



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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February 8, 2023

Mr. Brian Capistran
Superintendent
Glendale Union High School District
7650 N. 43rd Avenue
Glendale, Arizona 85301

By email only to Brian.Capistran@guhsdaz.org

Re: OCR Complaint No. 08-22-1531
Glendale Union High School District

Dear Superintendent Capistran:

On August 12, 2022, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against the Glendale Union High School District (District). The Complainant alleges that the District discriminated against her son (Student) on the basis of disability when the District failed to:

1. respond to disability-based harassment of the Student by a staff member;
2. properly evaluate the Student, as required by Section 504; and,
3. meaningfully communicate with her in a language she understands.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to 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; 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; and, Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to this law and regulation.

I. Investigation Summary

On September 27, 2022, OCR opened the allegations for investigation in accordance with OCR's *Case Processing Manual* (CPM). OCR's investigation included interviewing the Complainant;

reviewing documents pertinent to the complaint allegations, including information, records, and data from the District; and, interviewing five District staff members. During the course of the investigation, OCR identified concerns related to the District's compliance with Section 504, Title II, and Title VI. The District voluntarily agreed to address the allegations by signing the enclosed resolution agreement (Agreement), pursuant to Section 302 of the CPM.

II. Factual Findings

A. Background

The Student attended XX High School (School) in the District during the 2020-21 and 2021-22 school years (SYs) and received disability related services under an individualized education program (IEP). The Student also briefly attended the School during the 2022-23 SY, but was disenrolled by the Complainant on September XX, 2022. While enrolled at the School, the Student attended class in a XX "XX" and did not participate in the general education classroom, in conformance with the Student's most recent IEP.

The Complainant's native language is Spanish and she does not communicate verbally in English, though she explained to OCR that she understands English when someone else is speaking it. The District's records indicate that an interpreter has been utilized in IEP meetings when the Complainant is in attendance and documents have been translated into Spanish when provided to the Complainant.

B. Reevaluation Meeting and Translation of IEP Documents

On October XX, 2020, the District issued a Prior Written Notice to the Complainant to complete a Multidisciplinary Evaluation Team (MET) report because recent assessments had not been conducted. After completing the assessments, the IEP team convened on October XX, 2020, including the Complainant, to review and revise the Student's IEP. Based on the MET report, the IEP team determined that the Student continued to be eligible for special education as a child with a disability (mild intellectual disability) and continued placement in the XX classroom. The District subsequently provided to the Complainant copies of the related IEP documentation after having translated it into Spanish.

The following school year, the District reconvened the Student's IEP team on October XX, 2021, during which the IEP team discussed the Student's progress and revised his annual goals and accommodations. The School attempted to contact a "Parent" by phone when scheduling the October 2021 meeting; however, the first page of the IEP, which reflects the "efforts to schedule the IEP meeting, indicates that after a week of phone attempts, the "Parent" did not call back. The IEP does not indicate whether the "Parent" was the Complainant or the Student's father (Father). The District was unable to provide documentation indicating that a written notice or invitation was issued to the Complainant or the Father after the inability to contact them by phone. A copy of the signature form indicates that the Student attended the meeting with six

other School and District staff members; however, neither the Complainant nor the Father attended the meeting.

The Complainant explained to OCR by email that the October 2021 IEP meeting occurred without her knowledge and that she had not received an invitation to attend the meeting or copies of any related documentation. Rather, she clarified, upon enrolling the Student in another District, the Complainant was provided with copies of the Student's October 2021 IEP and realized that this IEP meeting occurred without her knowledge. During interviews with the District's Director of Special Education (Director), the Director explained that it was the District's expectation that a meeting request should be sent home following phone calls to confirm the meeting date. She also stated that it was not the District's practice to convene an IEP meeting without a parent/guardian present. OCR inquired about this practice during an interview with the School's Principal (Principal), to which he responded that "[he] didn't know specifics on that piece." The Principal also explained that the School's case manager is responsible for coordinating the IEP and reports to him, yet the Principal was unable to explain expectations for inviting parent(s)/guardian(s) to IEP meetings, stating he "believe[s] they communicate in many different ways..."

OCR also inquired about the District's practices related to interpretation and translation services for LEP parents, particularly related to IEP meetings and IEP documentation. The Director explained that the District encourages the translation of documents "at all times," prefers utilizing third party contractors to provide interpreters during IEP meetings, and that staff would not be utilized unless a staff member was on the IEP team (such as a therapist), happened to be bilingual, and could interpret their own data. When interviewing the School's Assistant Principal (Assistant Principal), OCR inquired about how the School addresses language barriers during IEP meetings with LEP parent(s)/guardian(s). The Assistant Principal explained that the School relies on its bilingual staff members and "language line,"¹ or potentially a family member that speaks the family's language. Throughout OCR's interviews with the District and School staff, none of the interviewees were aware of specific training provided to bilingual staff members serving as interpreters, beyond the District-wide confidentiality training provided to all staff.

