



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

June 20, 2023

Dr. Perry Berry, Superintendent

By email only to: pberry@qcusd.org

Re: **Queen Creek Unified School District**
OCR Case Number: 08-23-1196

Dear Superintendent Berry:

On January 24, 2023, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint of discrimination against Queen Creek Unified School District (District). The Complainant alleged that the District discriminated against the Complainant's son (Student) on the basis of disability when it removed him from his classroom several times during the 2022-23 school year.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department, 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 from the Department and a public entity, the District is subject to these laws and regulations.

On March 7, 2023, we formally notified the District that OCR opened an investigation regarding the above-listed allegations. We also requested information from the District. OCR reviewed information from the District and from the Complainant. During the course of OCR's review, OCR learned the following:

- The Student, a Kindergarten student during the 2022-23 school year, has an Individualized Education Plan (IEP).
- The District's practice is to not officially "suspend" Kindergarten students.

- During the 2022-23 school year, the Student was removed from his classroom on at least 20 separate occasions for behavior-related reasons, including throwing objects and chairs across the classroom, biting and hitting his classroom teacher, and screaming. On at least one occasion, the classroom students had to be evacuated as a result of the Student's behavior.
- When the Student was removed from the classroom, he usually spent time with the Dean of Students (Dean), either in the Dean's office or in a space apart from the classroom but still with the Dean.
- During the 2022-23 school year, School staff re-evaluated the Student and changed his diagnosis to "autism." The School also developed and implemented a Behavior Intervention Plan for the Student.
- The Student's classroom removals were documented in a wide variety of systems;
- The School documented the Student's removals in multiple systems, including: the District's Positive Behavior Interventions and Supports (PBIS) system; the Student's attendance profile, the classroom teacher's personal log, emails to the Complainant, an Excel spreadsheet, and a Google Document prepared by the Dean.
- The removals were not documented consistently. That is, some of the removals were documented in multiple systems, while other removals were documented in just one system.
- On at least one occasion, the Complainant repeatedly asked the School for information relating to the Student's removal from the classroom because the Complainant was trying to ascertain the number of removals that had occurred.

Based on this information, OCR has concerns that the District's lack of appropriate record-keeping regarding the Student's informal exclusions does not allow the District to ensure that it is providing the Student with a free appropriate public education and does not allow the District to ensure that it is meeting the documentation and procedural safeguard requirement for evaluation and placement decisions and the Complainant's right to review the Student's education records. OCR had to piece together the various dates the Student was informally excluded from the classroom by analyzing the several systems described above, despite OCR asking the District on multiple occasions for the Student's complete attendance record. Additionally, the evidence indicates that the Student's own parents were having difficulties understanding the extent of the Student's exclusions, despite several requests to the School for clarification.

Based on the information provided by the District and the Complainant thus far, we determined that voluntary resolution of the allegations was appropriate, pursuant to Section 302 of OCR's

Case Processing Manual (CPM). Section 302 provides that allegations may be resolved with a voluntary Resolution Agreement (Agreement) before completing a full investigation when identified concerns can be addressed through an Agreement. On May 18, 2023, OCR sent the District a proposed Agreement. The District sent OCR a signed Agreement on May 26, 2023. A copy of the signed Agreement is enclosed.

When fully implemented, the Agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case. We 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.

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 and is in compliance with Section 504 and Title II. When the monitoring phase of the case is complete, OCR will close case number 08-23-1196 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 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.

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please note 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the courtesy extended by your staff, including Attorney Brittany Reed. If you have any questions, please contact, XXX, Attorney and the OCR staff member assigned to this complaint, at (XXX) XXX-XXXX or XXX.

Sincerely,

XXXX
Supervisory Attorney

Enclosure – Resolution Agreement

cc: Brittany Reed, Esq., via email only: breed@gustlaw.com

Tom Horne, State Superintendent of Public Instruction

(via email only: Madelyn.loftus@azed.gov)