



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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December 15, 2020

Dr. Shari Popen
Founder and Director
Sky Islands Public High School
6000 E 14th Street
Tucson, AZ 85711

Sent via email only to director@skyislands.org

Re: Sky Islands Public High School
OCR Case Number: 08-20-1397

Dear Dr. Popen:

On July 2, 2020, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint alleging that Sky Islands Public High School (School) discriminated against a student (Student) on the basis of disability. Specifically, the complaint alleged that the School discriminated on the basis of disability by failing to implement the Student's Section 504 plan in the Student's XXXXX XXXXX.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulations, which prohibit discrimination based on disability in any program or activity operated by recipients of Federal financial assistance from the Department; and, Title II of the Americans with Disabilities Act of 1990, and its implementing regulations, which prohibit discrimination based on disability by public entities, regardless of whether they receive Federal financial assistance. As a recipient of Federal financial assistance from the Department, the School is subject to this law and regulation. Additional information about the laws OCR enforces is available on OCR's website at <http://www.ed.gov/ocr>.

Investigation Summary

OCR notified the School and the Complainant on August 28, 2020, that OCR opened the allegation for investigation. OCR's investigation focused on obtaining the evidence necessary to determine whether the School complied with the legal standard stated below, or whether the School engaged in discrimination as alleged. Specifically, the investigation consisted of requesting and reviewing records and information from the Complainant and the School.

OCR applies a preponderance of the evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in

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support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion.

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities.

A recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified person with a disability in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 34 C.F.R. § 104.33

Background

X—sentence redacted—X. The Student is a student with a disability. X—sentence redacted—X. The Section 504 plan included the following accommodations: extended time on tests when student requests; extended time on assignments as determined in advance with teacher and student agreement; XXXXX XXXXX; break down assignments when student requests into more manageable steps; and provide frequent check-ins and feedback for student.

X—sentence redacted—X. The School provided emails to OCR of communications between School staff and the Student's parent related to the Student. The emails show that XXXXX, the School scheduled a Section 504 meeting with the Student's parent; however, the meeting did not occur because of scheduling issues. X—sentence redacted—X. Around the same time period, the School transitioned to fully online remote learning because of COVID-19. Because of scheduling issues and COVID-19, the Section 504 meeting did not occur. As a result, the Section 504 plan remained as the existing plan for the Student during the entirety of the 2019-2020 school year.

X—sentence redacted—X. X—sentence redacted—X. The teacher reduced the amount of work the Student had to complete in the XXXXX and provided the Student extended time XXXXX to complete assignments; however, the Student's parent told OCR that assignments were not broken down into more manageable steps. The Student continued to have difficulty in the XXXXX and XXXXX. X—sentence redacted—X.

Analysis

Pursuant to Section 302 of the 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 allegation and the evidence provided, OCR determined that this allegation may be appropriately resolved through an agreement under Section 302 of the CPM. On December 7, 2020, OCR received the School's signed resolution agreement (Agreement) (enclosed). Accordingly, this allegation is closed as of the date of this letter and OCR will monitor the Agreement to ensure compliance.

Conclusion

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 School's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the School'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 its implementing regulations. If the School 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.

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, it will seek to protect, to the extent provided by law, personal information, which 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.

In addition, the Department has developed guidance to support recipients, as well as the students, families, staff, and community served therein, through the unprecedented challenges faced by COVID-19. For more information, see the Department's [*COVID-19 \("Coronavirus"\) Information and Resources for Schools and School Personnel*](#). If the School is in need of assistance from the Department or OCR as a result of COVID-19, please do not hesitate to reach out.

If you have any questions, you may contact XXXXX, the attorney assigned to this case at XXXXX or by email at XXXXX, or me at XXXXX or by email at XXXXX.

Sincerely,

/s/

Thomas M. Rock
Supervisory Attorney
Denver Regional Office

Enclosure – Resolution Agreement