



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 8, 2018

Dr. Shannon Goodsell, Superintendent
Casa Grande Union High School District
1362 North Casa Grande Avenue
Casa Grande, Arizona 85122

Via email only to XXXX

Re: **Casa Grande Union High School District**
OCR Case Number: 08-18-1094

Dear Superintendent Goodsell:

We write to advise you of the resolution of the above-referenced complaint, filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (“Department”), against Casa Grande Union High School District (“District”). The Complainant alleged that the District, at Casa Grande Union High School (“School”):

1. retaliated against the Complainant by requiring her to communicate and work with School staff through the School’s principal (“Allegation 1”);
2. retaliated against the Complainant’s son (“Student”) by giving him a “no credit” for his fall 2017 “zero hour” class (“Allegation 2”); and
3. denied the Student a free appropriate public education (FAPE) by failing to implement his Section 504 plan from the beginning of the 2017-2018 school year (SY) until approximately September 25, 2017 (“Allegation 3”).

With respect to Allegation 1, we completed a full investigation and found insufficient evidence to conclude that the District retaliated as alleged.

We closed Allegation 2 pursuant to Section 108(i) of OCR’s *Case Processing Manual* (CPM).

With respect to Allegation 3, we identified as an issue the timeliness of the Student’s Section 504 plan (and other students’ Section 504 plans) being made available to relevant staff. The issue may have affected the provision of FAPE to the Student at or near the beginning of school year 2017-2018 (*i.e.*, at minimum, August 3, 4, 7, 8, and 9 and possibly through September 2017). Before we conducted additional investigation of this issue, the District indicated its desire to voluntarily enter into an agreement to resolve the issue pursuant to Section 302 of the CPM. We reviewed this request and determined that entering into an agreement without completing a full investigation was appropriate. This letter details the applicable legal standards and the status of our investigation prior to receiving the District’s request to enter into an agreement.

The reasons for our findings and actions are set forth below.

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

I. JURISDICTION

OCR is responsible for enforcing: Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination based on disability in any program or activity operated by recipients of Federal funds; and Title II of the Americans with Disabilities Act of 1990 (“Title II”), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities, regardless of whether they receive Federal financial assistance. Additionally, 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. Section 104.61, which incorporates 34 C.F.R. Section 100.7(e), and by 28 C.F.R. Section 35.134. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

II. LEGAL STANDARDS

A. Retaliation

The Section 504 regulations, at 34 C.F.R. Section 104.61, incorporate 34 C.F.R. Section 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964, and prohibit school districts from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. Section 35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

In analyzing a retaliation claim, we first determine whether: (a) the individual experienced an adverse action caused by the school district; (b) the school district knew the individual engaged in an activity protected by Section 504 or Title II, or believed the individual might engage in an activity protected by Section 504 or Title II in the future; (c) and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether: (a) the school district has a legitimate, non-retaliatory, reason for its action; and (b) whether such reason is a pretext for retaliation, intimidation, or coercion.

B. Implementation of Section 504 Plans

The Section 504 regulations, at 34 C.F.R. Section 104.33, require public schools to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R Sections 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of a Section 504 plan developed in accordance with the procedural requirements cited above is one means of meeting the FAPE 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.

III. INVESTIGATION

Our investigation focused on obtaining the evidence necessary to determine whether the District complied with these legal standards. Specifically, our investigation consisted of:

- interviewing the Complainant, the Student, the Complainant's mother/Student's grandmother ("Grandmother"), and the Complainant's friend ("Friend");
- interviewing six of the Student's teachers from XXXX 2017 – "XXXX;" "XXXX;" "XXXX;" "XXXX;" "XXXX;" and "XXXX;"
- interviewing the School's principal ("Principal")
- interviewing the District's director of student services ("Director");
- requesting and reviewing information and records from the Complainant and District; and
- providing the Complainant with an opportunity to rebut information provided by the District.

IV. EVIDENTIARY STANDARD

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

V. FACTS

During the 2017-2018 SY, the Student is an XXXX grade student, with a Section 504 plan, at the School. At the beginning of the fall 2017 semester, the Student was enrolled in XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, and XXXX. On XXXX, 2017, at the request of the Complainant, the Student was transferred from XXXX to XXXX (and from XXXX Teacher A to XXXX Teacher B), and transferred to a different section of XXXX (and from XXXX Teacher A to XXXX Teacher B).

