



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

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April 7, 2020

Travis L. Dempsey
Superintendent
Gadsden Independent School District
4950 McNutt Road
Sunland Park, NM 88063
via email only at: XXXX

Re: Gadsden Independent School District
OCR Case Number 08-20-1031

Dear Superintendent Dempsey,

On October 10, 2020, we received a discrimination complaint against the Gadsden Independent School District (District). The Complainant alleged that the District discriminated based on disability. Specifically, the Complainant alleged that the District failed to provide the Student with services required in her Section 504 Plan when it placed the Student on homebound services without the consistent presence of a homebound teacher.

Under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, 34 C.F.R. Part 104 OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on disability. Under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 et seq., 28 C.F.R. Part 35 OCR has jurisdiction to investigate complaints involving individuals covered by the law (e.g., applicants, students, parents) and employment complaints based on disability.

Complainant's position:

The District failed to provide the Student with services required in her Section 504 Plan when it placed the Student on homebound services by not providing a teacher for over a month because no teacher was available and by not providing a consistent homebound teacher for the Student.

District's position:

The District denied the allegation 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. A 302 Agreement is appropriate in this case.

On April 7, 2020, we received the District's signed Resolution Agreement (enclosed) which resolves the allegations. OCR is closing the investigative phase of this complaint effective the

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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.

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 you xxxxxx for his work on this case with xxxxx. If you have any follow up questions, please contact xxxxxxxx attorney advisor, assigned to this complaint, at xxxxxx, or by email at xxxxxxxx. You also may contact me at xxxxxxxx.

Sincerely,

Thomas M. Rock
Supervisory General Attorney

Enclosure

cc: Ryan Stewart, Ed.L.D. (without enclosure)
New Mexico Department of Public Instruction
[via email only at: rsteward@state.nm.us](mailto:rsteward@state.nm.us)