



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

DATE

Superintendent Franklin Narducci  
1525 West Frye Road  
Chandler, AZ 85224

By email only to [narducci.frank@cusd80.com](mailto:narducci.frank@cusd80.com)

Re: OCR Complaint No. 08-22-1541  
Chandler Unified School District

Dear Superintendent Narducci:

On August 16, 2022, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against Chandler Unified School District (the District). The complaint alleges that the District retaliated against the Student for reporting allegations of sexual misconduct against a teacher by unenrolling her from the District in March 2022, and discriminated against the Student on the basis of disability by failing to evaluate the Student pursuant to Section 504.

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. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

### **I. Summary of OCR's Investigation and Findings**

OCR notified the District and the Complainant on September 27, 2022, that OCR opened the allegation for investigation. OCR's investigation included an interview and a rebuttal interview with the Complainant; a review of documentation provided by the Complainant; a review of the District's data response, and three witness interviews with the School's (1) Principal; (2) Guidance Counselor (the Counselor); and (3) Registrar.

After carefully considering all of the information obtained during the course of the investigation, OCR found insufficient evidence to support a conclusion that the District retaliated against the Student for reporting sexual misconduct against a teacher by unenrolling her from the District in March 2022. OCR found sufficient evidence to support a conclusion that the District

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

discriminated against the Student on the basis of disability by failing to timely evaluate the Student pursuant to Section 504. The reasons for our finding are set forth below.

## **II. Legal Standards**

Title IX regulations prohibit schools from intimidating, threatening, coercing, or discriminating against individuals for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this regulation. *See* 34 C.F.R. §106.71. In analyzing a retaliation claim, OCR determines whether: (a) the District knew the individual engaged in an activity protected by the laws enforced by OCR or believed the individual might engage in an activity protected by the laws enforced by OCR in the future; (b) the individual experienced an adverse action caused by the District; and (c) a causal connection existed between the adverse action and the protected activity. An act is an adverse action if it is likely to dissuade a reasonable person in the individual's position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR. Although all three elements must exist to establish a prima facie case of retaliation, OCR need not address all three elements if it determines one is missing. If OCR determines that all three elements of a prima facie case are met, OCR next determines whether the District has a legitimate, non-retaliatory, reason for its action and whether such reason is a pretext for retaliation.

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 individualized education program (IEP) or Section 504 Plan is one means by which FAPE may be provided.

Section 504's implementing regulation at § 104.35(a) requires school districts to conduct in a timely manner an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement.

## **III. Background and Facts**

The Student was a seventh and eighth grade student at XXXX (the School) during the 2020-2021 and 2021-2022 Academic Years. The Student did not have a Section 504 plan or Individualized Education Program (IEP) in place until April 4, 2022.

### *Retaliation Allegations*

It is undisputed that the Student was unenrolled from the District in March 2022 and then re-enrolled. The Complainant alleged that this unenrollment was done in retaliation for the Student's sexual harassment report. The Complainant alleged that the District wanted the "problem" of the Student to go away because they were demanding accountability for the District's handling of the Student's sexual harassment report.

The School Registrar reported that she had unenrolled the Student from the School in March 2022, after receiving a records request from another high school, who stated that the Student would be attending their school beginning on March 28, 2022. During a witness interview on December 22, 2022, the Registrar stated that it is typical practice to unenroll a student when they receive a records request from another school that contains a date on which the student will begin at that school. The District provided OCR with a copy of the Student Registration Manual for School Offices, which speaks to the District's withdrawal procedures. This document does not specifically speak to the District's unenrollment procedures, but states that a withdrawal notice must be completed in all instances except for transfers between classes in the same school.

In this case, the Registrar reported that she received a records request from another school with a starting date for the Student of March 28, 2022, so she unenrolled the Student from the District. The Registrar reported that the Student had not attended school the week before Spring Break and the start date was right after Spring Break, so she assumed the Student had begun attending the other school. The Registrar stated that she sometimes notifies the family when a student is withdrawn, but would not do in a situation like this, where the records request had a specific start date because she would assume that the Student had already started at the other school. The Registrar reported that after speaking with the family, she reenrolled the Student into the School and that this did not impact the Student academically or with respect to her attendance. The Registrar stated she was not aware that the Student had reported concerns of sexual harassment against a teacher prior to learning of the OCR complaint, had not been instructed by anyone at the School or District to unenroll the Student, and had not discussed unenrolling the Student with anyone at the District or School.