A. Retaliation

i. Communication Restrictions

The Complainant alleged to OCR that the Principal "loathes" her because she is "an advocate for [her] son" (as a student with a disability) and he "does not like parent involvement;" the Principal restricted her ability to communicate with staff by requiring that "everything" "go through" him; and she is the only parent at the School to have such restrictions. The evidence that the Complainant offered to support this allegation, were: (a) a description of her perception of how School staff communicated with her differently after she began more vociferously advocating for the Student's Section 504 rights; (b) her claim that she was told her that the Principal is "strong arming" her; and (c) an email from the Guidance Counselor on November

21, 2017, which indicated that the School's administrator would have to approve a mid-year change of the Student's schedule.¹

The District denied this allegation, writing:

[The Principal] has not asked Complainant to centralize communication through him and we have found no email between the Complainant and [the Principal] to support this allegation. Complainant has freely communicated with school staff and the Director of Student Services regarding her son as demonstrated by the email correspondence produced[.] Complainant also recently met with a school counselor and did not schedule the appointment through [the Principal].

Copies of emails show that the Complainant communicated directly with District and School staff, including the Director,² the School's Assistant Principal (AP),³ XXXX Teacher A,⁴ XXXX Teacher B,⁵ the Student's first XXXX Teacher ("XXXX Teacher A"),⁶ the Student's XXXX Teacher,⁷ the Student's XXXX,⁸ the School's XXXX,⁹ the School's XXXX,¹⁰ and the Student's XXXX.¹¹ Copies of emails also show that these staff members replied directly to the Complainant.

We requested from the District "a copy of all communications, since July 1, 2017, regarding the Student or Complainant." The District provided hundreds of pages of emails in response. After reviewing all of the emails, we found no evidence that the Complainant was subjected to communication limitations. Finally, all eight District staff members we interviewed reported having no knowledge of any communication restrictions for the Complainant; five of the staff

¹ On March 13, 2018, OCR requested from the Complainant the names and contact information for the persons who said this; however, the Complainant did not provide their names and contact information because they either did not have firsthand knowledge of facts or they were concerned about their identity being known. The Student, Grandmother, and Friend did not share, during with OCR, any relevant information about communication restrictions.

² Emails from the Complainant directly to XXXX: August 21 and 30; September 13; and November 16. Replies from the XXXX directly to the Complainant: September 13; and November 16.

³ Emails from the Complainant directly to the XXXX: September 22 and 25; and December 15. Reply from the XXXX directly to the Complainant: September 25.

⁴ Emails from the Complainant directly to XXXX Teacher A: August 11, 14, 21, and 29. Replies from XXXX Teacher A directly to the Complainant: August 14, 29, and 30.

⁵ Emails from the Complainant directly to XXXX Teacher B: September 28 and 29; and October 17 and 18. Replies from XXXX Teacher B directly to the Complainant: September 30; and October 17 and 18.

⁶ Emails from the Complainant directly to XXXX Teacher A: October 19 and 30. Replies from XXXX Teacher A directly to the Complainant: October 19 and 30.

⁷ Emails from the Complainant directly to XXXX Teacher: August 11; September 21. Replies from the XXXX Teacher directly to the Complainant: September 21.

⁸ Emails from the Complainant directly to the XXXX: November 17, 20, and 27. Reply from the XXXX directly to the Complainant: November 21.

⁹ Emails from the Complainant directly to the XXXX: December 7. Reply from the XXXX directly to the Complainant: December 11.

¹⁰ Emails from the Complainant directly to the XXXX: December 1, 4, 5, 6, 7, and 14. Reply from XXXX directly to the Complainant: December 4.

¹¹ Emails from the Complainant directly to the XXXX: December 1, 7, 13, and 14. Replies from the XXXX directly to the Complainant: December 1, 8, 11, and 13.

members indicated that they communicated directly with the Complainant, and vice-versa, during fall 2017.

ii. “No Credit” for “Zero Hour” Course

In fall 2017, the District offered a zero hour XXXX course (“course”) at the School. A zero-hour course is an optional enrichment class offered to students before the official start of the school day. The Student enrolled in the course.

