



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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November 24, 2015

Mr. Thomas Drexel
Director
Presidio School
1695 E. Fort Lowell Road
Tucson, Arizona 85719

Re: Presidio School
OCR Case Number 08-15-1255

Dear Mr. Drexel:

On June 1, 2015, we accepted for investigation the Complainant's allegations that Presidio School:

1. failed to provide the Complainant's son (the Student) a Free Appropriate Public Education because it:
 - a. failed to timely re-evaluate the Student after a significant change in placement when the Student could not physically attend school due to his disability;
 - b. failed to provide accommodations specified in the Student's Plan, including allowances for attendance;
 - c. failed to provide accommodations designed to meeting the individual needs of the Student based on his current and future disability manifestations;
 - d. failed to provide instruction when the Student's disability prevented him from attending;
 - e. required the Complainant to provide evaluations and reports, at her own cost, regarding the Student's disability; and
 - f. required the Complainant to provide an accommodation when the Student has a panic attack at School;
2. treated the Student differently in access to instructional materials, including textbooks; and
3. retaliated against the Complainant when she requested an Independent Evaluation, by threatening to report the Student as truant and requiring the Student be present on school grounds to take final exams.

We initiated an investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, 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 in programs or activities that receive Federal financial assistance from the Department. In addition, individuals filing a complaint, participating in an investigation or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. Section 104.61 and 28 C.F.R. Section 35.134.

During the investigation, the School expressed a willingness to resolve the complaint. Pursuant to OCR's *Case Processing Manual*, resolution options were discussed with the School. The Complainant alleged that her son, a student with disabilities (XXXX) was denied FAPE. The 2014-15 school year was the Student's first year at the School and the Complainant provided the Student's previous Section 504 Plan upon enrollment. The School stated that the Student attended school during the first semester on a regular basis, but started missing school for a significant amount of time during second semester. Due to the Student's disability, he was not able to physically attend school consistently and the Complainant alleged the School did not send classwork or materials home, or re-evaluate the Student to determine whether he needed different accommodations. The School provided information that the Student's Section 504 Plan was revised in March 2015 to add accommodations regarding the Student's inability to physically attend school. The Student is currently

attending a different school within a different school district. The Complainant has indicated that she will not re-enroll the Student in this charter school.

Though requested, the School did not provide OCR with a notice of non-discrimination, notice of its Section 504 and Title II compliance officer, special education policies and procedures for the identification and evaluation of students, or Section 504/Title II grievance procedures. The School expressed its willingness to correct these compliance concerns by entering into the attached Resolution Agreement.

The School has entered into the enclosed Agreement which, when fully implemented, will resolve the concerns raised by the Complainant and found during the investigation. The provisions of the Agreement are aligned with the issues raised in the complaint and are consistent with the applicable regulations.

We will monitor the School's implementation of the Agreement until all provisions have been satisfied. OCR has notified the Complainant that the School has entered into this Agreement, and we provided the Complainant a copy of the Agreement. We will also keep the Complainant apprised of monitoring activities related to this case.

This concludes our investigation of this complaint. We will continue to monitor the School's compliance with the Agreement until all the terms are satisfied. This letter addresses only the issues listed above and should not be interpreted as a determination of the School's compliance or noncompliance with Section 504, Title II, or any other Federal law in any other respect. Accordingly, we are closing the investigation of this complaint effective the date of this letter.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR. Additionally, the Complainant has a 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. If OCR receives such a request, we will protect personal information to the extent provided by law.

Thank you for your cooperation and the District's attention to this matter. If you have any questions regarding this letter, please feel free to contact Athena Quezada, Equal Opportunity Specialist assigned to this case, at (303) 844-3355 or by email at athena.quezada@ed.gov. I can also be reached at (303) 844-6083.

Sincerely,

/s/
Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

cc: Terry S. Garza, Superintendent
Presidio School

Diane Douglas
Arizona Superintendent of Public Instruction