



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 15, 2019

Dr. Perry Berry, Superintendent
Queen Creek Unified School District
20217 East Chandler Heights Road
Queen Creek, Arizona 85142

Via email only to XXXX@XXXX

Re: **Queen Creek Unified School District**
OCR Case Number 08-18-1552

Dear Superintendent Berry:

We have completed our investigation stemming from a complaint against Queen Creek Unified School District ("District") alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District, at XXXX ("School"), denied the Student, on the basis of disability, an equal opportunity to participate on the School's XXXX team.

Prior to OCR issuing a final determination pursuant to Section 303 of our *Case Processing Manual* (CPM), the District expressed an interest in resolving the allegation. OCR determined that it was appropriate to resolve the allegation prior to completion of our investigation. Therefore, OCR sent the District a proposed resolution agreement ("Agreement"). On February 15, 2019, OCR received a signed Agreement from the District. The provisions of the Agreement are tied to the allegation and evidence obtained during the investigation, and will be consistent with applicable regulations.

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.

I. Jurisdiction

The Office for Civil Rights (OCR) of the U.S. Department of Education ("Department") 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 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 ("Title II"), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. 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 Standard

Pursuant to Section 504, “No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.”¹ A school district must provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation.²

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 the conclusion as alleged.

III. Evidence to Date

The Student is a qualified student with disabilities; specifically, XXXX, XXXX, and XXXX. He has an individualized education program (IEP) under the eligibility categories of emotional disability (ED) and other health impairment. At the beginning of the 2018-2019 school year (SY), the Student was in XXXX grade at the School. His placement, “based on his behavior challenges,” was and is a private day school program, XXXX (“XXXX”), which is physically located in the School.

The Student’s special education records indicate that the Student struggles with [XXXX – redacted – XXXX]. One of his areas of eligibility is emotional disability because of his [XXXX – redacted – XXXX]. During the relevant time period, the Student received regular therapy, was followed by a psychiatrist, and was placed in a restrictive behavior support setting where he was supposed to receive XXXX minutes per week of behavior support” and 30 minutes per week of counseling, in part, for “inappropriate socialization.” He had a behavioral intervention plan (BIP), dated XXXX, 2018, but pursuant to his IEP, the BIP was “discontinued on XXXX when his placement and level of services” changed (*i.e.*, when he started at XXXX). During interviews with OCR, the Assistant Principal and Athletic Director (AP/AD) reported that the Student’s primary behavioral struggle was making inappropriate comments to other students; the District’s Director of Special Education (Director) noted that the Student has struggled with verbal confrontations with other students; and the Student’s teacher and XXXX coach (Coach) reported that the Student is placed at XXXX because of inappropriate verbal behaviors and inappropriate comments.

According to the Coach and Director, XXXX is a highly structured program that provides small staff-to-student ratios and constant supervision by staff members who are no more than approximately ten feet from students, and that utilizes positive behavioral interventions and supports (PBIS). According to the Coach, the Student has been very successful in managing his behaviors since starting in the program.

From XXXX to XXXX, the Student tried out for the School’s XXXX team (“team”). On XXXX, he was selected to be on the team. According to the Coach, the team has XX students and two coaches.

¹ 34 C.F.R. § 104.4(a).

² 34 C.F.R. § 104.37.

According to the District, on XXXX, three parents – Parent A, Parent B, and Parent C – contacted the AP/AD regarding the Student’s behavior on the team. The AP/AD conducted an initial investigation, which consisted of talking to the parents and obtaining written statements from their children/players – Student A, Student B, and Student C. Student A wrote that, during the first day of XXXX tryouts, the Student was cursing, saying “nigger” (the “n-word”), calling the coach the n-word, calling other students “mofos,” “flipp[ing] people off,” and smashing people’s cups. Student B further wrote that the Student “stole” his XXXX twice and called him “a transgender girl” because he has long hair. Student B wrote that, during practice, the Student threw ice at him and called him the “n-word.” Student C wrote that, “everyday of XXXX,” the Student would “bully people, throw ice at people, and pour water on them.” Student C also wrote that the Student called him and others, including a coach, the n-word, and called another student the “c-word.” Then, the AP/AD questioned the Student in his office, with the Coach present. According to the Coach, the Student admitted to calling a fellow player transgender, directing the n-word at coaches and other players, and using profanity. The Student’s written statement includes only an admission that he cursed. According to the District, “Upon determining that Student harassed students on the XXXX team on the basis of race and sex, [the AP/AD] determined that it was appropriate to remove Student from the XXXX team.”

According to the AP/AD, he then touched base with the Director and the School’s Principal. The Director asked the AP/AD what he would do with any other student who exhibited the same behaviors as the Student. The AP/AD responded that he would remove students from the team for such conduct. The Director told the AP/AD to do what he would normally do and generate documentation.

