



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

September 5, 2023

Mr. Kevin St. John, Superintendent
Show Low Unified School District
500 West Old Linden Road
Show Low, Arizona 85901

sent via email only to [redacted content]

Re: **Show Low Unified School District**
OCR Case 08-21-1132

Dear Superintendent St. John:

We write to inform you of the resolution of the above-referenced complaint filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on February 17, 2021. The Complainant alleged that Show Low Unified School District (the District), by complying with policies set forth by the Arizona Interscholastic Association (AIA) regarding face-covering/mask requirements, failed to provide individuals with disabilities, including the Complainant, her [redacted content] child (the Student), and her [redacted content] additional children, equal access to the District's athletic activities on [redacted content], and later in 2021. On January 13, 2021, AIA had published winter sports guidance that read, "Face coverings are required for competition for all AIA athletes and strongly recommended during all athletic activities until it is determined that face coverings during competition are no longer needed. ... No face covering exemptions will be honored under any circumstance." On January 21, 2021, AIA published revised winter sports guidance that read, "All students, coaches and officials will be required to wear a cloth mask or gaiter for the entirety of a game/context," and "Parents/Legal Guardians in attendance at events are required to wear a face covering for the entirety of the contest." This guidance remained in place when the Complainant filed her complaint with OCR.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination based on disability in any program or activity operated by recipients of federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II) 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 and a public entity, the District is subject to these laws and regulations.

The Complainant filed her complaint with OCR against the District and AIA. OCR initially assigned two separate case numbers to the complaint, one for the District (08-21-1132) and one for AIA (08-21-1129). On June 24, 2021, OCR notified the Complainant that OCR would not investigate her allegation against AIA in case 08-21-1129 because OCR was currently investigating the same or similar allegations based on the same operative facts involving the

same recipient in another OCR complaint in case 08-21-1090. OCR later resolved this similar allegation against AIA in case 08-21-1090 through the attached voluntary resolution agreement with AIA under Section 302 of OCR's Case Processing Manual (CPM).¹

On July 21, 2021, OCR notified the Complainant that it would open for investigation her allegation against the District under Section 504, Title II, and their implementing regulations in case 08-21-1132. Before OCR completed this investigation, the District expressed an interest in resolving the allegation under Section 302 of OCR's CPM, and OCR determined that an agreement under Section 302 was appropriate to resolve OCR's concern about the District's compliance with Section 504, Title II, and their implementing regulations identified to date. As explained below, OCR identified a compliance concern about whether the District's implementation of AIA's mask policies at District athletic events in 2021 effectively excluded individuals with disabilities who cannot wear a mask or cannot wear one safely from participating in or attending District athletic events because the policies did not provide a way to request or obtain reasonable modifications to the mask policies to avoid discrimination based on disability. On September 5, 2023, the District voluntarily entered into the attached Resolution Agreement (the Agreement) to resolve these concerns and the Complainant's allegation under Section 302 of OCR's CPM.

Legal Standards

Section 504 provides that "[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" 29 U.S.C. § 794(a); *see also* 34 C.F.R. § 104.4(a). Title II similarly provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a). Under the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(i), and the Title II regulation, at 28 C.F.R. § 35.130(b)(1)(i), recipients and public entities, respectively, in providing any aid, benefit, or service, may not, directly or through contractual licensing, or other arrangement, deny a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service.

Title II's implementing regulations require "[a] public entity [to] make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7)(i). Likewise, OCR and the courts have interpreted Section 504's regulations as requiring reasonable modifications to existing practices to accommodate persons with disabilities. *See Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 749 (2017). To comply with these obligations, "an individualized inquiry must be made to determine whether a specific modification for a particular person's disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration."

¹ *See* CPM (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

See PGA Tour, Inc. v. Martin, 532 U.S. 661, 688 (2001) (analyzing the equivalent “reasonable modifications” requirement under Title III of the ADA). To fulfill their Section 504 and Title II obligations, recipients and public entities generally must make reasonable modifications to their policies and procedures as needed to accommodate individuals with disabilities. *See* 34 C.F.R. §§ 104.4(a), (b), 104.37(a), 104.37(c) (Section 504); 28 C.F.R. §§ 35.130(b)(7), 35.149 (Title II).

Facts

During school year (SY) 2020-21, the Student was in [redacted content] at [redacted content]. According to the Complainant, the Student has [redacted content], with little to no ability to breath on that side, and therefore was at risk of suffocating and experiencing “very high anxiety” when wearing a face covering, and then hyperventilating and passing out. The Student had an Individualized Education Program (IEP) and a medical mask exemption from a primary care physician on file with the District. For her part, the Complainant also told OCR that she has [redacted content], and consequently, experienced high anxiety and blood pressure when wearing a face covering.

As noted above, on January 13, 2021, AIA published winter sports guidance mandating face coverings for competitions for all AIA athletes, strongly recommending face coverings during all athletic activities, and stating that no face covering exemptions would be honored. On [redacted content], the Student had a basketball game in a District gymnasium. The Complainant and the Student’s father were in attendance. Although the Complainant alleges disability discrimination against her other [redacted content] children as well, OCR found no evidence that these children were in attendance at the game, attempted to attend the game, or were prevented from attending. The game admission cost was \$10 per adult, and the total of the tickets for the Complainant and the Student’s father was \$20.