The Complainant alleged to OCR that the School was “trying to tamper with [the Student’s] official transcripts” as a form of retaliation. Specifically, the Complainant asserted that she was told that the “zero hour” course would be removed from the Student’s transcript altogether, but instead, the transcript showed “no credit” instead.

According to the District, between August 3, 2017 and November 20, 2017, the Student accrued 23 absences in the class. The Student Handbook, on page two, states: “Students who are absent for more than 9 instructional days, during a given semester, will lose credit in that class. On the 10th absence, the computer will replace the grade with an ‘NC’ for No Credit.” However, at the Complainant’s request, the Student was dropped from the course and then subsequently re-enrolled in the same course on November 28, 2017, the same day that the Complainant filed the complaint with OCR. The District reported to OCR that the re-enrollment had the effect of erasing the student’s 23 prior absences.

Subsequently, the District asserts that the School evaluated the overall attendance rates of students enrolled in the course and determined that the course should not continue because students were unable to arrive at School that early in the morning without the provision of transportation from the District. Consequently, the Superintendent waived the absences accrued for all students enrolled in the course and all students enrolled in the course earned half of a credit hour. Ultimately, as evidenced by his transcript, the Student received a grade of 95 and half of one credit hour for the course. According to the Principal, a “no credit” was only temporarily reflected on the Student’s unofficial list of grades, but never appeared on the Student’s official transcript. The official transcript entry reflecting the 95 and half-credit was made on December 22, 2017. OCR notified the District of the discrimination complaint on December 26, 2017.

B. Implementation of the Student’s Section 504 Plan

The Student has a Section 504 plan for XXXX. From the beginning of the 2017-2018 SY (August 3, 2017) to September 25, 2017, his Section 504 plan that was in effect was dated August 23, 2016. That Section 504 plan listed four accommodations:

1. “Extended time on tests when student advocates for himself”
2. “[The Student] may retake a test for a better grade if scored below 60%.”¹²
3. “Preferential seating so as not to get distracted during testing”

¹² Accommodations #1 and #2 are combined on the Section 504 plan.

4. “[The Student] may need copies of teacher notes if not able to keep up. Student may use device to take pictures of notes/etc. Teacher may provide copies of notes from a peer note taker if teacher notes are not feasible.”
5. “[The Student] may use earbuds or something similar to listen to music during independent work time and while taking tests and quizzes. [The Student] will be able to listen with both ears with a volume that allows him to hear any teacher directions. Volume should not be loud enough to distract other students. Not to be used while teacher is instructing or while directions are being given for tests and quizzes. This is meant so [the Student] can focus on his tasks and not be distracted by external auditory stimuli. [The Student] will need to be working while listening to his music.”

The Section 504 plan also noted that, on November 3, 2016, “testing in a small group” was added.

The Complainant alleged to OCR that the School did not provide the Student with any of his Section 504 accommodations in his core classes (although “mainly in his math classes”) from August 3, 2017 to September 25, 2017. She asserted that the delay in implementing the Section 504 plan was the result of: (a) the plan not being provided to staff; and (b) the Student’s annual Section 504 team meeting not occurring until September 25th. The Complainant offered as evidence of this allegation her own emails to the School asserting that the Student’s Section 504 plan was not being followed. She also said that, during a meeting at the School, Teacher A admitted that she was not implementing any of the Student’s Section 504 accommodations.

The Complainant also asked OCR to interview the Student, the Grandmother, and the Friend. The Student reported to OCR that he was denied, especially in XXXX Teacher A’s class at the beginning of the school year, the use of the accommodations specified in his Section 504 plan. Specifically, he alleged that XXXX Teacher A would not allow him to retake tests, use his headphones, or obtain a copy of notes. In short, the Student’s account was similar to the Complainant’s version of events. The Grandmother reported, during an interview with OCR, that the School was not implementing the Student’s Section 504 plan; however, she also reported that her assertion was based on information from the Complainant. The Friend shared with OCR that, during a meeting at the School, XXXX Teacher A admitted that she did not do anything with the Section 504 plan until after the Complainant shared the Section 504 plan with Teacher A and demanded that the plan be implemented.