C. The District's Response to Allegations of Disability-based Harassment

On July 28, 2022, prior to the beginning of the 2022-23 SY, the Complainant attended registration with her daughters (Daughter 1 and Daughter 2). Daughter 1 is the Student's sister and also attended the School, and Daughter 2 is in college, according to the Complainant. After Daughter 1 completed placement testing, the Complainant and her daughters arrived at registration and encountered the math teacher (Teacher) at the entrance. The Student was not in attendance. The Teacher explained to OCR that registration included many tables that students and parent(s)/guardian(s) could independently visit, though a few of the tables were mandatory. She stated that when she met the Complainant and her daughters most of the tables had closed as

¹ "Language line" is the District's contracted interpretation service.

registration was “shutting down.” The Teacher is not fluent in Spanish and explained to OCR that Daughter 2 was interpreting the conversation between herself and the Complainant.

In an interview with OCR, the Complainant asserted that she was trying to inquire about the tables she needed to visit to register the Student, but that the Teacher told her the Student “did not matter” and that he was “mental[ly] retarded and not normal.”² The Complainant expressed to OCR her distress upon hearing this from the Teacher. The Teacher told OCR that she was unable to answer the Complainant’s questions, so she requested that the Assistant Principal assist the Complainant and then left the interaction. She denied making the statements described by the Complainant or any statements that may have conveyed that the Student was not important because of his disability.

After speaking to the Assistant Principal, the Complainant returned home and emailed the Principal. Email correspondence demonstrates that the Complainant and Principal exchanged emails between July 28, 2022, and August 1, 2022. In the Complainant’s final response to the Principal, she alleged that the Teacher told her that the Student “was nobody, that he was disabled, mentally retarded...who did not have information about ‘that kind of children’” in a derogatory manner. She further explained that she had filed a report with the United States Department of Justice related to “discrimination against children with disabilities.”³ The Principal explained to OCR that he spoke to the Complainant by phone using “language line” and was aware of the concerns the Complainant had about the Teacher’s alleged use of derogatory language. When OCR inquired whether the Principal interviewed staff or conducted an investigation regarding the allegations, the Principal stated that he “know[s] that teacher” and the statements “would not have come from her.” The Principal notified the Director of the Complainant’s concerns, but did not otherwise investigate the allegations against the Teacher.

When OCR asked whether the Principal considered sharing with the Complainant the District’s complaint process, which he had previously described during the interview, he stated that the Complainant’s allegations did not seem like a complaint but that he shared the information with the District’s special education office (*i.e.*, the Director). He further explained that the Complainant developed a “workable relationship” with the Principal’s assistant and the attendance office staff members, all of whom speak Spanish, according to the Principal.

The Director explained to OCR that she spoke to the Complainant using “language line” on August 4, 2022, and that the Complainant was upset because someone was “discriminatory toward her son.” Following the conversation, the Director stated that the District sent the District’s complaint process paperwork to the Complainant, but that a completed form was never received. She confirmed that she would have expected the Principal to provide the complaint

² OCR utilized interpretation services when interviewing the Complainant and notes that all quoted text stated by the Complainant in this letter are representative of the statements provided by the interpreter.

³ OCR notes that the District provided copies of the email correspondence between the Complainant and the Principal that was translated from Spanish to English.

form to the Complainant. The District did not conduct an investigation into the allegations raised by the Complainant with regard to the Teacher's statements.

III. Legal Standards

A. Failure to Respond to Disability-based Harassment

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504, Title II and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504, Title II, and the regulations, once a school district has notice of possible disability-based harassment, it is responsible for determining what occurred and responding appropriately. A school district may violate Section 504, Title II and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program; (2) the district knew or reasonably should have known about the harassment; and (3) the district fails to take appropriate responsive action. These steps are the district's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.

B. Placement Decisions Must be Made by a Group of Persons Knowledgeable About the Student.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of an IEP or Section 504 plan is one means by which FAPE may be provided.

Section 104.35(c) of the Section 504 implementing regulation requires that placement decisions (*i.e.*, decisions about whether any special services will be provided to the student and, if so, what those services will be) be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented.

C. Limited English Proficient Parent(s)/Guardian(s)

LEP parents are parents or guardians whose primary language is other than English and who have limited English proficiency in one of the four domains of language proficiency (speaking, listening, reading, or writing). School districts and state education agencies (SEAs) have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any program, service, or activity of a school district or SEA that is called to the attention of non-LEP parents. At the school and district levels, this essential information includes but is not limited to information regarding: language assistance programs, special education and related services, IEP meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in district or school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, magnet and charter schools, and any other school and program choice options.⁴

SEAs and school districts must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for the staff merely to be bilingual. School districts should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue. In addition, school districts should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality.

IV. Analysis

- A. Allegation #1 and #3: The District failed to respond to disability-based harassment of the Student by a staff member, and failed to meaningfully communicate with the Complainant in a language she understands.

