



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
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June 3, 2016

Mr. Kevin Hoover  
Governing Board Chairman  
Amy Biehl High School  
123 4<sup>th</sup> Street SW  
Albuquerque, NM 87102

Re: Amy Biehl High School  
OCR Case Number: 08-16-1087

Dear Mr. Hoover:

On December 8, 2015, we opened for investigation a complaint filed against Amy Biehl High School to determine whether it failed to implement the Complainant's son's (the Student) Individual Education Program (IEP) during the 2015-16 school year regarding: Parental notification of concerns, checks with advisor regarding appropriateness or modification, opportunity to redo assignments, break down assignments, give the Student an opportunity for repetition/clarification, verbal discussion with teacher/notes/organizer, and shortened or fewer assignments. The Complainant also alleged that the School retaliated against her by not providing the Complainant with documents and evaluation materials prior to the October 2015 IEP meeting.

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 and, respectively, public entities. 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. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. As a recipient of Federal financial assistance and a public entity, the School is subject to these laws and regulations.

During the investigation, we reviewed documentation provided by the School and Complainant. In addition, we also conducted an initial interview of the Complainant, along with a rebuttal interview of the Complainant following our review of the documentation submitted by the School.

### **Failure to Implement the IEP Allegation**

To determine whether the School failed to implement the Student's IEP, we examine whether the Student is a person with a disability, whether the Student has an IEP, what accommodations are in the IEP, and whether the accommodations were implemented.

The Student is identified as a person with disabilities (Attention, ADHD, Executive Function, Anxiety); the Student has had multiple IEPs during School Year 2015-16. The file documentation supports that the Student received special education and related aids and services from the School prior to, and during School Year 2015-16. In addition to his April 2015 Behavior Intervention Plan, the Student had Assistive Technology needs, and qualified for Speech/Language Therapy. Subsequent to the complaint filing, during May 2016, the Student graduated from the School. The following is a summary of the Student's IEPs, the accommodations identified for the Student, and information on whether they were implemented for the Student.

The Student's October 2015 IEP had identified goals and accommodations/modifications in the areas of written language and social emotional. He was to receive frequent breaks and seating near a peer with whom he feels comfortable with. In response to these goals, he was also to be provided opportunities for discussion and verbal responses to curriculum as needed. He was also to use writing templates, outlines and/or graphic organizers for formal writing assignments, with copies of teacher notes when requested. In addition, he could ask to review progress and next steps prior to leaving class, as well as utilize model metacognitive strategies like thinking out loud and using multi-sensory learning strategies in lessons. In addition, at his request, the teacher would highlight the main points of the text for him to pay particular attention to. With these, he would be prompted before transitioning to something else and would also receive redirection when needed. He could test in a quiet group with extended time and could take the exams orally. With homework, he was to be provided with clear choices of assignments and strategies on how to prioritize with clear deadlines and key assignments. His work would be broken down into discreet steps and large homework assignments would be broken down into smaller assignments with deadlines.

The Student's March 2016 IEP had goals and accommodations/modifications that for the most part mirrored the October 2015 IEP. The differences were that he was allowed to bring and chew gum or eat candy in class, receive sentence starts for every paragraph for writing assignments, use his laptop and send all his documents to teachers that were typed and printed and/or email them, use the computer for his homework instruction, and have frequent check-ins with his advisor about his habits, tasks, and progress. He could also use assistive technology when needed and checks with advisor, and - when pre-arranged with teacher - his homework, classwork and tests could be assessed orally and/or weighed differently. He also had an opportunity to re-submit specific homework assignments to eliminate zeros. In the event of a failing grade, the School was to hold a conference with his advisor, teacher, and parent; if one of his teachers had concerns about the possibility of the Student failing the semester, the advisor was also to notify the parent.

Our review of the file information supported that the Student was provided with accommodations/modifications according to his IEP. The initial documentation supported that his IEP's were being implemented. There was specific documentation showing that the Complainant was given notification of concerns – including information provided by his advisor, the Student was given an opportunity to redo his assignments, others assignments were broken down into smaller pieces and other assignments were shortened pursuant to the accommodations in the IEP.

OCR had not yet made any determinations with respect to the remainder of his IEP and prior to making a compliance determination with respect to whether the School failed to implement the Student's IEP in violation of 34 C.F.R. § 104.33, on May 20, 2016, the School's designated representative contacted OCR to request a 302 Resolution Agreement. Based on this request, OCR did not proceed further with its investigation and has entered into a resolution agreement to address compliance concerns related to this allegation.

### **Retaliation Allegation**

The Complainant also alleged that the School retaliated against her by not providing her with documents and evaluation materials before the October 2015 IEP meeting.

Under the implementing regulation, recipients are prohibited from retaliating against any individual for the purpose of interfering with any right or privilege protected by Section 504 and Title II. In analyzing a retaliation claim, we determine whether: the individual engaged in an activity protected by Section 504 and Title II of which the recipient had knowledge; the recipient took an adverse action against the individual; a causal connection existed between the protected activity and the adverse action; and, the recipient has a legitimate, non-retaliatory, non-pretextual reason for its action.

OCR determined that the Complainant participated in a protected activity based on the fact that she served as an advocate on behalf of her son, who is a qualified individual with a disability. We next considered whether the alleged retaliatory action was adverse to the Complainant. During an email and telephone exchange with the Complainant, OCR specifically requested that she identify the specific documents that the School failed to provide her in preparation for the October 2015 IEP meeting. The Complainant stated that she requested documents from the School, which are contained in an email dated August 21, 2015. We notified the Complainant that we received evidence from the School demonstrating that the School responded to her August 2015 email on September 22, 2015. In responding to each of the Complainant's seven concerns, we found that the School provided the Complainant with some of the information she requested, directed her to a website that would allow her to retrieve other parts of her requested information, and directed her to an individual who would be able to provide her with information specific to her request.

OCR shared what we had learned in our investigation, and we issued the Complainant a follow-up email requesting that she identify if there was any additional information that the School failed to provide her in preparation for the October 2015 IEP meeting. The Complainant's

response to our follow-up email did not change our position; we determined that the School responded to the Complainant's August 2015 email on September 22, 2015.

Based on this, we are unable to conclude that the Complainant experienced the adverse action that she presented in her complaint. Without an adverse action to establish a prima facie case of retaliation, OCR concluded that there was no further need to continue our investigation or analysis of this allegation. Correspondingly, we find that the School did not retaliate against the Complainant as alleged.

With respect to the IEP allegation, the School agreed to voluntarily resolve the allegation by entering into a Resolution Agreement, signed June 3, 2016. OCR will closely monitor the School's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the School's policies and practices are administered in a nondiscriminatory manner. Once fully implemented, the Resolution Agreement will ensure the School's compliance with the regulations as addressed in this complaint.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the School's compliance or non-compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant has the right to file a private suit in federal court regardless of whether OCR finds a violation.

Please be advised that the School 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 individual may file another complaint alleging such treatment.

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 privacy.

This letter sets forth OCR's determination in an 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.

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Thank you for the cooperation and assistance provided by Mr. Frank McCulloch, the School's designated representative assigned to work with OCR on this case. We are committed to prompt and effective service. If you have any questions, please contact Ms. Athena Quezada at 303-844-3355 or by email at [athena.quezada@ed.gov](mailto:athena.quezada@ed.gov).

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Enclosure – Resolution Agreement

cc: Mr. Frank McCulloch  
Executive Director/Principal

cc: (w/o enclosures): Hanna Skandera  
New Mexico State Superintendent  
Of Public Education