



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 8, 2016

Gary Bruntz, Superintendent
Wiggins School District
320 Chapman Street
Wiggins, Colorado 80654

Re: Wiggins School District
OCR Case Number: 08-16-1321

Dear Superintendent Bruntz:

We have completed our investigation of the above-referenced complaint filed on May 9, 2016, against Wiggins School District (“the District”), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District failed to provide her daughter (“the Student”) a free appropriate public education (FAPE) by failing to implement her Section 504 Plan on three occasions:

- Incident 1: On or about February 25, 2016, the faculty sponsor of the Future Farmers of America (FFA) club at the Student’s school (“the Sponsor”) failed to provide the Student with a gluten-free option during the FFA week taco bar lunch.
- Incident 2: Staff at the Student’s school failed to provide the Complainant with notice of the food being provided at the junior class prom, which took place on or about April 16, 2016.
- Incident 3: During an FFA field trip, on or about May 3, 2016, the Sponsor failed to provide a gluten-free option with no possibility of cross-contamination.

We conducted an investigation under the authority of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) 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 (“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 subject to these laws and regulations because it is a recipient of Federal financial assistance from the Department and a public entity.

During the investigation, we reviewed documentation provided by the District and the Complainant, as well as the District’s responses to our questions. At the conclusion of our investigation, we found: (a) that the preponderance of the evidence supports that the District violated Section 504 and Title II with regard to Incident 2; and (b) that, with regard to Incident 1 and Incident 3, there is insufficient evidence to establish that the District, discriminated as alleged. This letter explains our findings.

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Upon being advised of these findings, the District voluntarily agreed to enter into a resolution agreement to resolve the matter. A signed original of the agreement is enclosed with this letter. We thank the District for entering into a Resolution Agreement, which when fully executed, will resolve our compliance concern.

Background Information

During the 2015-2016 school year, the Student was a ninth grade student at Wiggins High School (“the School”). The Student has Celiac Disease and a Section 504 plan.

Legal Requirements

The regulation implementing Section 504 at 34 C.F.R. Section 104.33 requires recipients that operate a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each student with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the student’s disability. Section 504 defines a student with a disability as a student who has a physical or mental impairment that substantially limits a major life activity. Section 504 defines “appropriate education” as the provision of regular or special education and related aid and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of non-disabled students. Implementation of a Section 504 plan developed in accordance Section 504 is one means of meeting this regulatory requirement. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Incident 1 – Gluten-Free Option During FFA Week Taco Bar Lunch

On or about February 25, 2016, the School’s FFA Club had a taco bar lunch. The Student’s Section 504 plan read, in relevant part: “Teachers will give the parents a 24 hour notice of any special events at which food will be provided that is not from the cafeteria. The school will provide parents with a gluten free option for the event. Parents may choose to provide appropriate food for the event.”

The Complainant asserted that she texted the following to the Sponsor: “Taco bar/dessert day-XXX can have the hamburger from Stagecoach, Ortega gluten free corn taco shells, and McCormick taco seasoning, if seasoning is used. ... XXX will bring in a dessert.” However, according to the Complainant, the Sponsor did not reply and then, on the day of the event, asked the Student if she had food that she could eat because he did not provide a gluten-free option.

The Sponsor, in his narrative response, indicated that he did not receive the text that the Complainant reported having sent. Instead, the Sponsor asserted that when he spoke with the Complainant a few days prior to the event, they agreed that: (a) the Complainant would send in a taco shell and dessert for the Student (in other words, she chose “to provide appropriate food” pursuant to the Student’s Section 504 plan); and (b) the Student would make her own taco with the gluten-free fixings provided (hamburger, lettuce, tomato, and cheese). The District provided

us with a record of text messages between the Sponsor and the Complainant; none of the text messages were about taco bar day.

We provided the Complainant with an opportunity to provide us with copies of the text messages, but she did not provide them.

Since the Complainant alleges that the School was supposed to provide a gluten-free option for the Student on taco bar day, and the District asserts that the Complainant agreed to provide the gluten-free option for the Student on taco bar day, and neither side can offer concrete evidence to support the veracity of their claim, **we find that there is not a preponderance of evidence that the District failed to follow the Student’s Section 504 plan with regard to taco bar day.**

Incident 2 – Notice of Food at Prom

On or about April 16, 2016, the School had its junior prom. According to the junior class prom faculty sponsor, prom was held at a private venue and the venue provided snacks. The Student’s Section 504 plan read, in relevant part: “Teachers will give the parents a 24 hour notice of any special events at which food will be provided that is not from the cafeteria.”

The Complainant alleged in her complaint that no one from the School contacted her to discuss food options for prom, as required by the Student’s Section 504 plan.

