



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Ref: 06121480

Mr. Dan Powell, Superintendent
Crowley Independent School District
512 Peach Street
Crowley, Texas 76036

Dear Mr. Powell:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed the investigation of the above-referenced complaint, which was received in our office on July 11, 2012. In the complaint, the complainant alleged that the Crowley Independent School District (CISD), Crowley, Texas, discriminates against persons with mobility and visual impairments, on the basis of their disabilities, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation found at 34 C.F.R. Part 104; and 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. The complainant also alleged that the CISD discriminated against her son, the Student, in the basis of his disability (XXX), in violation of Section 504 and Title II. In addition, the complainant alleged that the CISD retaliated against her and the Student, when she sought to secure his rights as a student with a disability.

OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Section 504. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. Additionally, Section 504 and Title II incorporates by reference 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 prohibits retaliation. OCR has determined that the CISD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational system. Therefore, OCR has jurisdiction to investigate this complaint under Section 504 and Title II.

During the investigation, determined that it had jurisdiction over the subject matter of the complaint allegations the CISD and that the allegations were filed timely. Therefore, OCR investigated the following issues:

1. Whether the CISD discriminates against disabled persons, including mobility impaired persons, by failing to make playgrounds (accessible entrances) at elementary schools operated by the CISD accessible to and usable by mobility impaired persons, in violation of Section 504 and its implementing regulation found at 34 C.F.R. §§ 104.21-22, and Title II and its implementing regulation found at 28 C.F.R. §§ 35 149-151;
2. Whether the CISD discriminates against disabled persons, including mobility impaired persons, by failing to provide an accessible entrance to the Ninth Grade Center, in violation of Section 504 and its implementing regulation found at 34 C.F.R. §§ 104.21-22, and Title II and its implementing regulation found at 28 C.F.R. §§ 35 149-151;
3. Whether the CISD retaliated against the complainant when CISD staff members were directed not to speak to the complainant about her son's educational placement during the 2011-2012 school year, in violation of Section 504 as it incorporates by reference Title VI and its implementing regulation found at 34 C.F.R. § 100.6(c) and Title II and its implementing regulation found at 28 C.F.R. § 35.134;
4. Whether the CISD discriminated against the complainant's son by failing to provide him with regular or special education and related aids and services when he refused to attend school during the 2011-2012 school year, in violation of Section 504 and its implementing regulation found at 34 C.F.R. §§ 104.33-36, and Title II and its implementing regulation found at 28 C.F.R. § 35.130; and
5. Whether the CISD retaliated against the complainant and her son by threatening to file truancy charges against them during the 2011-2012 school year because the complainant advocated for her son's rights as a student with a disability in violation of Section 504 at 34 C.F.R. § 104.61 and Title II and its implementing regulation found at 28 C.F.R. § 35.134.

During the investigation, OCR conducted a site visit to the CISD on January 29-31, 2013, and conducted interviews with pertinent CISD officials and the complainant. OCR also reviewed information provided by the CISD and the complainant. Based on a careful review of the entirety of the information collected and analyzed during the investigation, OCR has determined that there were concerns identified with regard to Issue #1 and #2. With regard to Issues #3, #4 and #5, OCR has determined that there is insufficient evidence to support a finding of a violation of Section 504 and Title II. The bases for these determinations are outlined below.

Issues #1 and #2

During the complaint investigation, with respect to Issue #1, OCR conducted a physical inspection of the Ninth Grade Center. In addition, with respect to Issue #2, OCR conducted a physical inspection of 14 elementary and intermediate school campus play areas and playgrounds. The campuses inspected were: Sycamore, Parkway, Jackie Carden, Deer Creek, Meadowcreek, Oakmont, Dallas Park, Hargrave, Poynter, Bess Race, Sue Crouch, S.H. Crowley, David Walker and Mary Harris. The investigation consisted of a physical inspection of all play areas, measurements and observation of students using the equipment.

In September 2010, the U.S. Department of Justice (DOJ) released its final rules updating the Title II regulations. Among other significant changes, DOJ adopted the entirety of the 2004 ADA Accessibility Guidelines (ADAAG) as the revised standards for physical accessibility under Title II. The 2010 ADA standards for Accessible Design (hereinafter referred to as the “2010 Standards”), which took effect on March 15, 2012, consist of the 2004 ADAAG and the requirements under 28 C.F.R. § 35.151. These include (at sections 240 and 1008, respectively), scoping and technical requirements for play areas.

