



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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June 16, 2020

Stephen Estatico
Superintendent
Superior Unified School District #15
1500 Panther Drive
Superior, Arizona 85173

via email only at: XXXX@superiorusd.org

Re: Superior Unified School District #15
OCR Case Number 08-20-1152

Dear Superintendent Estatico,

On January 3, 2020, we received the above captioned complaint that was filed against the Superior Unified School District #15 (District). The Complainant alleges that the District discriminated against her son (Student) based on disability (ADHD). Specifically, the Complainant alleges that the District failed to provide the Student with a free appropriate public education (FAPE) by failing to:

- Conduct a timely XXXX assessment for the Student;
- Provide the Student with XXXX as identified in his Section 504 plan;
- Provide XXXX as identified in his Section 504 plan, which results in the District inappropriately removing the Student from the classroom and disciplining the Student.

The Complainant also alleges that the District failed to timely and adequately investigate whether the Student's teacher discriminated against the Student by telling the Student that he was going to prison.

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. 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 Provide a FAPE:

The Complainant first alleged that the District failed to provide the Student with a free appropriate public education (FAPE) by failing to conduct a timely XXXX assessment for the Student.

The Complainant alleged that she first requested a XXXX assessment for the Student in August 2019. The Complainant states that the District failed to meet the Student's XXX needs until into 2020.

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 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 District stated that it completed a functional behavioral assessment, a full individual education program (IEP) assessment, placed the Student on an IEP, and developed a behavioral plan for the Student in March 2020.

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 June 3, 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 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 the District for working to resolve this matter. If you have any follow up questions, please contact xxxxxxxx, attorney advisor, assigned to this complaint, at xxxxxxxx, or by email at xxxxxxxx. You also may contact me at xxxxxxxx.

Sincerely,

/s/

xxxxxxxxxxxx
Supervisory General Attorney

Enclosure

cc: xxxxxxxxx
Attorney at Law
Via email only at: xxxxxxxxx

Kathy Hoffman, Superintendent
Arizona Department of Education
via email only at: adeinbox@azed.gov
without enclosures