



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VIII

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December 19, 2019

Dr. Mary Kamerzell  
Superintendent  
Catalina Foothills School District  
2101 East River Road  
Tucson, Arizona 85718  
*Via email only at: mkamerzell@cfsd16.org*

Re: Catalina Foothills School District #16  
OCR Case Number 08-19-1445

Dear Dr. Kamerzell,

On July 23, 2019, we received the above captioned complaint against the Catalina Foothills School District (District). The Complainant alleges that the District discriminated against her granddaughter<sup>1</sup> (Student) based on disability (low intelligence quotient, depression, anxiety, and attention deficit disorder). Specifically, the Complainant alleges that the District failed to appropriately and timely evaluate the Student for a free appropriate public education (FAPE) under Section 504.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementation regulations 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; Title II of the Americans with Disabilities Act of 1990 and its implementing regulations at 28 C.F.E. Part 35. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

*Alleged Failure to Appropriately and timely evaluate the Student for FAPE:*

The Section 504 regulation, at 34 C.F.R. § 104.33, requires public school Districts 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 non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets

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<sup>1</sup> OCR confirmed that the Complainant and her spouse are the legal guardians of the Student.

the Title II regulations, at 28 C.F.R. §§ 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.

The Complainant's Position:

The Complainant alleges that she enrolled the Student in the District prior to the start of the 2018-2019 school year. The Student had previously been in a private school. In July 2018, when the Complainant enrolled the Student in the District, she asked several times to meet with the school counselor to discuss an evaluation for a Section 504 Plan to be put into place. The Complainant provided the District some of the documentation of the Student's academic and emotional concerns and some documentation was provided by the private school that the Student had recently graduated (K-8) from.

The Complainant alleges that on 8/9/2018, the school counselor emailed the Complainant to advise her that she had found the "504 Plan" from the private school. The Complainant stated that there was no Section 504 Plan at the private school. The Complainant alleged that at no time did the District provide the necessary information, notices, evaluations, meetings, documents, or obtain her signatures on any documents related to a 504 Plan until after the first semester of school and when she contacted the school counselor on the 13th of January 2019 and an IEP evaluation was initiated. The Complainant alleges that at no time during the 2018-2019 school year did the District evaluate the Student and make a determination concerning the Student's disabilities or needs under Section 504.

The District's Position:

The District denied the allegations stated in the complaint. Before OCR completed its investigation, the District expressed an interest in voluntarily entering into an agreement to resolve the allegations. Pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations.<sup>2</sup> A 302 Agreement is appropriate in this case.

On December 12, 2019, we received the District's signed Resolution Agreement (enclosed) which resolves the allegations. OCR is closing the investigative phase of these allegations effective the date of this letter. This case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions, as described in the Agreement.

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<sup>2</sup> (xxx paragraph redacted xxx)

This concludes OCR's investigation of this complaint and 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. This letter sets forth OCR's determination in this individual OCR case. 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.

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

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 seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

We thank the xxxx, for her attention to this case. If you have any follow up questions, please contact Virginia Wilson-Cobble, attorney advisor, assigned to this complaint, at (303) 844-4538, or by email at [virginia.wilson-cobble@ed.gov](mailto:virginia.wilson-cobble@ed.gov). You also may contact me at (303) 844-5927.

Sincerely,

/s/

Thomas M. Rock  
Supervisory General Attorney

Enclosure

cc: Kathy Hoffman  
State Superintendent of Public Instruction  
Arizona Department of Education  
*Via email only at: [azeinbox@azed.gov](mailto:azeinbox@azed.gov)*  
*Without enclosure*