

## Even if it is 5 or 10 minutes each day it is not acceptable!

"In my district, special ed kids are sent home from school early - 30 minutes to an hour earlier than 'regular ed' students. This doesn't seem right. When I asked about this, I was told, "All special ed students are released early - that's the rule." Is this legal?"

### **Wrightslaw Answers**

No. When your district says, "All special ed students are released early - that's the rule," they are discriminating against these children and violating the law. What can you do?

When the parents unite and work together, they are a powerful force. Here's how one group of parents tackled the problem. A group of parents in Tidewater Virginia formed a parent advocacy group called **PIER**.

PIER knew that their school district routinely sent disabled kids home early. Working together, members of PIER came up with a Creative Solution to the "transportation problems" in their district. This is how they handled it.

### **An OCR Complaint**

In December 1998, PIER filed a [compliant with the Office for Civil Rights \(OCR\)](#). Download the [OCR COMPLAINT: http://www.wrightslaw.com/law/pleadings/va.vabch.pier.ocr.pdf](#)

**Note to Readers:** This OCR Complaint is a very large (27 page) document in PDF. We suggest that you "right click" the link, save the document on your hard drive, then print it (remember where you put it!).

In their Complaint, the parents alleged that [Virginia Beach City Public Schools](#) (VBCPS) discriminated against students with disabilities. Here are some excerpts from the Complaint:

"Students with disabilities were routinely dismissed from school before the end of the instructional day, required to use separate bus loading and unloading areas, arrived to school late in the morning, rode segregated buses, and endured unreasonably lengthy bus rides."

"Students with disabilities who are dismissed before the end of the school day are given no meaningful opportunity to cover or makeup the instruction, knowledge or benefits they have been denied due to early dismissal."

"Consistent with School Board policy, nondisabled students receive a minimum of 6.5 hours of instructional time per day. In violation of this same School Board policy, students with disabilities are guaranteed only 5.5 hours. "

### **The Evidence: Parent Observations**

PIER supported their claims by conducting a series of observation at the schools:

"To document the early departure of students from schools, members of the community conducted **organized observations of school bus departures from school property at 39 randomly selected VBCPS schools.**

Documented observations by PIER and data provided by VBCPS revealed that **at 35 of the 39 observed schools, school buses transporting only students with disabilities departed from schools before the ending time of the instructional day . . .**"

PIER advised the school district that they were making these observations:

"Throughout the observation period, PIER kept the VBCPS administration apprised of the fact that observations were being conducted. In late spring VBCPS was verbally reminded that PIER intended to file a complaint regarding the early dismissals. Final observations were scheduled, and occurred on June 15, 1998."

"The morning of June 15, PIER telephoned VBCPS to inform the school district that observations would be occurring that day."

### **The Cover-Up That Failed**

At that point, Virginia Beach school administrators initiated a "cover-up." Their "cover-up" backfired:

"When PIER observers arrived at the schools on the afternoon of June 15, they observed **buses being rerouted back to school parking lots** by security guards and heard announcements on PA systems and bus radios that buses were not to leave school property until the general education students were dismissed."

"Students with disabilities were observed to be **waiting outside of the school building or sitting on buses for up to thirty minutes** until the end of the school day for nondisabled students."

"PIER faxed a handwritten note to VBCPS the next morning, after being unable to reach VBCPS Administration by telephone the afternoon before. The note informed VBCPS that PIER was halting observations because of the hardship placed on the students with disabilities the day before while waiting outside in the heat and on stifling hot buses."

"Apparently, instructions had been sent by VBCPS Administration to schools on June 15 informing the schools not to allow buses to leave the school property early. However this directive merely stopped buses from leaving early, not students with disabilities from being dismissed before their nondisabled peers."

### **"Predetermined Policy"**

In their [OCR Complaint](#), PIER alleged that:

"VBCPS has a **predetermined policy that students with IEPs will have a 5.5 hour program** as evidenced by the VBCPS's current IEP form that states, "All students should have the availability of receiving a full (5.5 hours) program if determined appropriate by the IEP committee and included in the student's IEP."