The District’s Superintendent and the faculty sponsor asserted in narrative responses that no one provided notice to the Complainant because they did not know the Student would be attending the event. They reported that attendance by freshman has only been allowed for a few years and has been sporadic (yet increasing). The sponsor also noted that students were not required to sign up for or purchase tickets in advance of junior prom

The Student’s Section 504 plan required 24-hour notice for “*any* special events at which food will be provided that is not from the cafeteria.” (emphasis added). The plan did not require that the School have specific knowledge that the Student was planning to attend an event. Junior prom was a special event at which food was provided by a private vendor. Therefore, the Student’s Section 504 plan required the School to provide notice at least 24 hours prior to the junior class prom.

Since the Superintendent and junior prom faculty sponsor admitted that no one provided notice to the Complaint of food being served by a private provider, **we find that there is a preponderance of evidence that the District failed to follow the Student’s Section 504 plan with regard to junior class prom.**

Incident 3 – Gluten-Free Option During FFA Field Trip

The Student’s Section 504 plan read, in relevant part, “If a field trip or extracurricular activity sponsor stops at a convenience store, restaurant, or fast food franchise where food is NOT provided by the school but students purchase their own, all efforts will be made by the sponsor to stop at or near an establishment that parents have preapproved. Parents will provide the school with a list of acceptable restaurants and fast food franchises.”

On or about May 3, 2016, the School's FFA Club was scheduled to go on a field in Fort Collins, Colorado. Participating students were going to purchase their own meals at restaurants the group frequented. The Complainant alleged that she sent the Sponsor a list of acceptable nearby restaurants, but the Sponsor would not ensure that the students would eat at restaurants with gluten-free options and a guarantee of no cross-contamination. Specifically, she asserted that the Sponsor was taking the group to Texas Roadhouse for dinner and IHop for breakfast, in violation of the Student's Section 504 plan.

Records provided to us by the District show the following communications between the Complainant and Sponsor leading up to the trip. On April 14, 2016, the Sponsor texted the Complainant about the upcoming FFA State Judging Contest at Colorado State University. He advised her that the plan was to go to IHOP in the morning and Texas Roadhouse in the evening on May 3, 2016. On April 18, 2016, the Complainant texted the Sponsor to share her concerns about Texas Roadhouse and IHOP not being able to guarantee that there would be no cross-contamination. The Sponsor replied on the same day to request a list of alternatives. On April 20, 2016, the Complainant texted the Sponsor a list of six restaurants that "offered a safe meal option" – Outback Steakhouse, Olive Garden, Chick-Fil-A, Wendy's, Pizza Hut, and The Egg & I. She also wrote, "I will text additional restaurants after I have confirmed if they're supposed to be Celiac friendly." On April 28, 2016, the Sponsor texted the Complainant that the plan was still to go to IHOP and Texas Roadhouse because: (a) the vast majority of participating students wanted to go; and (b) he and the principal "felt the gluten free menu for these restaurants looked good[.]" Further, with respect to Texas Roadhouse, he wrote: "I know you are concerned about cross contamination. I'm willing to visit with the Manager to express this concern. As another option for her, if there is another restaurant nearby she can call in an order that can be picked up to go and she can join us as well. Please let me know her choice." With respect to IHOP, he wrote to the Complainant: "Tuesday morning the group wants to eat at IHop. We have checked into their options as well and against there were several gluten free options for her. I will meet with the manager as well. She could also see what the Hilton offers for breakfast, or I can run her to Campus or another nearby restaurant to get something to go."

The Sponsor stopped "near" establishments that the Complainant preapproved, as required by the Student's Section 504 Plan. According to Google Maps, The Egg and I, which was pre-approved by the Complainant for breakfast, is located 0.3 miles from the IHOP where the group stopped. Similarly, the Texas Roadhouse was 2.6 miles from Olive Garden, 1.2 miles from Outback Steakhouse, 2.5 miles from Pizza Hut, and 3.1 miles from Chick-Fil-A, all of which were pre-approved by the Complainant.¹ Therefore, **we find that there is not a preponderance of evidence that the District failed to follow the Student's Section 504 plan with regard to the FFA field trip.**

Conclusion

The District voluntarily entered into an agreement with the Office for Civil Rights (OCR) to resolve these issues. Therefore, OCR is closing the investigative phase of this case effective the

¹ Notably, the Complainant did not ultimately send the Student on the portion of the field trip involving the meals at Texas Roadhouse and IHOP.

date of this letter. The case is now in the monitoring phase. The monitoring phase will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close Case Number 08-16-1321 and send a letter to the District, copied to the Complainant, stating that this case is closed.

This letter addresses only the issues listed above and should not be interpreted as a determination of the District's compliance or noncompliance with any other law or regulatory provision.

Please note that the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Additionally, the District 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.

This letter sets forth OCR's determination in an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. 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. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions, please contact Jason Langberg at (303) 844-6299 or Jason.Langberg@ed.gov.

Sincerely,

/s/

R. Michael Sentel
Senior Attorney Advisor

Enclosure – Resolution Agreement

CC: State commissioner