In accordance with 28 C.F.R. § 35.150(b)(2)(i), elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding scoping and technical specifications for those elements in either the 1991 Standards or in the Uniform Federal requirements set forth in the 2010 Standards. However, 28 C.F.R. § 35.150(b)(2)(ii) provides that this safe harbor provision does not apply to those elements in existing facilities that are subject to supplemental requirements, which includes play areas. Thus, play areas must comply with the 2010 Standards, sections 240 and 1008, as of March 15, 2012.

The requirements for accessibility are different for existing building and for new construction. Facilities constructed or altered after the effective dates of the regulations (June 3, 1977, for Section 504 and January 26, 1992, for Title II) are considered new construction. The Ninth Grade Center was originally constructed in 1971, with alterations/additions in 1973, 1980, 2003, 2004, 2005 and 2006. Specifically, the CISD completed additions to the athletic facilities in 2003, made upgrades to the parking lot in 2001 and upgrades to the building in 2006. The alterations included an addition to the athletic facilities, upgrades to athletic flooring, boy's and girl's locker rooms, Ninth Grade Center bathrooms, library additions, signage at Ninth Grade Center entrances, addition of a ramp and resurfacing of the parking lot. These alterations resulted in the Ninth Grade Center being considered new construction under the 1991 accessibility standards. Therefore, based on the alterations to the Ninth Grade Center, which include alterations to the athletics facilities, the parking lot and other alterations to the structure, OCR considers the Ninth Grade Center as new construction under Section 504 and Title II.

Therefore, the CISD must ensure the facility or part of the facility, which was altered after the effective date of the applicable regulations in a manner that affects or could affect the usability of the facility, or part of the facility, is compliance with Section 504

and its implementing regulation at 34. C.F.R § 104.23, and Title II and its implementing regulation at 28 C.F.R. § 35.151.

Based on the information collected during the physical inspection, and prior to the completion of complaint resolution activities with regard to Issue #1 and #2, on December 18, 2013, the CISD voluntarily agreed to enter into a resolution agreement to resolve the concerns identified during the investigation. Pursuant to OCR's Case Processing Manual (CPM) a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in voluntarily resolving the complaint. The provisions outlined in the resolution agreement were aligned with the complaint issues and the information collected during the investigation, and is consistent with the requirements of Section 504 and Title II. A copy of the signed resolution agreement (RA) is enclosed. OCR will monitor the CISD, with regard to these issues, until all action items outlined in the RA are completed. The CISD will ensure that when implementing the RA, it will apply the following legal standard(s) as it relates to the accessibility concerns regarding Issue One and Issue Two.

Issue #3

The complainant alleged that the CISD retaliated against her when CISD staff members were directed not to speak to her about the Student's educational placement during the 2011-2012 school year.

In order to resolve issues of retaliation, OCR must determine whether a *prima facie* case of retaliation can be established. With regard to the alleged act of retaliation, OCR used a four-part legal standard to analyze whether the complainant's initial burden of establishing a *prima facie* case of retaliation has been met. Generally, the presence of the following elements is necessary to establish a *prima facie* case of retaliation:

1. The individual engaged in a protected activity, *i.e.*, asserting or protecting a right or privilege secured by Section 504/Title II;
2. The recipient had knowledge of the individual having engaged in the activity;
3. The recipient took adverse action against the individual contemporaneously with or subsequent to the protected activity; and
4. There was a causal connection between the adverse action and the activity.

If a *prima facie* case of retaliation is established, then OCR must investigate to determine whether the recipient had a legitimate, nondiscriminatory reason for its actions, which is sufficient to rebut the inference of discrimination created by the *prima facie* case. Finally, OCR must investigate to determine whether any reason presented by the recipient is merely a pretext to discriminate in the form of retaliation.

