



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Ref: OCR Docket # 06151707

XXXXXX, Head of School
Gateway College Preparatory School
3360 CR 111
Georgetown, TX 78626

Dear XXXXX:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Gateway College Preparatory School (GCPS), Georgetown, Texas, which OCR received on September 10, 2015. The Complainant alleged that GCPS discriminated against a second-grade student (Student) on the basis of disability and also subjected him to retaliation. Specifically, the Complainant alleged:

1. The GCPS discriminated against the Student on the basis of disability when it failed to timely evaluate the Student during the 2014-2015 school year;
2. The GCPS retaliated against the Student by attempting to expel him after the Student's parent advocated for his rights as a student with a disability.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability.

OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging disability discrimination against public entities, such as public preschools, elementary and secondary education systems and institutions, public institutions of higher education and vocational education

(other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. The implementing regulations for Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.134, also prohibit retaliation.

The GCPS is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction to process this complaint under Section 504 and Title II.

OCR opened an investigation of the following legal issues:

1. Whether GCPS discriminated against the Student on the basis of disability by failing to timely evaluate the Student's need for regular or special education and related aids and services despite having notice that, because of the Student's alleged disabilities, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education during the 2014-2015 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.
2. Whether GCPS retaliated against the Student by attempting to expel him during the 2014-2015 school year because the Student's parent advocated for the Student's disability-related rights, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134.

During the course of investigation, OCR interviewed the Complainant and the Student's mother and received information from the GCPS regarding the issues under investigation.

Regarding issue 1, OCR's investigation revealed that the Student's mother referenced a possible learning disability, and a potential connection between the learning disability and the Student's negative behavior, in email communication with a GCPS teacher in February 2014. Additionally, information received from the recipient indicated that all GCPS personnel may not be following the District's Section 504 policies and procedures, which require the District to decide whether an evaluation of a student is needed within a reasonable amount of time.

Regarding issue 2, OCR's review of the District's data response indicates that the parents advocated for the Student related to his disability throughout the 2014-2015 school year. During a meeting on March 13, 2015, the GCPS informed the parents that the Student may not be a good fit for school and discussed the possibility of a dismissal meeting. Due to the previous advocacy from the parents and the time of the alleged adverse action, OCR determined that there is a possibility of a causal connection between the protected activity and the adverse action.

Prior to the conclusion of OCR's investigation, and before OCR had obtained sufficient evidence to support a finding of either compliance or noncompliance with regard to either issue 1 or 2, the GCPS expressed an interest in resolving the allegations and issues raised in the complaint. Under Section 302 of OCR's Case Processing Manual, issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

OCR determined that it is appropriate to resolve the allegations and issues pursuant to OCR's case processing procedures referenced above. OCR negotiated with the GCPS and obtained the enclosed Resolution Agreement (Agreement), which was signed by the GPCS on May 11, 2016. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the alleged compliance issues raised in the complaint. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the GCPS's implementation of the Agreement. Please be advised that if the GCPS fails to adhere to the actions required under the Agreement, OCR will immediately resume its compliance efforts.

This concludes OCR's investigation of the complaint and should not be interpreted to address the GCPS's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The GCPS has been notified of this action.

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. The Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the GCPS 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.

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.

If you have any questions regarding this matter, you may contact Tamara Williams, the investigator assigned to your complaint, at (214) 661-9607 (Tamara.Williams@ed.gov), or you may contact Lori Bringas, Team Leader, at (214) 661-9638 (Lori.Bringas@ed.gov).

Sincerely,

Taylor D. August, Director
Office for Civil Rights
Dallas Office

Enclosure