



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 20, 2013

Dr. Betsy Hargrove
Superintendent
Avondale Elementary School District
District Office
295 W. Western Avenue
Avondale, Arizona 85323

Re: Avondale Elementary School District
Case Number: 08-13-1191

Dear Dr. Hargrove:

We are writing to inform you that we have completed our investigation of the above-referenced case. We investigated whether the Avondale Elementary School District (District) discriminated against the Complainant's son on the basis of race and disability. Specifically, the Complainant alleged that the District failed to respond to her complaints of harassment of her son (Student A) by a peer (Student B).

We are responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation, which prohibit discrimination on the bases of race, color, or national origin in programs and activities that receive funds from the U.S. Department of Education. Additionally, we enforce Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation 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 recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

In the investigation, we carefully considered information provided by the Complainant, documents submitted by the District, and the District's response to the complaint. We also interviewed the Complainant, the Student, and District witnesses with information relevant to the allegations. With regard to the first allegation, failure to respond to complaints of disability harassment, we found that there was insufficient evidence to support the allegation. A discussion of our finding with regard to this allegation can be found below.

With regard to the second allegation, failure to respond to complaint of racial harassment, the District agreed to enter into an agreement. This agreement was entered into during the course of OCR's investigation, and before OCR made any further findings with regard to this allegation. The District indicated its willingness to take steps necessary to ensure compliance with Title VI with regard to this allegation: failure to respond to complaint of racial harassment. We reviewed

this request and determined that it justified entering into an agreement without completing a full investigation. On November 20, 2013, we received the District's signed Resolution Agreement (enclosed). The provisions of the Agreement are aligned with the complaint allegations in this case and the information obtained during OCR's investigation and are consistent with the applicable regulations. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title VI, and its implementing regulation. We will monitor implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the School fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

Failure to respond to complaint of disability discrimination

Legal Standard

The regulations implementing Section 504 at 34 C.F.R. Section 104.7(b) and Title II at 28 C.F.R. Section 35.107(b) require a covered entity, such as the District, to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by their respective provisions, including disability harassment. To meet this standard, a recipient's grievance procedures should include, among other requirements, notice to the Complainant of the outcome of his or her grievance and a process for appealing the determination. Additionally, the District is responsible, whenever it has notice of possible discrimination based on disability, to respond in a prompt and equitable manner. That obligation applies regardless of whether a Complainant uses the District's existing grievance procedures, otherwise informs the covered entity of the disability-based discrimination, or the District learns of the alleged discrimination in another way.

When investigating allegations of a failure to respond to a disability-based complaint, OCR first examines whether the District knew or should have known that a complainant may have experienced discrimination based on disability. Once OCR determines that the District is on notice of possible disability-based discrimination, it then examines whether the District responded in a prompt and equitable fashion. The response should consist of steps to promptly and thoroughly investigate or otherwise determine what occurred, including, but not limited to, interviews of the individual alleging discrimination, as well as the accused and other relevant witnesses. Following the investigation, the District must determine whether discrimination occurred, notify the parties of the outcome of the investigation, and take prompt and effective measures reasonably calculated to end any discrimination, prevent discrimination from occurring again, and remedy any effects of the discrimination on the victim.

Background

The Complainant informed OCR that Student A has an Individualized Education Plan (IEP) which states in part that Student A has XXXX. The Complainant alleged that since February 2013, Student A was bullied and harassed by Student B resulting in Student A assaulting Student B on XXXX and receiving a nine day out-of-school suspension.

The Complainant explained that the disability related harassment by Student B consisted of; 1. crunching a water bottle near Student A's ear in class; 2. repeatedly calling Student A's name in

class and then smiling at him and walking away; and 3. repeatedly taunting Student A with statements about “XXXX” or saying Student A had to go to the “XXXX”. Student A has repeatedly told Student B to be quiet when he did these harassing behaviors, but Student B continued. Student A made a request to his home room teacher that his seat be moved away from Student B unbeknownst to the Complainant. This request was granted; however, this did not resolve the issue because the two students attend multiple classes together as well as recess. The Complainant informed OCR that Student B continued to harass Student A during these other class periods.

Complainant did not file a disability harassment complaint with the District at the time that each incident occurred, but did inform the District of these incidents after the XXXX incidents.

The District asserts that it did not fail to respond to the Complainant’s concerns because they never received a complaint alleging disability harassment nor did they perceive the incidents reported by the Complainant as disability related. The District’s acknowledged that the Complainant informed the District of the water bottle crunching, peanut comments, and smiling incidents after XXXX.

Analysis/ Conclusion

First, we examined whether the School knew or should have known that Student A may have experienced disability related harassment. It is undisputed that the Complainant did not make a written or oral complaint alleging disability harassment. The Complainant did provide the District with a chronology of the continued negative interactions between Student A and Student B. While the chronology certainly provides a history of the ongoing hostility between Student A and Student B, it does not invoke any language that should have been reasonably interpreted as alleging harassment based on Student A’s status as a student with a disability. Consequently, we cannot conclude that the District knew or should have known that either Student A or the Complainant was making a complaint of disability harassment. Therefore we find insufficient evidence that the District failed to respond to a complaint of disability harassment.

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

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.

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.

This concludes OCR’s investigative phase of this complaint. We thank you and XXXXX for the courtesy and cooperation provided throughout the resolution of this complaint. If you have any

questions regarding this or other civil rights matters, please feel free to contact XXXX, Equal Opportunity Specialist at XXXX, or me at 303-844-2557.

Sincerely,

/s/

Stephen Chen
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Mr. John Huppenthal
Arizona State Superintendent of Public Instruction