



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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July 8, 2020

Superintendent Rebecca Stone
Lake Havasu Unified School District
2200 Havasupai Blvd.
Lake Havasu City, AZ 86403

Via email only to: xxx@xxxlaw.com

Re: Lake Havasu Unified School District
Case Number: 08-20-1170

Dear Superintendent Stone,

On February 11, 2020, the United State Department of Education (Department), Office for Civil Rights (OCR) opened for investigation a complaint alleging Lake Havasu Unified School District (District) discriminated on the basis of disability. Specifically, the Complainant alleged the District discriminated against her grandson (Student) by failing to ensure that he is provided with effective communication at school.

OCR initiated an investigation of this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; 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 and a public entity, the District is subject to these laws and regulations.

Investigation Summary & Facts

OCR notified the District and the Complainant on February 11, 2020, that OCR opened the above complaint allegations for investigation. On March 16, 2020, the District provided its response to OCR's data request. While OCR was conducting this review, the District expressed an interest in voluntarily entering into an agreement with OCR prior to OCR interviewing district staff.

OCR's initial review of the information reveals that in February 2019, the District held an IEP eligibility meeting for the Student and he was initially determined to qualify under (phrase –

XXX – phrase). In May 2019, when the Student was XX years and XX months old, the Student was diagnosed with XXX.

During the 2019-2020 school year, the Student was a XXX and attended school at the XXX XXX School in (phrase – XXX – phrase). As a result of the Student’s new diagnosis XXX, in September 2019, the Student’s IEP team reconvened to update the Student’s IEP, which then included eligibility under the XXX XXX classification. The Student’s IEP also was changed to include 30 minutes of XXX XXX services 3 times per week. Without providing further information, the IEP identified accommodations the Student required, including amongst other items (phrase – XXX – phrase). At that time, the Student was nonverbal and had been learning XXX XXX XXX for a few months. The IEP states that the Student “has an extremely limited mode of communication” and that “[w]ithout assistance in the areas of XXX support, from a teacher of the XXX/XXX, XXX XXX, and XXX XXX therapy [Student] cannot make adequate progress.” In the “Parent Input” document as part of the September 2019 IEP, it states, “XXX is concerned that [Student’s] XXX XXX and how that will affect his communication in the classroom and learning.”

The documents provided to OCR demonstrates that, through the fall of 2019, the Complainant continued to have a variety of concerns regarding the Student’s IEP and that the District and the Complainant engaged in ongoing communications to address those concerns. On October 23, 2019, the Complainant requested the District fund an IEE (Independent Educational Evaluation), which the District agreed to provide, and it was agreed the Student’s team would reconvene after the evaluations.

In a November 4, 2019, letter to the District, the Complainant stated that 30 minutes of XXX XXX services 3 times a week was insufficient for the Student, “when none of his other teachers are able to communicate with him using his only known language, XXX XXX.” It additionally requested that the District provide XXX training to the Student’s teachers, “so that they are able to communicate with him.” Finally, it states that the lack of XXX XXX services “prevents [Student] from accessing the education being provided to his peers.” The next day, November 5th, the Complainant requested for the Student’s September 2019 IEP to be revised to correct what she perceived as errors. Amongst the requested corrections are two specifically related to the Student’s communications XXX XXX. Instead of stating that the Student does not have the language to understand directions, the Complainant stated that the Student follows directions at home when using XXX. Instead of stating that the Student receives daily XXX in class, the Student only gets XXX XXX related instructions 3 times a week for 30 minutes, while he uses XXX consistently at home.

The documents provided to OCR also demonstrate that the District provided the Student with additional XXX support beyond the 30 minutes 3 times per week specified in the IEP. For example, in a November 5th email to the Student’s self-contained classroom teacher (“Teacher”) and the District’s Director of Special Services (“Director”), the Student’s Teacher of the XXX/XXX reminded them of the requirement that when the Teacher provides lessons, the lessons “need to include XXX to ensure the information is accessible for [Student]. She described what she would do to support the District and the Teacher. That day, the Director emailed the XXX and the Teacher and requested for a copy of the Student’s schedule “to that

addresses the time that he is in the general education classroom and when he has XXX support. I need to know what has changed since the last meeting with the grandparent as far as time in the general education classroom and support from XXX staff.”

In response, on November 6th, the XXX identified the 3 times per week for 30 minutes of services identified in the Student’s IEP that she provides. She additionally stated that she had been “going in at other times to provide XXX support during instruction.” She identified a recent example of additional support she provided and offered to provide documentation of other times. That day, a Teacher of Students with Visual Impairment emailed and stated that she had been providing “XXX support” on Monday mornings. She added that she tries to fit in between her other duties to work with the Student. In another document provided by the District, XXX emailed the Director on February 23, 2020, and stated that she accompanies the Student on Mondays and Tuesdays from 8:00 a.m. to 9:00 a.m. and “function as a language interventionist and collect data for his XXX teacher.”

In her OCR complaint, the Complainant stated that, although the Student is not proficient in XXX, XXX is his primary mode of communication. Additionally, she stated that the Student’s classroom teacher (Teacher) only uses XXX XXX to communicate with her students and does not know XXX. Further, she stated that none of the school staff know XXX, except for the XXX who provided the Student with 30 minutes of services 3 times per week. During the rest of the school day the Student is unable to access what is being taught because he is not provided with an XXX Interpreter.

In its Data Response to OCR, the District stated that XXX is integrated in the self-contained classroom and the general education classroom and specials throughout the Student’s day. The District stated that the Complainant had requested the Student’s IEP team increase the Student’s XXX support and time in the general education setting and supports for staff regarding XXX. The District stated that it has done so, but the September 2019 IEP does not reflect the increased time as the Student’s IEP team had nor formally met¹ since the September 2019 IEP meeting.

Following the District’s March 11th Data Response, the District held an IEP meeting to consider the results of the Student’s IEE. The District removed the XXX eligibility classification, agreed to provide the Student with a full-time XXX XXX for the 2020-2021 school year, and placed the Student in the general education classroom for the majority of the day. The Complainant expressed confidence that going forward the Student would be provided with effective communication.

On May 20, 2020, before OCR had completed its investigation, the District notified OCR that it was interested in resolving this complaint. Further investigation is necessary in order for OCR to make findings on the allegation.

Pursuant to Section 302 of OCR’s Case Processing Manual, 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.

¹ As of the date of the District’s Data Response on March 11, 2020.

On July 6, 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 allegation 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 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.

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 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 Michael Germano, Attorney and primary contact for this case, at (XXX) XXX-XXXX or by email at XXX.XXX@ed.gov, or me at (XXX) XXX-XXXX or by email at XXX.XXX@ed.gov.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Enclosure – Resolution Agreement

Cc: Ms. Kathy Hoffman, AZ Superintendent of Schools, via email only