Regarding element one of the retaliation analysis, OCR obtained information to evidence that the complainant engaged in a protected activity during the 2011 school year. Specifically, pursuant to Section 504, the complainant participated in placement meetings for the Student who attended Crowley Ninth Grade Center, wherein a placement decision was reached for him, for the 2011-2012 school year. The information revealed that CISD officials, including officials at the Crowley Ninth Grade Center, were aware of the complainant's protected activity, because school officials participated in an individual evaluation and placement meetings for the complainant's son. OCR could not, however, establish that the complainant was subjected to an adverse action.

Under OCR's interpretation of the retaliation analysis, to be an "adverse action," the recipient's action must significantly disadvantage the complainant as to his or her status as a parent, student or employee, or his or her ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual's employment or educational opportunities, the action could be considered to be retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action precluded from pursuing his or her discrimination claims. In making this determination, OCR considers whether the alleged adverse action caused lasting and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse.

The information obtained during the investigation revealed that during the 2011-2012 school year, the complainant requested services for the Student from CISD officials, and that several placement meetings were convened during the 2011-2012 school year. The information also revealed that CISD officials, including officials at the CISD Ninth Grade Center, had contact with the complainant during the 2011-2012 school year, including verbal and electronic communication. The information revealed that the complainant contacted her son's teachers to discuss his educational progress during the 2011-2012 school year, and the complainant was able to communicate with CISD school officials during placement meetings during the 2011-2012 school year. The information revealed that during the school year, the Ninth Grade Center Principal requested that all communication with the complainant and responses to the complainant be conducted via his office. During the investigation, OCR interviewed the Ninth Grade Center, XXX who stated to OCR that he did request that the complainant's son's teacher inform him of communication with the complainant, and that he would contact the complainant to address her concerns. OCR also conducted interviews with officials at the Crowley Learning Center (CLC), including the CLC XXX and the complainant's son's XXX teacher. The Student was placed at the CLC from XXX and from XXX, 2012. The CLC XXX stated that he did not have contact with the complainant or her husband while the complainant's son was assigned to the CLC. The Special Education Teacher stated that he did communicate with the complainant while her son was placed at the CLC. The XXX Teacher stated that he provided the complainant with daily progress sheet, communicated with her by electronic mail and met with the complainant in person.

Based on this information, OCR's investigation determined that the complainant was not subjected to an adverse action, under the retaliation analysis, and OCR's interpretation of an adverse action. The information obtained during the investigation revealed that the CISD Ninth Grade Center XXX did direct staff that all communication with the complainant should go through his office, the information obtained during the investigation revealed that the complainant was able to communicate with the Ninth Grade XXX as well as other CISD staff, and was able to obtain information about the educational progress of her son. The information revealed that while the Ninth Grade Center's directive may have been unpleasant to the complainant, the action did not result in the complainant being denied access to information about the Student's educational progress. The information revealed that, in spite of the Ninth Grade Center XXX directive, the complainant was able to communicate with CISD officials. Based on this determination, OCR cannot establish a prima facie case of retaliation, and as such, OCR will not continue with the retaliation analysis, with regard to this Issue.

Issue #4

The complainant alleged that the CISD failed to provide her son with an appropriate public education during the 2011-2012 school year. The complainant stated that the CISD refused to provide her with assistance in the form of school personnel arriving at her home to escort her son to school in an effort to ensure her son attended school, thereby denying him the educational services outlined in his placement decision for the 2011-2012 school year.

During the complaint investigation, however, the complainant provided OCR with a copy of a hearing officer decision issued by the Texas Education Agency (TEA), dated XXX, 2012, which addresses the above-referenced allegation and the educational services provided to the Student during the 2011-2012 school year. In pertinent part, the hearing officer decision states that "Petitioner proved that Petitioner is entitled to compensatory services . . . associated with Respondent's denial of FAPE", and that the "Respondent is ordered to contact XXX Center . . . to establish beginning and end dates, and the scope of programming for Petitioner's 8 week Summer Program . . ."

Under OCR's Case Processing Manual (CPM), Section 110(a), OCR will close a complaint allegation when the same complaint allegations have been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency or through a recipient's internal grievance procedures, including due process proceedings, and for resolved complaint allegations, the resolution meets OCR regulatory standards; i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards.

