



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

\*REGION VIII

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July 28, 2021

Ms. Brian Capistran  
Superintendent  
Glendale Union High School District  
6400 Uptown Blvd. NE  
Albuquerque, NM 87110

By email only to [brian.capistran@guhsdaz.org](mailto:brian.capistran@guhsdaz.org)

Re: OCR Complaint No. 08-20-1341  
Glendale Union High School

Dear Superintendent Capistran:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint. On April 14, 2021, OCR received a complaint against the Glendale Union High School District (GUHSD, Recipient, or District). The Complainant alleged that the District discriminated against her daughter (the Student) based on disability when the School Resource Officer failed to follow her Section 504 Plan which allows her to step out of her classroom or go to the Counseling Office when she is experiencing anxiety; and that the District retaliated against the Student and the Complainant when it failed to provide the Student with class notes for her Chemistry and Math classes, failed to respond to requests to add a required Wellness class to the Student's Spring 2020 schedule, failed to respond to Complainant's request regarding how she could check the Student's grades for two online classes (i.e., history and English) and failed to respond to the Complainant's request for information regarding an investigation of discrimination against the Student relating to nursing services.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Additionally, individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

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

On December 17, 2021, OCR opened an investigation into the above allegations.

As part of its investigation, OCR reviewed information provided by the Complainant and District, conducted interviews with the Complainant, the Student, the Assistant Principal, the School Counselor/504 Coordinator (the Counselor), and the District 504 Coordinator, and reviewed written data provided by the District, and discussed the allegation with counsel for GUHSD.

OCR makes legal decisions based on a preponderance of evidence standard.

Section 504 § 104.33 (a) and (b) states in part that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

### **Discrimination based on disability**

The District evaluated the Student for services as outlined in § 104.35 and determined the Student to be eligible for services. The Student Section 504 Plans dated September 13, 2019 and February 12, 2020 both include provisions for the Student to leave class to go to the counseling office when she is experiencing an anxiety episode and that the Student has a permanent hall pass for this purpose.

According to the Complainant, on January 27, 2020, the Student was feeling dizzy and went to the nurse's office. The nurse contacted the Complainant who agreed to let the student return to class after being informed the Student was feeling better. Instead of returning to class the Student texted her father to pick her up from school and went to the attendance office. While in the attendance office the Student informed the secretary that she was waiting on her father to pick her up and allegedly informed the secretary that she needed to pick up her math homework and left the office. The school secretary observed the Student was no longer in the office and contacted the School Resource Office (SRO) to find the Student and return her to the attendance office. The Student was found outside the Math building by the SRO who returned her to the office. The Complainant alleges the SRO was not a part of the Student's 504 meetings and violated the Student's 504 Plan provisions by escorting her back to the attendance office.

The District's Parent/Student Handbook states "Students may NOT leave campus during the school day without following the appropriate check out procedures. THIS INCLUDES LUNCH PERIODS. All students must check in and out through the Attendance Office."

In her interview dated March 10, 2021, the Student was asked what the school or District’s policy was regarding hall passes for students, the Student responded “you need teacher permission to get a hall pass. My teachers would let me leave early without a pass for my 504.” When asked if she asked the attendance office secretary for a hall pass to leave to get her homework, the Student responded “no.” When asked why not, the Student responded, “she didn’t acknowledge me.” When asked when she can use her “permanent pass” provided for in her 504 plan the Student responded, “I am allowed to use my permanent hall pass when I need to step out of class due to stress or anxiety or when I feel the need to leave class one or two minutes early in order to avoid the crowded halls when I am feeling generally overwhelmed.”

Since it is undisputed that the Student violated the Student/Parent handbook requirements to obtain a hall pass before she went to obtain her homework and that her “permanent hall pass” has conditions upon its use, OCR finds the SRO did not violate the Student’s 504 Plan accommodation. Consequently, OCR finds insufficient evidence that the Student was discriminated against based on disability.

### **Retaliation**

Title IV § 100.7 (e) as incorporated into Section 504 § 104.6 states that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) A *prima facie* case of retaliation can be established, which involves consideration of whether:
  - a. An individual experienced an adverse action caused by the recipient; and
  - b. The recipient knew that the individual engaged in protected activity or believed the individual might engage in a protected activity in the future; and
  - c. There is some evidence of a causal connection between the adverse action and protected activity
- (2) The recipient identifies a facially legitimate reason for taking the adverse action other than the protected activity; and
- (3) Whether the recipient’s reason is a pretext for retaliation and/or whether multiple motives exist for the recipient taking the adverse action.

