



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 24, 2016

Dr. Mary Kamerzell
Superintendent
Catalina Foothills Unified School District
2101 E. River Rd.
Tucson, Arizona 85718

Re: Catalina Foothills Unified School District
Case Number: 08-16-1003

Dear Superintendent Kamerzell:

We received a complaint of discrimination filed against the Catalina Foothills Unified School District (District) on October 5, 2015. In his complaint, the complainant alleged that the District discriminated against his son (the student) on the basis of disability. Specifically, the complainant alleged that the District failed to adequately respond to his complaint(s) of discrimination, including retaliation. We determined that we have the authority to investigate this complaint consistent with our complaint procedures and applicable law.

We initiated an investigation of the complaint allegations under the authority of Section 504 and its implementing regulation, at 34 Code of Federal Regulations 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 by public entities respectively. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and similarly, individuals filing a complaint, participating in an investigation, or asserting a right under Title II are protected from intimidation or retaliation by 28 C.F.R. § 35.134. As a recipient of Federal financial assistance and a public entity, the District is subject to these laws and regulations.

During our processing of this complaint, we confirmed that the complainant, a parent of a student with a disability, filed a complaint with the District in which he asserts that the District's staff discriminated against the student on the basis of disability, and retaliated against the student for his self-advocacy. Specifically, the complainant's allegations in his internal complaint included denial of free appropriate public education for the student by the District, and retaliation against the student by identified staff members in the form of harassment. The District acknowledges receiving the complaint dated October 4, 2015 via email. The complaint is comprised of eighteen enumerated paragraphs that identify the complainant's various concerns. The District also provided documentation demonstrating that it investigated the complainant's

allegations, including meeting with the complainant to discuss his concerns, interviewing relevant witnesses identified by the complaint, and took prompt action to address the concerns identified as a result of the District's investigation.

The District issued a written response (dated October 30, 2015) to the complainant that delineated the steps taken to investigate his allegations, and explaining that appropriate action had been taken or was pending against identified staff members based on the District's investigation. The response letter includes a response to each of the complaint's enumerated paragraphs. OCR confirmed that the District found concerns consistent with those reported by the complainant, and that the District took action [XXXX-section redacted -XXXX.]

Per the complainant's request, the District also completed a comprehensive educational evaluation of the student under the Individuals with Disabilities Education Act and developed for implementation an Individual Education Program for him. The student previously was receiving services pursuant to a Section 504 Plan. The complainant confirms these actions. The District also changed the student's case worker and modified his schedule to avoid certain staff and students. The District also issued an all staff email on January 15, 2016 (as recommended by OCR) advising staff that retaliation for engaging in a protected activity is prohibited and that any individuals who perceive they have been retaliated against may file a complaint with the District through its 504/Title II grievance procedures, or may file directly with OCR. The email also indicated that individuals found to have retaliated will be subject to disciplinary action consistent with District disciplinary policies and procedures. OCR confirmed delivery of this email.

Nonetheless, the complainant asserts that the District's actions in response to his complaint are inadequate. Specifically, the complainant asserts that the District did not provide adequate individual remedy for the student. Prior to completion of our investigation and prior to OCR reaching a conclusion regarding the complaint allegations, the District expressed an interest and willingness to resolve the complaint allegations through a voluntary agreement with OCR. According to Section 302 of OCR's *Complaint Resolution Manual*, allegations and 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. We have determined that in this instance a 302 agreement is appropriate to resolve the identified complaint allegation and issues. The terms of the agreement are aligned with the allegation and issues investigated and are consistent with applicable law and regulation(s).

We will monitor the District's implementation of the enclosed Agreement until all provisions have been satisfied. We will provide the complainant a copy of the Agreement, and we will also keep the complainant apprised of monitoring activities related to this case.

This concludes our investigation of this complaint (case number 08-16-1003). This letter addresses only the allegations raised in this complaint and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504 and Title II, or any other federal law in any other respect. Accordingly, we are closing the investigation of the 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 contact Sandra Sanchez, Civil Rights Attorney, at (303) 844-6096 or by email at Sandra.Sanchez@ed.gov. I can also be reached at (303) 844-6083 or at Angela.Martinez-Gonzalez@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enc. Resolution Agreement

cc: XXXXX

Ms. Diane Douglas
Arizona Department of Education