During the investigation, OCR received information that Issue Four was resolved as a result of the TEA hearing officer's decision, which was provided to OCR by the complainant. During the investigation, OCR confirmed with both the complainant and CISD staff that the Student was enrolled and did complete the eight-week summer program, at no cost to the complainant. Therefore, based on the entirety of the

information obtained during the investigation, and in accordance with OCR's CPM, we are closing this issue, effective the date of this letter.

Issue #5

The complainant alleged that she was subjected to retaliation when the CISD threatened her with truancy when her son refused to attend school during the 2011-2012 school year. Specifically, the complainant alleged that an agent of the CISD informed her attorney through an electronic message that "[t]he District does not want to see truancy added to the list of problems for [the Student] and his family." As stated above, OCR must determine whether a *prima facie* case of retaliation can be established. As previously determined in Issue Three, the complainant engaged in a protected activity, and the CISD was aware of the complainant's protected activity. However, OCR could not establish that the CISD subjected the complainant or the Student to an adverse action. The complainant alleged that officials at the CISD threatened her with truancy because her son refused to attend school during the 2011-2012 school year.

During the investigation, OCR conducted a review of the Student's attendance records and conducted interviews of pertinent CISD officials, including the Ninth Grade Center **XXX** coordinator and the **XXX** Officer. The information obtained revealed that at no time during the 2011-2012 school year was the complainant or the Student referred for truancy because of excessive unexcused absences. The Ninth Grade Center **XXX** stated that his campus did not send a "warning letter" to the complainant regarding her son's attendance or absences, or refer her son to the Central Office for any truancy violations, as would be the practice pursuant to CISD procedures. The Ninth Grade **XXX** also stated that he did not threaten the complainant or the Student with truancy charges. The **XXX** Officer stated to OCR that he is responsible for referring students for excessive absences, but did not receive a referral for the Student from the Ninth Grade Center, and did not refer the Student to the court for a truancy violation. The **XXX** Officer also stated that he did not speak to the complainant about truancy matters and did not threaten the complainant or the Student with truancy charges. The information obtained from the CISD revealed that the electronic message was sent by the CISD's attorney to the complainant's attorney and was not specifically directed to the complainant. The information revealed that the CISD attorney made the aforementioned statement as part of the CISD's efforts to "identify interventions to help get [the Student] back to school, after "consistent school refusal reported by the parents . . ." OCR could not identify any information either from the complainant or the CISD to evidence that the information contained in the electronic message was directed to the complainant, or served as a threat to the complainant.

Based on OCR's interpretation of an "adverse action," as described above in Issue #3, OCR has determined that neither the complainant nor the Student was subjected to an adverse action when the CISD threatened to file truancy charges because of the Student's attendance record. The information revealed that the Student campus of record, the Ninth Grade Center, did not send a "warning letter" to the complainant regarding the Student's attendance records, and did not refer the student for truancy. The information also

revealed that the **XXX** Officer did not contact the complainant regarding the Student's attendance record, and did not refer the Student for truancy charges. Therefore, inasmuch as OCR could not establish that a prima facie case of retaliation existed, OCR will not continue with the retaliation analysis, with regard to this issue.

In summary, with regard to Issues #1 and #2, OCR secured a voluntary RA from the CISD, and determined that the provisions of this RA are aligned with the issues raised in the complaint, and the information obtained during the investigation. OCR also determined that the provisions of the RA are consistent with Section 504 and Title II. OCR will continue to monitor the CISD's implementation of the resolution agreement.

With regard to Issues #3, #4 and #5, OCR determined that there was insufficient evidence to support a finding of a violation of Section 504 or Title II, with regard to the issues raised in the complaint. There are no further complaint issues appropriate for resolution and as such, OCR is closing the above-referenced complaint, effective the date of this letter. This letter should not be interpreted to address the CISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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 OCR procedures, we are also obligated to inform the complainant and the institution against which a complaint is filed, that intimidation, or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by this agency because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

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.

This concludes OCR's consideration of this complaint. If you have any questions, please feel free to contact John Stephens, Compliance Team Leader, at (214) 661-9600 or Ms. Lisa Thierry, Senior Investigator, at (214) 661-9654.

Sincerely,

Taylor D. August, Director
Office for Civil Rights
Dallas Office

Enclosure