While the District initially explained to OCR that the Principal had conducted an investigation into the Complainant’s allegations, the Principal’s comments to OCR during his interview conflicted with this assertion. Specifically, though the Principal had notice of the alleged statements by the Teacher and notified the Director, the Principal declined to interview staff members based upon knowing the Teacher and discrediting the allegations without inquiring further. Additionally, despite the Complainant’s use of the term “discrimination” and “discriminatory” in her allegations, neither the Principal nor the District conducted an investigation. Section 504 requires the District to take appropriate responsive action upon

⁴ In addition to the general requirement under the civil rights laws described, LEP parents are also entitled to translation and interpretation of particular information under Titles I and III and the IDEA, as noted in Parts II. A, F.1, and G of the OCR and Department of Justice *Dear Colleague Letter: English Learner Students and English Proficient Parents*, issued on January 7, 2015. See <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

becoming aware of alleged conduct, whether or not a formal complaint was filed by the Student or the Complainant. Therefore, the Principal's statements and the lack of documentation demonstrating that the District conducted a prompt investigation raises concerns regarding the District's compliance with Section 504 and Title II.

Further, while the Teacher's brief reliance upon Daughter 2 to translate non-academic information may have been appropriate, the discussion regarding the Student's registration status, in light of having an IEP, potentially contributed to the allegation of disability-based harassment and raises concerns regarding the District's compliance with the requirements under Title VI to provide meaningful communication with LEP parents.

- B. Allegations #2-#3: The District failed to properly evaluate the Student, as required by Section 504, and failed to meaningfully communicate with the Complainant in a language she understands.

OCR found that the District evaluated the Student in SY 2020-21, which included convening an IEP meeting on October XX, 2020, to discuss the evaluation data and the Student's placement. Documentation demonstrates that the Complainant received a written invitation to and attended the October 2020 meeting, and that all related documents were translated into Spanish. However, based on OCR's review of documentation available during the investigation, as well as the interviews OCR conducted, OCR identified concerns about the District's compliance with Section 504 and Title VI as it pertains to the IEP meeting convened in SY 2021-22. Specifically, the documentation demonstrates that neither of the Student's parents, including the Complainant, were in attendance at the meeting wherein the IEP team discussed the Student's placement and receipt of FAPE; and, while the records indicate that five phone attempts were made to contact a "Parent" when scheduling the meeting, it is unclear who was contacted. Further, the District was unable to provide a record of a written attempt (*e.g.*, email, mailed letter, etc.) to invite the Complainant to attend the meeting. Finally, the District was unable to provide documentation demonstrating that the records were translated into a language the Complainant understands (*i.e.*, Spanish).

Given the requirement under Section 504 that placement decisions be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options, the foregoing information, or lack thereof, raised concerns regarding the District's compliance with Section 504. Moreover, Title VI requires that the District communicate in a meaningful way with LEP parents regarding essential information, including IEP meetings, in a language they can understand. The District's inability to provide records demonstrating that a) either the Father or the Complainant was invited to the 2021-22 SY IEP meeting, and b) the IEP documents were translated and provided to the Complainant, as had previously been done, raised additional concerns regarding the District's compliance with Title VI.

C. Allegation #3: The District failed to meaningfully communicate with the Complainant in a language she understands.

In addition to the Title VI concerns outlined above, OCR noted potential compliance concerns while conducting staff interviews. While the Director stated that the District utilizes third party contractors, and did not rely upon staff members, to provide interpretation services during IEP meetings, the School-level staff explained that bilingual staff members were utilized for interpretation services. Moreover, the Principal explained that following the Complainant's report regarding registration, he deferred to bilingual staff members to communicate with the Complainant. Further, though School-level staff confirmed the use and familiarity of the "language line" option, they also confirmed that siblings and family members have been utilized for interpretation and translation services when preferred by the parent(s)/guardian(s).

During phone calls between the District and OCR, the District expressed an interest in voluntarily resolving the allegation and confirmed its intention to resolve OCR's concerns through a voluntary resolution agreement by email on January 16, 2023. Pursuant to Section 302 of the CPM, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement.

V. Conclusion

The District voluntarily agreed to address OCR's concerns by signing the enclosed Agreement on February 6, 2023. When fully implemented, the Agreement will resolve the remaining allegation raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the complainant(s) and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statute and regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-22-1531 and will send a letter to the Complainant and to the District stating that the case is closed.

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. Complainants may have the 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 an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

OCR thanks the District for being willing to voluntarily address the allegations raised by the complaint. OCR appreciates the District's attention to this matter and looks forward to working with the District to meet the terms of the Agreement.

If you have any questions, please contact XX, the attorney assigned to this case, at XX or XX.

Sincerely,

/s/

Michael D. Todd
Supervisory Attorney

Attachment: Resolution Agreement

cc: Brittany J. Reed
Attorney
Gust Rosenfeld P.L.C.
By email only to XX

Tom Horne
State Superintendent of Public Instruction
Arizona Department of Education
By email only to questions@azed.gov