The District also provided documentation of the records request from the other school, which listed the Student's enrollment date as March 28, 2022. The email documentation includes an email from ASU Preparatory Academy, dated March 21, 2022, which states, in relevant part, "Hi [Registrar]! I just enrolled one of your students to start with us on 3/28. Parents should be reaching out soon to withdraw. Please find attach record request!" The District provided email documentation from the Registrar, dated March 31, 2022, where the Registrar explained that there had been confused because they had received a records request stating that the Student was starting at another school on March 28, 2022, and that she then spoke with the Student's parents who stated they were only inquiring about enrolling at another school.

During the rebuttal interview, the Complainant confirmed that they had been pursuing all their options regarding potentially moving the Student to a different school. The Complainant stated they had submitted an out of bounds application for enrollment to ASU Preparatory Academy,

but the Student never attended that school. The Complainant denied that it is typical District policy to unenroll a Student in these circumstances and said he was told by their child advocate that the District should have reached out to the parents before unenrolling the Student. The Complainant stated the Student was doing online school as much as possible during this time because they did not want to send the Student back to school prior to the Section 504 meeting.

### *Discrimination Allegations*

It is undisputed that in February 2021, the Student reported allegations of sexual harassment against her teacher at the School and that this teacher ultimately resigned from his position in March 2021. The Complainant reported that the Student suffered from Post-Traumatic Stress Disorder (PTSD) and anxiety as a result of the sexual harassment she experienced by a teacher at the school. The Complainant reported that the Student experienced anxiety being at the School, such that they sought outside support because the School was not providing any supportive measures, and that this impacted her academic and emotional well-being.

It is undisputed that in March 2021, the Complainant emailed the Principal and asked for counseling and some support for the Student due to her declining mental state. The Complainant provided a copy of this email to OCR, dated March 30, 2021, and sent to the Principal, which stated, in relevant part, “[the Student] has been having emotional meltdown’s [sic], anxiety attacks, a reluctance to return to school and since [the teacher is] leaving this week, her psychological state has continued to deteriorate ... [the Student] needs to see a licensed mental health counselor! I am very concerned about her fragile emotional state ... I am begging you to please help us get her some time with a mental health professional ... Please contact me ASAP we are scared of our daughters [sic] emotional well-being.” The Principal acknowledged receiving an email from the Complainant asking for the Student to meet with a counselor. The Principal said he believed that the Student met with the Counselor, but said he did not recall what the outcome of this meeting was.

It is next undisputed that over the summer of 2021, the Complainant and the Student were in communication with the Principal to schedule a time for the Student to come to the School with her family and her therapist to address issues of anxiety, panic attacks, and PTSD caused by being on campus. The Complainant reported that the Student was working with a therapist regarding her anxiety and that they worked with the Principal to open the School to the Student over the summer to work on trauma therapy. The email sent to the Principal on June 25, 2021, states that the Student’s therapist wants to set up a time to come to the School to work on “Exposure Therapy” with the Student prior to the next school year, since the Student had been having panic attacks when walking down the hallway or passing the drama classroom.

The Principal reported that he was contacted by the Student’s mother over the summer of 2021, who said the Student was having anxiety being on the side of the campus where the sexual harassment complaint occurred, so they wanted to access the campus with the family and the Student’s psychiatrist or therapist to walk around the campus. The Principal said he arranged for the campus to be open to the Student for this purpose. The Principal said he did not follow up with the Student after this and did not know whether anyone else followed up with the Student

after this. The Principal reported that after this, the Student and her family did not reach out to the School’s counselors.