According to the Complainant, this is what transpired at the game. At some point during the game, when the Student was on the bench, an AIA referee stopped the game and yelled at the Student to put on a mask. The Student responded by referring to the medical exemption and began crying. The basketball coach (the Coach) yelled at the Complainant to put on a mask. When the Complainant did not put on her mask, the Coach told her and her family to leave the game. The Complainant contacted the AIA’s Assistant Executive Director, the District’s Athletic Director (the Director), the District’s Special Education Director, and others regarding the alleged discrimination.

District personnel largely confirmed the Complainant’s account of what occurred at the game. According to the Coach, at the referees’ request, a public address announcer announced that everyone in attendance at the basketball game had to wear a mask, and the Complainant did not put on her mask. The referees told the Coach that his team had two minutes to comply with the mask mandate or the game would be forfeited. The Coach told the Complainant to put her mask on, but she refused. The Coach explained the AIA policy to the Complainant. After further discussion with the Coach, the Complainant chose to leave the District gymnasium rather than put on a mask.

According to the Director, when he arrived at the basketball game, he saw the Complainant, the Student, and the Student's father being escorted out of the gym. The Director spoke with the parents. To help them understand the District's actions, the Director called a member of the AIA's Executive Leadership Team, who reaffirmed the rule that masks had to be worn by all in attendance at sporting events.

The District confirmed to OCR that, during the game, the District had followed the AIA's face-covering policy, and that the policy applied universally to both players and spectators. The District told OCR that the District could not exempt students from the policy's face masking requirements at AIA interscholastic events and still participate in them, and that, given the state of the pandemic at the time, no reasonable accommodation to that policy existed. However, the District was granting exemptions to its masking requirement for instruction in school to students whose parents produced a doctor's note supporting the exemption, and the District had granted such exemptions to the Student and another one of the Complainant's children, the only two students in the District who requested exemptions, according to the District's narrative response. In response to the Complainant's allegations of discrimination against herself and the Student's father at the game, the District noted to OCR that neither the Complainant, nor the father had indicated during the game that they had a disability, nor requested an accommodation for themselves.

As noted above, on January 21, 2021, [redacted content], AIA published revised winter sports guidance that required all students, coaches, and officials to wear a cloth mask or gaiter and all parents/legal guardians to wear a face covering for the entire game. The Complainant alleged that due to the AIA face-covering policy, the Student was denied the ability to play the entire basketball season. According to a schedule the Complainant provided, the last game of the Student's basketball season was on [redacted content].

On March 2, 2021, AIA revised its mask mandate to specify that "all athletes and officials that are actively participating in competitions for the spring season and winter playoffs" are no longer required to wear masks, but that "all students, coaches and officials not actively participating in competition" and spectators were required to continue wearing an approved face covering. In July 2021, AIA issued new "Recommended Guidelines for Returning to Athletic Activity," that encouraged but did not require masks. On August 29, 2022, AIA published "Recommended Guidelines for Returning to Athletic Activity," which recommended that certain individuals should wear a mask and required that athletes who tested positive for COVID-19 follow certain procedures for returning to competition, including mask wearing for a specified number of days. As noted above, OCR resolved its concerns about AIA's face-covering/mask policies in 2021 and 2022 with AIA through the attached resolution agreement in case 08-21-1090.

Compliance Concern

During the investigation in this case 08-21-1132, OCR identified a compliance concern about whether the District's application and enforcement of the AIA's mask policies in 2021 may have effectively excluded individuals with disabilities who cannot wear a mask or cannot wear one safely due to their disabilities, including the Student, from participating in or attending athletic events. OCR is concerned that the District, as a matter of policy, may not have provided

individuals with disabilities a way to obtain reasonable modifications to the mask policies it enforced at AIA interscholastic events, even when necessary to avoid discrimination based on disability. To fulfill their Section 504 and Title II obligations, recipients and public entities generally must make reasonable modifications to their policies and procedures as needed to accommodate individuals with disabilities. *See* 34 C.F.R. §§ 104.4(a), (b), 104.37(a), 104.37(c) (Section 504); 28 C.F.R. §§ 35.130(b)(7), 35.149 (Title II). The evidence OCR has collected to date suggests that the District may not have been willing to consider or make such modifications to its mask requirements at athletic events in 2021.

Conclusion

When fully implemented, the Agreement will address OCR's compliance concern based on the evidence obtained to date. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the Title II and Section 504 statutory and regulatory obligations at issue in the case. OCR will monitor implementation of the Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and require actions to address such deficiencies. The Complainant will be sent a copy of OCR's monitoring letters. Upon determining the District's compliance with the Agreement and its Title II and Section 504 obligations at issue in this case, OCR will close the case and notify the parties of the closure.

This concludes OCR's investigation of the allegation and should not be interpreted to address the District's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual 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.

Please note that the Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testified, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

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, we will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Thank you for the District's attention to this matter and cooperation. If you have any questions or concerns, you may contact Jason Langberg, the attorney assigned to this case, at [redacted content] or [redacted content].

Sincerely,

/s/

Daniel Contreras
Supervisory General Attorney

Attachment: Resolution Agreement with the District for OCR case 08-21-1132
Resolution Agreement with AIA for OCR case 08-21-1090

cc (via email): Scott Hoffmeyer, Athletic Director ([redacted content])
Beth Marsh, Special Education Director ([redacted content])