Emails provided by the District to OCR shows that, on August 9, 2017, the fifth day of the 2017-2018 SY, the Director emailed the Student’s Section 504 plan (dated August 23, 2016) to the Student’s then current teachers. The email read, in part, “Attached you will find a current copy of [the Student]’s 504. Please review it and follow through with the noted accommodations.”¹³ The emails also show that, on September 25, 2017, the Student’s Section 504 team met and made slight modifications to his Section 504 plan, and then the Director emailed a copy of the updated Section 504 plan to the Student’s then current teachers on October 3, 2017.

¹³ On October 3, 2017, the Director emailed the Student’s new Section 504 plan to his teachers – specifically, his XXXX teacher, XXXX teacher, XXXX Teacher, second XXXX teacher (“XXXX Teacher B”), and second XXXX teacher (“XXXX Teacher B”). The email read, “Attached you will find [the Student]’s new 504. Please replace this one with the one I sent you earlier this year.”

Additionally, teachers of the Student during the time period of the alleged failure to implement (August 3, 2017 to September 25, 2017) – specifically, XXXX Teacher A and the XXXX Teacher – reported, during interviews with OCR, that the Student’s Section 504 plan was implemented and the Student was never denied the opportunity to use his accommodations. The XXXX Teacher reported to OCR that the Student had preferential seating in his class, but did not need or request the other accommodations. XXXX Teacher A told OCR that the Student did not need, request, or utilize accommodations in her class. Neither the XXXX Teacher nor XXXX Teacher A could recall whether the Student actually used any of his accommodations. The Director denied that Teacher A made the comment alleged by the Friend during the Student’s Section 504 meeting. When asked if they were ever aware of the Student’s Section 504 plan not being implemented, all eight District staff members interviewed by OCR answered “no.”

Emails exchanged during at least a portion of the time period in question tend to support the School’s position. For example:

- On August 11, 2017, XXXX Teacher A replied to an email from the Complainant, “I believe I have already received a 504 plan for [the Student], and please know that I will be accommodating his needs in my class.”
- On August 21, 2017, XXXX Teacher A replied to an email from the Complainant to: schedule a makeup test for the Student to have an opportunity to improve his grade; describe how the Student could access class materials online; notify the Complainant that she would be “transferring” the Student “to a different seat because” she noticed that he was “not paying that much attention during class time;” and encourage the Student to take advantage of afterschool tutoring.
- On August 23, 2017, XXXX Teacher A emailed the Complainant to notify her that: the Student had made up a test and his grade was updated; the Student could retake the test; the settings for the homework had been changed to allow the Student to redo homework; the Student was shown how to access presentations used in class; and the Student’s seat was changed in order to help him “pay more attention during class.”
- On August 29, 2017, XXXX Teacher A replied to an email from the Complainant to notify her that the Student could retake a test.
- On August 30, 2017, XXXX Teacher A emailed the Complainant to provide assurances that the Student’s grades would be updated to reflect work he re-did.
- On August 31, 2017, XXXX Teacher A emailed the Director, in part, “I already changed [the Student’s] seat to the front, so he will have better view of the board, and he can take down notes.”
- On September 25, 2017, XXXX Teacher A replied to the Student’s email to notify him that the time limits for homework assignments did not apply to him.

Finally, the District wrote to OCR:

District offers online mathematics curriculum Pearson Math Excel (“Math Excel”). The Math Excel program allows for universal accommodations to all students for notes and retaking homework assignments and tests. Math Excel allows all students to view notes before and after classroom instruction, including videos. In addition, all students are permitted to retake homework assignments without limitation using Math Excel. All students are permitted to retake tests without limitations. Teachers can provide Student with additional time for retakes as needed. Once a student retakes a test, the student simply needs to inform teacher of the retake so that the updated score can be recorded. As prescribed by Student’s 504 Plans, accommodations related to notes, homework and test retakes have been met through these universal accommodations available in Math Excel for all students.