It is undisputed that in November 2021, the Complainant notified the Counselor that the Student had anxiety being in the front office because of being questioned in the front office during the sexual harassment investigation. The Counselor recalled receiving this email and said that her office is located close to the front office, so she offered to meet with the Student in the library instead, but the family declined her offer. The Counselor did not recall the family elaborating on the anxiety or the issue the Student had with being near the front office. The Counselor said she may have checked in with the Student on her own after this email, but the Student did not indicate that she was having any issue.

The Complainant reported that the Student began engaging in self-harm and drug use and that her grades slipped during the 2021-2022 Academic Year. The Complainant reported that the Student was previously an A/B Honor Student, but had to be withdrawn from her honors classes. The Counselor reported that over winter break (December 2021 through January 2022), she was contacted by the Student’s parents, who requested that she move the Student from her accelerated courses to standard/on-level courses because they felt she was struggling in those classes. The Counselor stated she changed the Student’s classes, but did not reach out to the Student or meet with her. Email documentation regarding the April 2022 Section 504 meeting shows that on March 31, 2022, the Counselor writes, “This student was in all honors classes but has been struggling with mental health. She was moved into on-level Science, ELA and Math classes at the start of 2<sup>nd</sup> semester.” Documentation of the Student’s grades show:

2020-2021 Grade 7, Terms 2 and 4 (the Student reported sexual misconduct against a teacher in February 2021)		
Term 2:	Accelerated Science	B
	Honors Language Arts	C
	Honors Pre-Algebra	B
	Life Connections and Careers	B
	Social Studies 7	A
	Technical Theatre	A
Term 4:	Accelerated Science	B
	Dance	A
	General Art	B
	Honors Language Arts	C
	Honors Pre-Algebra	B
	Social Studies	A

2021-2022 Grade 8, Terms 2 and 4		
Term 2:	Academy Volleyball	A
	American Sign Language	A
	Honors Algebra	F
	Honors Language Arts	B
	Honors Social Studies	C
	Investigative Science	D
Term 4:	Academic Progress	Pass
	Family and Consumer Science	A
	Integrated Science	B
	Language Arts	B
	Pre-Algebra	B
	Social Studies	C
	Technology 101	A

Disciplinary documentation provided by the District shows that the Student was given an out-of-school suspension for ten days on February 4, 2022, for smoking marijuana in the bathroom with other students. Prior to this discipline, the Student’s disciplinary record consists only of receiving attendance letters regarding her absences in February 2018, February 2019, and May 2019.

It is undisputed that the Complainant submitted an email request for the District to evaluate the Student for a Section 504 plan on March 8, 2022, and that the Section 504 evaluation meeting was held on April 4, 2022. At this meeting, it was determined that the Student was a student with a disability and a Section 504 plan was created for her.

The Principal reported that prior to this request for evaluation, he was not aware of anyone raising concerns or suggesting that the Student be evaluated for a Section 504 plan. The Counselor similarly reported that prior to the request for evaluation, she was not aware of any red flags or concerns that the Student may need to be evaluated. The Counselor was the Student’s assigned guidance counselor for both the 2020-2021 and 2021-2022 Academic Years. The Counselor stated that part of her job description is to identify students who may need to be evaluated and recommend these students to the District’s MTSS team to determine what they recommend. The Counselor stated she rarely initiates this process and has done so for only two or three students in the four years she has worked at the School. The Counselor stated that she may have thought there was a need for the Student to be evaluated for accommodations sooner if the parents had made her aware of their concerns earlier in the year, but she was not made aware. The Counselor said she had not met with the Student the previous year regarding the sexual harassment complaint and was not made aware of any disciplinary or emotional issues involving the Student.

#### **IV. Analysis and Conclusion**

##### *Retaliation Allegations*

Based on the totality of the information obtained by OCR, there is insufficient evidence to conclude by a preponderance of the evidence that the District retaliated against the Student for reporting sexual harassment allegations by unenrolling her from the District in March 2022.

It is undisputed that the Student engaged in a protected activity in February 2021, when she reported allegations of sexual harassment to the School against a teacher, and that the District knew the Student had engaged in this protected activity.