Although all three elements must exist to establish a *prima facie* case, OCR need not address all three elements if it determines one is missing.

After OCR has been able to infer a causal connection between the protected activity and the adverse action, OCR will then determine if the recipient has identified a facially legitimate, non-retaliatory reason for the adverse action. The recipient’s facially legitimate, non-retaliatory reason must be clear, reasonably specific, and of such a character to justify the recipient’s action. If the recipient identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation.

An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the complainant’s position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Under that perspective, petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions.

### Incident One

The Student’s September 13, 2019, Section 504 Plan does not contain a provision for providing classroom notes. The Student’s February 11, 2020, Section 504 Plan does contain a provision for providing classroom notes when requested. According to the Counselor’s interview, the provision of class notes was added to the Student’s February Section 504 Plan without benefit of a Section 504 meeting.

The Complainant alleges that the District failed to provide the Student classroom notes for a Chemistry class after she made a formal email request on February 10, 2020, to the Counselor for class notes from these classes. The Complainant asserts that no class notes were provided until March 9, 2020, by the Chemistry teacher and provided OCR a screen shot from Google Classroom indicating such. The Complainant alleges that failing to provide class notes was in retaliation for her filing an internal District complaint of discrimination with the Superintendent on February 12, 2020.

OCR confirmed via emails to Counselor and interviews with the Student and the Complainant that the class notes were not provided to the Student until March 9, 2020. According to the District, the Student and Complainant, class notes are posted to the District’s media platforms called Canvas. Additionally, teachers have the option to post class notes to Google Classroom. The Student and Complainant confirmed that they know how to access both platforms and have been using these platforms for four years. During her interview, the Complainant stated that class notes for the Chemistry class had not been updated for a couple of months prior to her request for class notes. This was confirmed by the Counselor in an email reviewed by OCR. The Complainant further stated that a meeting was held on March 9, 2020, with the Chemistry teacher who agreed to let the Student submit all “missing packets and stay after class to retake tests to raise her failing grade.” Furthermore, the Complainant raised no allegations that the delay resulted in any educational harm to the Student but did contribute to her anxiety.

The Complainant's request for class notes on February 10, 2020, constituted a protected activity and the District knew about the this protected activity. Despite not receiving notes for 25 days and since District took action to mitigate this circumstance by allowing the Student to turn in work assignments and retake tests there was no adverse action. Consequently, OCR finds insufficient evidence that the District retaliated against the Student or Complainant.

### Incident Two

Neither the Student's September 13, 2019, nor February 11, 2020, Section 504 Plans contain a provision for modification of the Student's class schedule due to her disability.

The Parent /Student Handbook section STUDENT SCHEDULES AND COURSE LOADS (GB POLICY IIE) states "it shall be the responsibility of the principal, with the cooperation of assigned counselors, to assist students in the scheduling of classes. All students except graduating seniors are required to enroll in six (6) classes. Graduating seniors will be required to enroll in a minimum of five (5) classes. \*\*For the 20-21 school year the requirement remains the same with 3 courses in each semester."

In her supplemental complaint dated April 13, 2020, the Complainant alleges that after the January 27, 2020, incident with the nurse, noted above, that the Counselor<sup>1</sup> insisted that the Student change to a schedule of taking three courses in person and two courses online (English 6 and U.S. History 2) at a different location within the school until she adjusted to the schedule instead of a total of six classes for the semester. The Complainant alleges she engaged the Section 504 Coordinator in communications between the end of February 2020 until the beginning of March 2020 about adding an elective course to the Student's Spring 2020 semester course schedule. The Complainant alleges the failure to add this course was in retaliation for her filing an internal District complainant of discrimination with the Superintendent on February 12, 2020.

On March 9, 2020, the Complainant, her husband and the Student met with the Counselor and it was decided by the parents that the Student would not take the online Wellness course as too much time had passed since the beginning of the semester putting the Student behind in that class and adding to her anxiety. In her interview, the Complainant was asked what impact not being able to take the Wellness class during the Spring 2020 semester had on the Student. The Complainant stated "Academic year Fall 2020- Spring 2021 is/was her senior year in which she was supposed to have one free hour/class the entire year. Instead of having a free hour, she took a .5 elective course in Fall 2020 to make up for the previous semester (Spring 2020)." The Complainant further stated this increased the Student's anxiety but provided no evidence how this impacted the Student.

