



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
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February 3, 2020

Mr. Todd Jaeger, J.D.
Superintendent
Amphitheater Public Schools
701 W. Wetmore Road
Tucson, AZ 85705

Via email only to XXX

Re: Amphitheater Public Schools
OCR Reference No. 08-19-1499, 08-20-1059

Dear Mr. Jaeger:

On September 12, 2019, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging Amphitheater Public Schools (District) discriminated against a student (Student) on the basis of his disabilities. Specifically, the Complainant alleged the District failed to evaluate the Student for a Section 504 plan, treated him differently in the use of terms such as “XXX kids” and assigning his special education classes to the XXX buildings, and retaliated against the Student for filing a complaint regarding disability-based harassment. The Complainant also filed a subsequent complaint on November 5, 2019, alleging that the District failed to implement the Student’s individualized education program (IEP), failed to provide him with notice of procedural safeguards, and retaliated against the Student by neglecting his needs.

OCR initiated an investigation of this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation 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; 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. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

Investigation Summary

OCR notified the District and the complainants on October 8, 2019, that OCR opened allegations for investigation from the complaint received on September 12, 2019. On November 21, 2019, the District and the Complainant attempted to resolve the allegations through OCR’s Facilitated

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

Resolution Between the Parties, but were ultimately unable to agree on a resolution¹.

On November 26, 2019, the Complainant requested that OCR consider utilizing provisions within Section 110 of the OCR *Case Processing Manual* (CPM), i.e. Rapid Resolution Process (RRP). On December 10, 2019, OCR notified the Complainant that the allegations made in the second complaint, filed on November 5, 2019, would proceed under RRP and be considered jointly with the initial complaint allegations opened for investigation. On December 10, 2019, the District submitted a partial response to OCR's data request.

During the course of the investigation, OCR reviewed documentation provided by the Complainant and the District. The Complainant provided documents related to a District record request, specifically regarding the club XXX team, as well as emails regarding a XX XXX meeting; the implementation of the Student's IEP; the Student's progress report, wherein the term "XXX" is used; and, an email which documented the Complainant's outreach to the Superintendent. The Complainant also emailed OCR with updates regarding his concerns throughout the investigation.

In its partial data response, the District provided OCR with documentation related to the use of its XXX facilities by a club team, including email communication; the team's articles of incorporation; scheduled use of the XXX; insurance coverage; District usage requirements; and, invoices. The District also provided emails between the Complainant and District staff regarding the Student's IEP, including the District's proposal to reevaluate the Student and the lack of consent from the Complainant; the provision of procedural safeguards to the Complainant; the Complainant's allegations of bullying; and, the Complainant's concerns regarding the Student's XXX XXX.

It is undisputed that the Student is a student with a disability, has an IEP, and transferred into the District at the XXX of the XXX school year. Emails demonstrate that, on October 10, 2019, the District and Complainant participated in a XXX meeting with the Arizona Department of Education. As a result of this meeting, the Student's IEP was reviewed; however, as of December 2019, the Student had not been reevaluated. Emails provided by the District further indicate that an offer to evaluate the Student was presented to the Complainant, along with procedural safeguards, but that consent was not provided. Emails also indicate that the District and the Complainant have both demonstrated a desire to have the Student reevaluated, though progress has stalled based on the lack of consent needed to proceed. While the Complainant has alleged that the District failed to implement provisions within the Student's IEP and neglected the Student's educational needs as a retaliatory response to the complaint filed with OCR, the limited evidence indicates that, throughout OCR's investigation, the Complainant and the District have continued discussions regarding the Student's IEP, including the implementation thereof and the reevaluation of the Student.

Emails provided by the Complainant demonstrate that a staff member referred to a progress

¹ OCR had not fully evaluated the complaint filed on November 5, 2019, at the time FRBP was conducted, but the parties agreed to try and resolve the contents of that complaint during the same meeting on November 21, 2019.

report as the “weekly XXX progress” and signed the email as “Thanks!!! The XXX.” The District disputed the use of this term as evidence of segregation based on disability and stated to OCR that the Student’s school does not have XXX XXX.

The Complainant also stated that the District retaliated against the Student after the Student allegedly filed with the District a complaint of disability-based harassment regarding occurrences on a club XXX team. The District disputed its authority over the club XXX team. It is unclear from the evidence provided whether the District has control over or has provided substantial assistance to the club XXX team.

On December 3, 2019, before OCR had completed its investigation, the District notified OCR that it was interested in resolving this complaint. On December 10, 2019, the District reaffirmed their interest in resolving the complaints when submitting the partial data response.

Pursuant to Section 302 of OCR’s CPM, allegations under investigation may be resolved at any time when, prior to issuing a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations. Based on the allegations and the evidence provided, OCR determined that the complaints may be appropriately resolved through an agreement under Section 302 of the CPM.

On January 24, 2020, OCR received the District’s signed Resolution Agreement (enclosed). OCR is closing the investigative phase of this case effective the date of this letter. The 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 have been resolved consistent with the requirements of Section 504 and Title II, and their implementing regulations. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

This letter sets forth OCR’s determination in an 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. The complainants 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.

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, OCR

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

OCR is committed to prompt and effective service. If you have any questions, please contact XXX, Attorney and primary contact for this case, at XXX or by email at [XXX](#), or me at XXX or by email at [XXX](#).

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement

cc w/out enclosure (via email): Denise M. Bainton, Esq.
Attorney
Via email only to XXX