It is additionally undisputed that the Student was unenrolled from the District in March 2022. The Registrar reported that there was no adverse impact on the Student from this unenrollment – the Registrar was able to re-enroll the Student in the District when it was discovered she had been erroneously unenrolled, the Student did not miss any days of school because of the unenrollment, and there was no academic impact on the Student due to the unenrollment. The Complainant noted that the Student missed more days of school because the Section 504 meeting was postponed due to her being unenrolled, but did not assert that the Student missed days of school because she was not enrolled. However, being unenrolled from a District after reporting allegations of sexual harassment against a teacher would likely dissuade a reasonable person from making an allegation of discrimination or otherwise exercising their rights under Title IX.

Assuming that the unenrollment was an adverse action, there is insufficient evidence to conclude that there was a causal connection between the Student reporting allegations of sexual harassment and the District unenrolling the Student. Significantly, the Registrar reported that it is standard practice to unenroll a student from the District when they receive a records request from another district with a specified start date for the other district and the District provided a copy of the records request received regarding the Student, which lists a specific start date. The Registrar stated during her OCR interview that she had not been aware that the Student had made a report of sexual harassment, that she had not been instructed by anyone else to unenroll the Student, and that she had not discussed unenrolling the Student with any individuals before doing so. The email documentation dated March 31, 2022, further supports the Registrar's statements, stating at the time that she withdrew the Student because she had a records request stating the Student was starting at another District on March 28, 2022. Although the Complainant asserted that the District policy would be to contact the family prior to unenrolling the Student, the Registrar stated she does not always notify or contact the family and there is no information to suggest that the Registrar unenrolled the Student without notifying the family because of the Student's sexual harassment report more than one year prior. Additionally, the Complainant stated they had submitted an application to the other school – supporting the Registrar's statements that she unenrolled the Student because she received the records request from this other school rather than because the Student had reported allegations of sexual misconduct.

Pursuant to Section 303(a) of the CPM, OCR therefore finds there is insufficient information to determine that the District retaliated against the Student for reporting allegations of sexual misconduct against a teacher by unenrolling her from the District in March 2022.

### *Discrimination Allegations*

The totality of the information obtained by OCR shows by a preponderance of the evidence that the District did not timely evaluate the Student, despite being on notice that the Student may be a student with a disability.

In this case, the evidence shows that the District was on notice that the Student may be a student with a disability as early as March 2021, but failed to evaluate the Student until April 2022, more than one year later. Specifically, the District was aware that: (1) in March 2021, the family had concerns about the Student's emotional meltdowns, anxiety attacks, deteriorating mental state, and a reluctance to return to school; (2) in June 2021, the Student was working with a therapist to address issues of anxiety, panic attacks, and PTSD caused by being on campus, such that the Student and the therapist came to the School over the summer to work on trauma therapy; (3) in November 2021, the Student had anxiety being in the front office such that she did not want to meet with the Counselor in her office near the front office; (4) in December 2021 or January 2022, that the Student was changing from accelerated classes to standard/on-level classes; and (5) in February 2022, being suspended for ten days due to using marijuana in the School restroom.

When taken as a whole, OCR finds there is sufficient evidence to determine that the District was on notice that the Student may be a student with a disability as early as March 2021. Although the District did evaluate the Student in April 2022 and determined she was a student with a disability, OCR notes that they only did so at that time after a request was made by the family. Although there is no statutory timeline of when a District must evaluate a student, waiting over a year and only evaluating the student because of a written request from the Student's family is clearly unreasonable in light of the known circumstances.

Pursuant to Section 303(b) of the CPM, OCR determined that the preponderance of the evidence supports a conclusion that the District discriminated against the Student on the basis of disability by failing to timely evaluate the Student pursuant to Section 504. When fully implemented, the resolution agreement will address OCR's compliance concerns and/or identified violations. OCR will monitor the implementation of the agreement until the recipient is in compliance with its terms and the statute(s) and regulation(s) at issue in the case.

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 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, 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.

If you have any questions, please contact XXXX, the Attorney assigned to this complaint, at XXXX or by email at XXXX. You may also contact me at XXXX or by email at XXXX.

Sincerely,

/ s /

Michael D. Todd  
Supervisory Attorney

Enclosure – Resolution Agreement