**"Parents are not advised** during IEP meetings or at any other point **that their children with disabilities are entitled to a school day of 6.5 hours as provided to nondisabled students."**

"VBCPS **discriminates against students with disabilities by applying a more limited length of the school day** for students with disabilities as compared to the length of the school day provided for nondisabled students . . . "

"The majority of students with disabilities need intensive remediation and services in part due to prior mis-education and denial of equal educational opportunity . . . With this intensive need **it is inappropriate to shorten the school day for students who perform poorly** on State-based testing . . . Indeed a strong **argument can be made under Section 504 that these students are entitled to additional, supplemental services** in order for them to attain outcomes expected for all students."

### **Virginia Beach Schools Agree to Resolve Allegations of Discrimination**

(from Press Release of November 8, 1999)

On November 8, 1999, PIER issued a Press Release about the case. A portion of the press release is quoted below.

"Virginia Beach City Public Schools (VBCPS) has entered into an agreement with the federal Office for Civil Rights (OCR) to address allegations of discrimination of students with disabilities. Protecting Individuals with Disabilities Education Rights (PIER), a local community group, filed a complaint with OCR in December alleging VBCPS systemically discriminated against students with disabilities who required transportation services."

"Students with disabilities were routinely dismissed from school before the end of the instructional day, required to use separate bus loading and unloading areas, arrived to school late in the morning, rode segregated buses, and endured unreasonably lengthy bus rides."

"In 1998 PIER conducted observations at 39 randomly selected schools. Ninety percent of these schools dismissed students with disabilities before the end of the instructional day. PIER observed 347 incidents of buses leaving school before the end of the instructional day. VBCPS provided documentation indicating that all of these buses were used to transport students with disabilities."

"VBCPS has agreed to take additional steps to resolve the complaint."

"The agreement with **OCR requires VBCPS to modify the school district's individualized education program procedures** to include a particular written plan to address transportation issues, to **provide transportation information to parents** through a newsletter, and to **develop a brochure to notify families of transportation requirements.**"

"The agreement by VBCPS to resolve the complaint closes this phase of the OCR investigation initiated in February that included a four day on-site investigation by OCR staff in May."

"Some students with disabilities may need separate transportation services, a shortened school day or other special transportation services. PIER fully supports the right of parents to have these needs met through the IEP (individualized education program) process."

"The resolution agreement between OCR and VBCPS will advance the civil rights of students with disabilities. PIER is pleased that VBCPS has agreed to resolve the complaint rather than continue with an even more lengthy and expensive OCR investigation. Cooperation by VBCPS with parents will result in more dollars being spent on education and fewer dollars being used for administrative and legal fees. Children with disabilities have won a significant battle to receive equal educational benefits."

"Parents of children with disabilities who continue to experience discrimination can contact PIER at 757-461-8007 or OCR at 202-208-7670."

### **Lessons from this Case**

If you work in the system be careful that you don't become a lightning rod for conflict. My assumption about the people calling the shots is:

- They don't know any better, or
- They've gotten away with it for years and think they can continue to get away with it.

You may want to print this information and take it the school, saying "Gee, this is what happened in Virginia when they sent kids with disabilities home early."

As you see with this OCR Finding, the practice of sending kids with disabilities home early is illegal. If your district has information that they are acting illegally, they are "on notice" that they need to "mend their ways" - now!

### **Information from the Office of Civil Rights (OCR)**

[Office of Civil Rights](#) - "We serve student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems. An important responsibility is resolving complaints of discrimination."

[How to File a Discrimination Complaint with the Office for Civil Rights](#) in English (September 2010)

[How to File a Discrimination Complaint with the Office for Civil Rights](#) in Spanish

[Customer Service Standards for the Case Resolution Process](#)

[OCR's Complaint Resolution Procedures](#)

[Contact OCR](#)