So, also on XXXX, the AP/AD left a voicemail for the Complainant to inform her that he had decided the Student would be removed from the team. The Complainant emailed the AP/AD, “I know he can’t play in the game – he can’t go at all or he goes and can’t play or what?” The AP/AD replied to the Complainant, “[The Student] has been removed from the team. I’m very sorry.” The Complainant replied to the AP/AD, copying the Director and others, to assert that the Student was contrite and that removing the Student from the team would be unfair and excessive, and eliminate the benefits of participation for the Student. The Complainant also wrote, “[The Student] has an emotional disability and this will jeopardize his mental health. ... Your decision warrants a formal meeting to further discuss the unfair treatment of a child with an emotional disability[.] ... I would like this meeting to be tomorrow or Friday.”

On XXXX, the Complainant emailed the AP/AD, Director, and others to try to explain the Student’s behaviors at XXXX tryouts and practice. She also wrote, “[The Student] has a known and documented emotional disability that impairs him to control his impulses, understand social norms and cues, as well as issues interacting with peers. This is a known issue for [the Student]. ... He is not like peers his age in social situations. This decision will have a negative impact on him as a child with a disability and will put his well-being at risk.” On XXXX, the AP/AD replied to the Complainant, in part, “Please contact [the School’s Office Clerk], so we can meet next week concerning this matter.”

In a letter to the District, dated XXXX, the Complainant alleged that the School violated Section 504 when it removed the Student from the XXXX team. She wrote, in part:

[T]he action of removing [the Student] from the XXXX team qualifies as a violation of his civil rights under Section 504 ... rendering [the School] and [the District] out of compliance by violating the following provisions and regulations:

- Discrimination on the basis of disability against a student with a disability
- Failure to make reasonable accommodations for an individual with an established disability and that is “otherwise qualified” to participate in a sport or activity in question. ...

[The Student] has a learning disability with an IEP and a documented lower cognitive ability than his peers. His XXXX and XXXX are manifested as; difficulty relating to peers, difficulty understanding and responding to social cues, difficulty deciphering and choosing acceptable or unacceptable behavior in interactions with peers, impulsivity, and difficulty establishing and sustaining relationships with peers. [The School] and [the District] failed to provide reasonable accommodations for [the Student]’s participation on the XXXX team that would allow him to be successful and learn from the opportunity of being on a team sport. The end result of this failure was the unfair dismissal of [the Student] from the team.

Additionally, in the letter, she requested immediate reinstatement of the Student to the team and “[t]he creation of accommodations with a behavior intervention plan appropriate to the specifics pertaining to his disability and how it is manifested, that will allow his participation and address any concerns while on the XXXX field.” The Complainant hand-delivered the letter to the School’s principal (“Principal”), the Director, and the District superintendent (“Superintendent”).

In a letter dated XXXX, the AP/AD wrote to the Director a summary of what had transpired since XXXX. The letter ended, “On XXXX, I met with you concerning [the Student]’s removal from the XXXX team.”

On XXXX, an IEP team meeting was held at the School. According to the Complainant, the Director refused to discuss the Student’s participation on the team. During an interview with OCR, the Director affirmed that he did refuse to discuss XXXX, repeatedly telling the Complainant, “We’re not talking about that,” and that they were meeting to discuss only whether anything in the Student’s IEP needed to be changed or updated.

On XXXX, the Complainant, through counsel, filed a complaint with OCR, copying the Superintendent. On XXXXX, OCR notified the District that we were opening the allegations in this case for investigation.

After the District was notified of the complaint to OCR, the District continued accumulating evidence of the Student’s misconduct in XXXX during the first week of August. On XXXX, the AP/AD obtained a statement from another student (“Student D”), which read, “I heard [the Student] say the F-word and throw water at people.” Then, the AP/AD requested statements about the Student

from players and parents. On XXXX, a parent (“Parent B”) wrote to the AP/AD that the Student had been “teasing a few kids on the team as well as making snide and vulgar comments about one of the coaches.” She noted that the Student called another student transgender and used the n-word. Two more students – Student E and Student F – provided written statements. Student E indicated that the Student: called people “gay,” “fag,” and the n-word; and made fun of a student for being Asian and called him “chink.” Student F indicated that the Student used the n-word in the locker room/gym. On XXXX, Parent A emailed the AP/AD that the Student called her son the n-word and threw ice at him.

In an undated letter, to “To Whom it may concern,” Student C’s mother (“Parent C”) wrote that, on XXXX, the Student used profanity, called Student C and other players the n-word, and called another team member “transgender” and “gay.” Parent C also wrote that she called Parent A and Parent B to tell them what Student C had reported, and then, the following morning (XXXX), went to the School to talk to the AP/AD.

IV. Conclusion

We thank the District for being willing to voluntarily address the allegation raised by the Complainant. A copy of the signed Agreement is attached. The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. We will inform the Complainant of the status of the monitoring, including providing the Complainant with copies of our monitoring responses.

The monitoring phase will be completed when OCR determines that the District has fulfilled all of the terms 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. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, stating that this case is closed. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issue 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.

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.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. 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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for your attention to this matter and the District's cooperation. If you have any questions, please contact Jason Langberg, the attorney assigned to the case, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

cc: Heather Pierson, Attorney for the District
Kathy Hoffman, Arizona Superintendent of Public Instruction