By filing an internal discrimination complaint with the District, the Complainant was engaged in a protected activity and the District knew of this protected activity. The Complainant alleged the Student's anxiety was increased as result of the addition of a course to her Fall 2020 semester in

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<sup>1</sup> During her interview, the Counselor stated that the suggestion of a modified schedule was actually made to her by the Assistant Principal.

her senior year. Further, the Complainant and the Student knew from at least the beginning of the school year that the Student would need to complete an extra course in either the Fall 2020 or Spring 2021 semester. The Complainant provided no further material information regarding this assertion, so its accuracy is suspect. In fact, the Student successfully completed her courses, including the additional course during the Fall 2020 semester, and graduated from the District on time. Ultimately, based on the evidence reviewed during its investigation, OCR is unable to establish that Complainant's assertion that the Student's increased anxiety rose to the level of an adverse action. Accordingly, OCR finds insufficient evidence that the District retaliated against the Student or Complainant.

### Incident Three

The Complainant alleges that she asked the Counselor how she could view the Student's online class grades (English 6 and U.S. History 2) but did not receive any information from the Counselor which she believed is in retaliation for her filing an internal District discrimination complaint with the Superintendent on February 12, 2020.

Neither the Student's September 13, 2019, or February 11, 2020, Section 504 Plans stipulate that the District is to provide Complainant with reports on the Student's grades or assignments.

In her interview, the Complainant was asked why she felt it was the Counselor's responsibility to tell her how to view the Student's grades. The Complainant responded "The counselor, [name], recommended and set up [the Student's] hybrid schedule. She specifically stated that [the Student] would continue to be a Greenway Student and not considered an online student. [The Counselor] never provided us with information such as online teacher names or other pertinent information verbally, physically (such as a printed schedule displaying teacher names) or via electronic communication. She simply told us what classes would be transitioned to the online only format." The Complainant provided written records and emails showing a series of conversations with the Counselor regarding this matter. These records show the Complainant was at times able to see the Student's records including online course records on Canvas or the platform for parents entitled ParentVue on some occasions but not on other occasions. These records also show the Complainant was told by the Counselor that she could view the Student's grades and assignments by having the Student sign on to her Canvas account. During numerous interviews, the Complainant failed to provide specifics as why Counselor's inability to answer her questions regarding how to access the Student's records on Parent Vue or Canvas was retaliation.

The Student/Parent Handbook states "Online Learning, facilitated by the Glendale Union High School District, has been offering online instruction for grades 8-12 since 2009. Our curriculum provides parents with the educational assistance to meet their student's academic needs for both graduation and credit recovery. Each course is designed to meet state of Arizona and national curriculum standards. Worksheets, reading assignments, interactive online practice activities, tutorials, unit reviews, quizzes and tests are included as part of our online instruction.

Three opportunities for Online Learning include:

- Credit Recovery- Online courses offered to students at traditional campuses during the school day.
- Online Learning Academy- In person blended learning environment with a variety of student supports.
- Glendale Union Online- Online Learning (from home) with a variety of student supports”

The Parent/Student Handbook section entitled “PARENTVUE” states “parents can access information about their student’s grades and attendance online. Contact the counseling office at your local campus for information.”

The Parent Student Handbook section entitled “EXTENDED EDUCATIONAL PROGRAMS” subsection “Online Learning” states “GUHSD offers a number of online opportunities. See your school counselor for further information regarding online courses offered in the district and the registration process of these courses.”

The District asserts that the Complainant and Student had been using Canvas and ParentVue to view the Student’s academic progress since the Student’s sophomore year of school. The District asserts that both are familiar with these District platforms and can view academic progress at any time as can all other students and parents. The District further contends that the Student can view their progress on Google classroom. The Student confirmed her use of Canvas since her sophomore year in her interview. The Complainant also confirmed her use of Parent Vue for the past three years as she had another child in the school.

