



UNITED STATES DEPARTMENT OF
EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION VIII
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September 29, 2017

Mr. Shane McCord
Superintendent
Gilbert Unified School District
140 South Gilbert Road
Gilbert, Arizona 85296

Re: Gilbert Unified School District
OCR Case Number: 08-16-1176

Dear Superintendent McCord:

We are notifying you of our decision in this case. On February 16, 2016, we received a complaint alleging Gilbert Unified School District (District) discriminated against the Complainant's daughter (the Student) on the basis of disability. Specifically, the Complainant alleged that the District failed to respond appropriately when she complained that the Student was harassed at XXXX School (School) based on her disability; and that the District's failure to address the bullying resulted in a denial of a free appropriate public education (FAPE). Also, the Complainant alleged that the School treated the Student differently because of her disability when it failed to correct her incorrect Grade Point Average (GPA), resulting in a denial of opportunity to participate in Student Council.

We initiated an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; 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. The District is a recipient of Department funding and a public entity, and as such is subject to these laws.

We requested that the District provide us with information and documents relevant to the complaint allegations, which it did. We conducted a thorough review of the information the Complainant and the District provided.

We conclude there is sufficient evidence to find that the District failed to respond appropriately to the complaint of disability harassment. After we notified the District that we find it did not respond appropriately to her complaint of disability harassment, the District, through its counsel, agreed to resolve this violation by entering into a resolution agreement. We find insufficient evidence that the District failed to correct the Student's GPA thus denying her an opportunity to participate in Student Council. This letter addresses our findings.

Alleged Failure to Respond to a Complaint of Disability Harassment

Legal Standard

Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment by student peers, it is responsible for determining what occurred and responding appropriately. A school district may violate Section 504, Title II and the regulations if: (1) the harassing conduct is sufficiently severe, pervasive or persistent to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take prompt and equitable responsive action. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate a hostile environment, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7[b] and 28 C.F.R. §35.107[b]).

Facts and Analysis

The Student was enrolled in the School from the Fall semester 2014 through the Fall semester 2015. She was in the eighth grade when the Complainant withdrew her from the School after the winter break in 2015. She received services pursuant to an Individualized Education Program (IEP) during her time at the School. The Complainant raised complaints to the District that the Student was harassed on three occasions during the Fall semester 2015 by her peers, including being called "retard". The District acknowledges that the Complainant complained to the School staff that the Student was harassed by her peers.

The District denied that the Student was harassed while a student at the School and denied that it failed to address concerns expressed by the Complainant that the Student was bullied or harassed. The District claims that it attempted to investigate each incident reported by the Complainant. The investigations included the staff speaking to others who were witnesses to the alleged incidents. The District also claims that the Student would often refuse to participate in an investigation. The School reported to OCR that at no time did they substantiate an incident of bullying or harassment.

We reviewed the District's Policies on Discrimination and Harassment and the procedures to be followed when a complaint of discrimination or harassment is made to the District. The District's procedures require that an investigation be conducted and a written investigation report prepared. In those instances where the District investigator finds no violation (harassment) occurred, the investigator will, within two days of the finding, notify in writing the individual filing the complaint and will provide that individual information regarding other grievance or dispute resolution procedures. There is no dispute that the District did not provide the Complainant with the required notification. The District acknowledged this failure and agreed to resolve the procedural violation found in this investigation.

The District entered into a Resolution Agreement, a signed copy of which is enclosed. OCR will monitor the implementation of the Agreement. When the Agreement is fully implemented, the allegation will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. A failure to implement the Agreement according to its terms will require us to reopen the case for further proceedings. The provisions of the Agreement are aligned with the issue in the complaint and are consistent with the applicable regulations.

Allegation Regarding Participation in Student Council

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504, Title II and the regulations for providing students with a nondiscriminatory educational environment.

The Complainant alleged that the Student was treated differently because she was not able to participate in the Student Council class because the GPA was wrong on the transcript (lower than the Student's actual GPA), and that this was disability discrimination. In November 2015, the Complainant contacted the School to report that the Student's GPA was incorrect on the School's intranet website. Specifically, she raised that the Student's GPA was listed at XXXX. The Complainant's concern was investigated by the Principal, the Dean of Students, and the 8th grade Guidance Counselor. We note that an email provided by the District indicates there may have been a computer glitch that showed the XXXX GPA, and a follow-up transcript had a cumulative GPA that was blank. However, we could not find evidence that any mistake in the GPA was based on disability. The District provided us with its grading policies and the Student's grade report with a GPA of XXXX. The District reported that the Student was eligible to participate in the School's extracurricular activities, including Student Council, and was not denied access based on a low GPA. Rather, the District claims that the Student did not express an interest in Student Council. The Complainant stated that the Student completed an essay as part of an application to participate in Student Council. In a rebuttal opportunity, the Complainant wrote to us that the Student cannot remember who she provided the Student Council information to or if her directions were clear to School staff on who to provide the Student Council application to. We find the evidence insufficient to conclude that the District discriminated in this matter.

Conclusion

This letter addresses only the issues discussed above and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504, Title II, or other

Federal civil rights laws in any other regard. The Complainant may have a right to file a private suit in Federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in the investigation process are protected from retaliation by Federal law.

Under the Freedom of Information Act, we may release this document and related correspondence and records upon request. If we receive a request, we will protect personal information to the extent provided by law.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Thank you for the District's cooperation in this matter. If you have questions about this letter, please contact Attorney Michael Sentel at 303-844-3333, or by email at r.michael.sentel@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Cc: Cathleen Dooley, Counsel for District

Diane Douglas, Arizona Superintendent of Public Instruction