



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 27, 2013

Mr. Darwin J. Stiffler
Superintendent
Yuma Elementary School District
450 West Sixth Street
Yuma, AZ 85364

Re: Yuma Elementary School District
OCR Case Number: 08-13-1207

Dear Superintendent Stiffler:

We completed our investigation of the above-referenced complaint filed on May 20, 2013, against the Yuma Elementary School District. The Complainant alleges the District:

- Failed to communicate in a language the Complainant understands, including not providing procedural safeguards in Spanish, providing only a portion of the Individual Education Plan in Spanish, notifying the Complainant about a change in transportation services in English, and not providing a Spanish language translator at the school;
- Failed to adequately respond to the Complainant's disability discrimination complaint regarding the Student's treatment on the bus;
- Failed to timely conduct an independent evaluation/functional behavior assessment of the Student;
- Failed to implement the Student's Behavior plan; and
- Retaliated by changing the Student's transportation to a private company that charges if the Complainant does not report the Student's absence.

We conducted our investigation under Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin and Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities

As a public entity that receives Federal financial assistance from the Department, the District is subject to these laws and regulations. Individuals filing a complaint, participating in an investigation, or asserting a right under Title VI, Section 504, or Title II are protected from retaliation by 34 C.F.R. § 100.7(e), 34 C.F.R. § 104.61 as it incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Our investigation included a review of documentation submitted by the Complainant and the District. We also interviewed District staff and the Complainant. During the course of our investigation, the District expressed an interest in voluntarily resolving the allegations concerning LEP Parent Communication and the District's response to disability discrimination complaints from the complainant. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and the OCR Office Director believes that doing so is appropriate, and the remedies align with the allegations. With regard to the remaining allegations, we continued with our investigation and made findings. A discussion of our findings follows.

Parent Communication

We reviewed information from the District that was sent to the Complainant. We found that the District did not provide the Complainant with grades, the letter changing the Student's transportation, notice of discipline actions, and portions of the special education documents to the Complainant in Spanish. We note that many documents were translated into Spanish before being sent to the Complainant, but not all documents necessary for the Complainant to participate in her son's education and not all of the contents of the documents were provided to the Complainant in Spanish. The Agreement will require that the District establish a list of qualified interpreters and train staff on how to access translation assistance and interpreter services.

Disability Complaints

The Complainant raised concerns regarding XXX that her son received on the bus and restraint used in her son's classroom to the District. We found that in response to the Complainant's first concern regarding the XXX on the bus and the loss of the student's shoes, the District immediately investigated the Complainant's concern. As a result of the investigation, the District met with the Complainant on several occasions to discuss options and ultimately the Student's transportation was changed to individual private transportation.

As for the Complainant's concern regarding XXX and XXX resulting from the classroom, we found the District immediately investigated the complaint and took steps to prevent future injuries and ensure the Student's safety. The District communicated its findings to the Complainant at a number of IEP meetings throughout the school year. We find that the information from the District demonstrates that the District appropriately investigated and responded to each of the Complainant's concerns.

However, our investigation raised concerns regarding the District's policies on the use of restraint. During the past school year, the District did not have a restraint and seclusion policy. A policy has been developed and is in the process of being adopted. We reviewed the policy and it complies with guidance provided in the Department's Restraint and Seclusion: Resource Document, except that it allows the use of mechanical restraints. The District states that it does

not use mechanical restraints and requested that OCR review its proposed changes to the draft policy stating it prohibits mechanical restraints.

Accordingly, the Agreement will address revision of the policy to prohibit the use of mechanical restraints, updates for the Student's IEP regarding the use of any restraint or seclusion techniques, and notice and training regarding the new policy to staff and parents.

Independent Evaluation and Behavior Plan

The Complainant alleged that the District failed to timely conduct an independent evaluation for a functional behavior assessment (FBA) and failed to implement the Student's Behavior Intervention Plan (BIP). The complainant requested the FBA on October 18, 2012 and requested a specific evaluator. The District agreed to the independent FBA and evaluator on October 22, 2012. On December 13, 2012, the District informed the Complainant that it had not been able to reach her specified evaluator and reminded the Complainant to submit the signed release of confidential information. In the meantime, the District had its behavior specialist observe the Student and provide interventions for staff to try with the Student.

The independent evaluator began his assessment on January 17, 2013. The results were shared at an IEP meeting on February 19, 2013. The independent evaluator continued to work with staff through the end of the year on various positive behavior modification techniques with the Student. The Student's behaviors are challenging and the independent evaluator and classroom staff experienced difficulties finding positive behavior interventions that worked with the Student. Additionally, the District requested the independent evaluator provide written interventions for the IEP team to consider in order to develop a BIP. The independent evaluator has refused to provide the written interventions. The IEP team developed a BIP in the fall semester of 2013 based on the independent evaluator's verbal suggestions in the classroom.

We find that the amount of time between the Complainant's request and the start of the evaluation process and the duration of the evaluation are reasonable. We conclude that the District did not fail to timely conduct the independent functional behavior assessment.

Next, we reviewed whether the District failed to implement the Student's behavior intervention plan (BIP). However, there was no BIP in place during the 2012-13 school year. Since no BIP was in place, the District had nothing to implement and the District is in compliance regarding this allegation.

Retaliation – Charge for Transportation

Finally, we investigated the Complainant's allegation that the District retaliated against her for her advocacy by changing the Student's transportation to a provider that would charge her if she did not call to cancel the ride when the Student was absent. In analyzing the retaliation claim, we determine whether: 1) the individual engaged in an activity protected by Title VI, Section 504 or Title II of which the recipient had knowledge; 2) the recipient took adverse action against the

individual; 3) a causal connection existed between the protected activity and the adverse action; and 4) the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

We found that the Complainant participated in a protected activity when she advocated for disability-related services for her son. However, we did not find that the District took an adverse action. We found that her son was switched¹ to a private transportation service and the Complainant was informed she would be charged if she failed to call in when her son was absent. However, the Complainant was informed at an IEP meeting on February 19, 2013, that she would not be charged. The District also stated that the Complainant has in fact never been charged. The District sent the Complainant a letter on October 30, 2013 confirming that she will not be charged if she does not call the transportation company to inform them when the Student is absent. Based on the information gathered during the investigation, we find the District did not subject the Complainant to an adverse action. Therefore, we find the District did not retaliate against the Complainant as alleged.

We will monitor the District's implementation of the Agreement until all provisions have been satisfied. A copy of the Agreement is enclosed. We will also keep you and the Complainant informed of monitoring activities related to the case.

This concludes OCR's investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. Accordingly, we are closing the investigation of this complaint effective the date of this letter.

This letter sets forth OCR's determination in individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment. In addition, the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal

¹ We note that the Complainant did not allege that the switch to the private transportation service was retaliatory. However, we found that the Student's behavior on the District bus placed the Student and other students in danger and the District met with the Complainant on several occasions, including during IEP meetings, to discuss the Student's behavior prior to the change to private transportation. We also note that the Student continued to receive transportation in accordance with his IEP through the school year except when the Student's behavior caused damage to two different vehicles. During the time period when the vehicles were being repaired, the District reimbursed the parent for transporting the Student.

privacy. If OCR receives such a request, we will protect personal information to the extent provided by law.

Thank you for the courtesy and cooperation extended to us throughout the investigation. If you have any questions about this letter, you may contact XX-phrase redacted-XX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory Attorney Advisor

cc: John Huppenthal
Superintendent of Public Instruction