The Complainant was engaged in a protected activity when she sought help to monitor the Student’s progress in classes and the District was aware of this activity. Neither of the Student’s Section 504 plans require the District to provide the Complainant updates on the Student’s grades and class progress other than that provided to all other parents. Further, it is undisputed that the Complainant is familiar with the District’s Parent Vue system and likewise the Student is familiar with the Canvas system, both of which allow the Complainant to track the Student’s progress at her convenience. Since the Complainant had access via the Student’s Canvas account, including class assignments, grades, and information about the Student’s progress in online classes, the Complainant’s assertion that could not view important information on the Parent Vue portal, if true, does not rise to the level of an adverse action. Consequently, OCR finds insufficient evidence that the District retaliated against the Complainant.

#### Incident Four

The Complainant alleged that the District failed to respond to her request for information relating to her internal discrimination complaint with the District Superintendent on February 12, 2020, in retaliation for filing the complaint.

The Complainant’s internal complaint identified the following concerns:

- The complaint alleges that the School Nurse (the Nurse) failed to follow medical protocol in dealing with the Student on January 27, 2020 including failing to recognize symptoms of the Student’s disability.
- The complaint further alleges that the Assistant Principal mishandled the same incident.
- The Complainant requested the names and contact information for all parties involved in the human resources investigation of the nurse’s actions.

The Complainant received a copy of the District findings<sup>2</sup> relating to her complaint on March 23, 2020. The findings stated that the Complainant and her husband identified the following three concerns:

- The first concern was the behavior and professional response of the school nurse, [name].
- The second concern related to [the Student’s] one and only interaction with the GI-IS Resource Officer on campus this school year.
- Their third concern was whether counselor [name] was asked by administration to not respond to the family's emails in her usual quick fashion as an act of retaliation. During the conversation with [the Complainant’s husband] and [the Complainant], they did not directly allege that discrimination/retaliation was the underlying motive of any GUHSD staff member, despite previously alleging that.

The District Section 504 Coordinator investigation did find that there were inaccuracies related to the nurse’s actions and that the Complainant’s concerns about the Resource Officer were based purely on the Complainant’s assumptions about the Resource Officer. The District Section 504 Coordinator also found that the Counselor’s failure to respond as rapidly to the Complainant’s emails was due to personal illness and other official duties the Counselor was performing and not due to retaliation.

The Complainant was engaged in a protected activity and the District knew about the protected activity when the Complainant raised the issue of retaliation in her internal complaint. However, the District’s investigation findings as well as OCR’s own investigation and interview of the Counselor show that the Counselor not responding to the Complainant’s emails and other contacts as quickly as she did prior to the Complainant filing the internal complaint were not an adverse action. Consequently, OCR finds insufficient evidence that the District retaliated against the Complainant or Student.

### **Other Concerns**

During the course of investigation, OCR identified areas of concern regarding the following issues:

- Timeliness in providing services.
- Ensuring all service providers are given copies of IEP and Section 504 plans (including SROs and online teachers)

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<sup>2</sup> OCR reviewed the investigative findings.



- Convening properly constituted IEP and Section 504 meetings to make decisions such as adding or subtracting services, including changes in placement.

Before OCR completed its investigation, the District asked to voluntarily resolve the allegations under investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), which provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. Although OCR had identified concerns regarding the identified issues under investigation, OCR had not yet reached a full compliance determination. On June 22, 2021, OCR determined that a resolution under CPM Section 302 was appropriate.

On July 28, 2021, the District voluntarily signed and submitted to OCR a Resolution Agreement (Agreement) to resolve the issue under investigation. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the allegations under investigation and appropriately resolves them. Further, OCR accepts the Agreement as an assurance that the District will fulfill its obligations under Section 504 and Title II with respect to the allegations under investigation. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the District's implementation of the Agreement.

Effective the date of this letter, OCR concludes its investigation of the above referenced allegation. This letter should not be interpreted to address any issues other than those addressed therein.

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.

Please be advised that a recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, an individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, OCR will seek to protect to the extent provided by law personal information that if released, could constitute an unwarranted invasion of privacy. Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law.

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If you have any questions about this letter, please contact Mr. Craig Nydick, the attorney assigned to this complaint, by telephone at (303) 844-7104 or by email at [craig.nydick@ed.gov](mailto:craig.nydick@ed.gov). You may also reach me at (303) 844-6086 or via email at [michael.todd@ed.gov](mailto:michael.todd@ed.gov).

Sincerely,

Michael D. Todd  
Supervisory Attorney  
Office for Civil Rights  
Denver Office

cc: Mr. Robert Haws, Outside Counsel by email at [rhaws@gustlaw.com](mailto:rhaws@gustlaw.com)