



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

April 27, 2017

Dr. Christina M. Kishimoto
Superintendent
Gilbert Public Schools
140 S. Gilbert Rd.
Gilbert, AZ 85296

Re: Gilbert Public Schools
OCR Case Number: 08-17-1111

Dear Superintendent Kishimoto:

On December 16, 2016, we accepted for investigation a complaint alleging that Gilbert Public Schools is discriminating on the basis of disability by not implementing a Student's Individualized Education Program (IEP) at Desert Ridge High School by failing to provide bi-weekly updates, allowing for re-take on finals, and providing special education minutes. We also accepted for investigation an allegation that the District failed to adequately respond to multiple complaints of retaliation during the 2016-17 school year.

We initiated an investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. 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. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 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 the investigation, and before we conducted interviews and had sufficient evidence to support findings, the District expressed a willingness to resolve the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual*, resolution options were discussed with the District. The District has entered into the enclosed Agreement which, when fully implemented, will resolve the concerns that the Complainant raised in the complaint. The Agreement requires that an IEP team meet to determine if the Student should receive compensatory services and that the District investigate the Complainant's internal grievances.

Prior to resolving the allegations through the Agreement, OCR learned that during the fall semester 2016, the Student had two applicable IEPs, dated January 25, 2016 and October 20, 2016. Both IEPs require the District to provide the parents with bi-weekly reports, and the October 20th IEP requires the Student's Case Manager or CSC Teacher to provide weekly reports. The District provided a number of communications to the Complainant from some of the Student's teachers, Case Managers, and CSC teachers, but there appears to be some gaps in

the available documentation, which would need to be investigated further in order to reach a compliance determination.

Further, the Student's January 25th IEP requires the Student be allowed to retake orally tests/quizzes if the Student scores a 60% or below, but excludes District and State assessments. The Student's October 20th IEP requires the Student be allowed to retake orally tests/quizzes if the Student scores a 75% or below. The District provided documentation that many of the Student's tests and quizzes were retaken throughout the fall semester; however, several, including a couple class final exams, qualified for the Student to retake exams and it is unclear if the Student was offered opportunities to retake all the eligible exams. As required in the Agreement, the Student's IEP team will consider whether there were missed retakes in its meeting regarding the consideration of compensatory services.

Also, the Student's IEPs require the receipt of special education minutes in the CSC classroom. The District provided information that there were a number of issues with the Student's CSC teacher and some of the issues involved her lesson plans for the Student's class. The Complainant and her husband raised concerns on four different occasions during the fall semester and the District provided documentation that it took action regarding each occasion; however, the documentation, alone, did not establish whether investigations were adequate under the requirements of Section 504 and Title II.¹ Through the Agreement, the District will fully investigate the four complaints and provide OCR with evidence of their completion.

We will monitor the District's implementation of the Agreement until all provisions have been satisfied. We will keep you apprised of monitoring activities related to this case.

This concludes our investigation of this complaint. We will continue to monitor the District's compliance with the Agreement until all the terms are satisfied. This letter addresses only the issues listed above and should not be interpreted as a determination of the District's compliance or noncompliance with Section 504 or Title II or any other federal law in any other respect. Accordingly, we are closing the investigation of this 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, complainants have 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.

¹ OCR is currently monitoring the District's implementation of an agreement's terms in OCR case number 08-16-1322 in which the District agreed to revise its Section 504 and Title II grievance procedures, provide notice of its compliance officer, and provide training to staff on the requirements for implementing students' educational plans.

We thank you for the District's cooperation in this matter, and the assistance of Erin Walz. If you have any questions regarding this letter, please feel free to contact Heidi Kutcher, Attorney Advisor and the primary contact for this case at (303) 844-4572 or by email at Heidi.Kutcher@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure – Copy of Resolution Agreement

Cc: Erin Walz, Counsel for the District

Diane Douglas, Arizona Superintendent of Public Instruction