VI. ANALYSIS

A. Retaliation

i. Communication Restrictions

In analyzing a retaliation claim, we first determine whether the individual experienced an adverse action caused by the school district. In light of the facts in Section V(A)(i), we found insufficient evidence to conclude that the District took the alleged adverse action – *i.e.*, restrictions on communicating with staff – against the Complainant. Thus, we found insufficient evidence to conclude that the Complainant was retaliated against.

ii. “No Credit” for “Zero Hour” Class

Pursuant to Section 108(i) of OCR’s CPM, we will dismiss a complaint allegation if: (a) OCR obtains credible information indicating that the allegation has been resolved or is no longer appropriate for investigation. In this case, the District provided evidence – *i.e.*, a copy of the Student’s PowerSchool “Quick Lookup” transcript for the 2017-2018 SY – showing that the Student received credit and a grade of “A”/”95” for the course, regardless of his absences.

The Complainant did not dispute that the District awarded the Student credit and a grade for the zero hour class. However, she asserted that the change was made solely in response to her filing a complaint with OCR. The District, on the other hand, asserts that the change was made for all students. Nevertheless, the core issue related to this allegation is resolved and no longer appropriate for investigation. There is no allegation that a temporary “NC” had any adverse effect on the Student or Complainant. Thus, we are dismissing, pursuant to Section 108(i) of the CPM, the allegation that the School retaliated against the Student by giving him a “no credit” for his fall 2017 zero hour class.

B. Implementation of the Student's Section 504 Plan

To summarize the evidence detailed in Section V(B), on one hand, the Complainant, the Student, and the Friend provided testimony that the Student's Section 504 plan was not implemented during the time period in question (August 3, 2017 to September 25, 2017). On the other hand, multiple District staff indicated that the Student's Section 504 plan was implemented, and the District provided emails tending to show that the Section 504 plan was being implemented. Therefore, we find that the evidence is insufficient to conclude that the District failed to implement the Student's Section 504 plan after it was distributed by the Director on August 9, 2017.

However, the XXXX Teacher and XXXX Teacher A both told OCR that they do not receive copies of students' Section 504 plans until after the school year begins. Specifically, the XXXX Teacher said that he usually receives Section 504 plans with two to three weeks of the school year beginning; the XXXX Teacher A said that she usually receives Section 504 plans within four weeks of the school year beginning.¹⁴ When we raised concerns with the District about how teachers are aware of their obligations pursuant to their students' Section 504 plans after the school year begins, but prior to the plans being disseminated, the District expressed an interest in entering into an agreement to resolve the issue pursuant to Section 302 of OCR's CPM.

VII. CONCLUSION

Based on a preponderance of the evidence standard, we found insufficient evidence to support Allegation 1; therefore, this concludes OCR's investigation of Allegation 1. For reasons explained in Section VI(A)(ii), we are dismissing Allegation 2. With regard to Allegation 3, we found insufficient evidence to support the allegation that the District failed to implement the Student's Section 504 from the beginning of the 2017-2018 SY until approximately September 25, 2017. However, after finding evidence to suspect that the Student's Section 504 plan may not have been implemented for at least the first five school days of the 2017-2018 SY, but before conducting additional investigation, the District expressed an interest in entering into a 302 agreement to resolve the issue and we determined that entering into an agreement without completing additional investigation was appropriate.

When the Agreement is fully implemented, the issue will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from the District demonstrating that 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. The Complainant will be copied on our monitoring letters. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

¹⁴ We repeatedly asked the Director how teachers are aware of their obligations pursuant to their students' Section 504 plans after the school year begins, but prior to the plans being disseminated. His answer was (seemingly unintentionally) non-responsive.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the 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 it 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.

Please be advised that 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 investigation. If this happens, the individual may file another complaint alleging such treatment.

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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the patience and cooperation extended to us during the resolution of the case. If you have any questions, please contact Jason Langberg, the attorney assigned to this complaint, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosed: Resolution Agreement

cc (via email): Tom Trigalet, Principal of the School
Carrie O'Brien, Attorney for the District, Gust Rosenfeld P.L.C.
Diane Douglas, Arizona Superintendent of Public Instruction