



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

July 16, 2014

Mr. Mike Miles, Superintendent
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

Reference: OCR Case No. 06141297

Dear Mr. Miles:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, in the above-referenced complaint against the Dallas Independent School District (DISD), Dallas, Texas, which was received by OCR on March 25, 2014. The complainant alleged that the DISD discriminated against her daughter (Student) on the bases of disability (dyslexia). Specifically, the complainant alleged the DISD failed to provide Student a free appropriate public education during the 2013-14 school year, when it did not provide her the related aids and services determined to be necessary for her individual educational needs (i.e., tape recording of essential lecture or instructional content such as Raz Kid; to answer orally on exams where appropriate; extra time for reading, writing, and math [15 min]; to use calculation devices or use of a dictionary on statewide assessments; and dyslexia instructional sessions). In subsequent communication with this office on May 23, 2014, the complainant further alleged that the DISD retaliated against Student when, after the complainant attempted to protect Student's rights as a student with a disability on February 18, 2014, she was subsequently suspended during the Spring 2014 semester for fighting and her dyslexia facilitator was changed.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 704, and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. Section 504 prohibits discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. § 12131, and its implementing regulations, at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The Section 504 implementing regulations, at 34 C.F.R. §104.61 incorporates the prohibition retaliation under Title VI, and the Title II implementing regulations, at 28 C.F.R §35.134, also prohibit retaliation. The DISD is a recipient of Federal financial assistance

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from the Department and is a public education system. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II. The DISD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

To reach a determination in this case, OCR gathered and analyzed information and documentation provided by the complainant and the DISD, including policies and procedures, and the Student's educational records, including progress reports and a report card. Additionally, OCR gathered information during interviews with the complainant and DISD personnel.

Allegation 1:

As noted above, OCR investigated the following allegation: whether the DISD failed to provide Student a free appropriate public education during the 2013-14 school year, when it did not provide her the related aids and services determined to be necessary for her individual educational needs (i.e., tape recording of essential lecture or instructional content such as Raz Kid; to answer orally on exams where appropriate; extra time for reading, writing, and math [15 min]; on statewide assessments, to use calculation devices or use of a dictionary, and dyslexia instructional sessions). Prior to the conclusion of OCR's investigation, on May 30, 2014, the DISD expressed an interest to voluntarily resolve the issue raised in Allegation 1. OCR's *Case Processing Manual (CPM)*, § 302, provides that a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Resolution of complaints in this manner must be approved by the Office Director's designee. OCR's *CPM* § 302 also states that the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations. On July 3, 2014, OCR approved the voluntary resolution of Issue 1.

With regard to Issue 1, the DISD submitted the enclosed Resolution Agreement (Agreement), dated July 14, 2014, to memorialize steps that it would take to resolve the identified compliance issue. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance concerns raised in Issue 1. OCR determined that the provisions of the Agreement are aligned with the complaint allegations or the information obtained during the investigation, and are consistent with applicable regulations. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding Issue 1 in this complaint. However, OCR will actively monitor the DISD's efforts to implement the Agreement. Please be advised that if the DISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

Allegation 2:

During the course of the investigation of Allegation 1, the complainant further alleged that the DISD retaliated against Student because of her (complainant) attempts to protect Student's rights as a student with a disability on February 18, 2014, when in Spring 2014 the Student was suspended for fighting and her dyslexia facilitator was changed. Thus, OCR investigated the complainant's retaliation allegation and found insufficient evidence to support a conclusion that

the DISD retaliated against the complainant in violation of Section 504 and Title II. The basis for OCR's determination is set forth below.

Legal Standard

To establish whether retaliation occurred, it is necessary for OCR to determine whether: 1) the complainant was engaged in a protected activity (that is, exercised a right or took some action that is protected under the Federal laws that OCR enforces); 2) the recipient was aware of the complainant's involvement in the protected activity; 3) the recipient took an adverse action contemporaneously with or subsequent to the protected activity; and 4) there is a causal connection between the protected activity and the alleged adverse action. If any one of these elements cannot be established, then OCR must find insufficient evidence of a violation. If, however, all of the elements are established, OCR then inquires as to whether the recipient can identify a legitimate, nondiscriminatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation.

Regarding prong 3 above, to be an "adverse action," a recipient's action must significantly disadvantage the complainant's ability to gain the benefits of the recipient's program, or reasonably act as a deterrent to further protected activity or preclude the complainant from pursuing her discrimination claims. To make this determination, OCR considers (on a case-by-case basis, in light of all the facts and circumstances) 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.

OCR determined that the complainant was involved in protective activity and that the District was aware of her involvement. Specifically, a review of documentation regarding a 504 meeting held on February 18, 2014, indicates that the meeting was held at the complainant's request to discuss her concern that services were not being provided to Student.

As to whether the Student was subjected to an adverse action, OCR determined that the Student was subjected to an adverse action when she was suspended from school on May 19, 2014. However, OCR determined that changing the Student's dyslexia facilitator was not adverse.

OCR determined that there was a causal connection between the protected activity on February 18, 2014, and the alleged adverse action on May 19, 2014, due to their close proximity in time (approximately 90 days). However, OCR also determined that the DISD had a legitimate, nondiscriminatory reason for its action. Specifically, in an electronic message received from the complainant on May 23, 2014, she acknowledged that Student was involved in a fight. According to the complainant, the other student involved had been "bullying (Student) for several weeks and was removed from a class they both shared by a science teacher ... due to threatening and disruptive behavior towards Student." The complainant further stated that she repeatedly asked the principal if it was possible that Student was defending herself.

In an OCR interview with the principal, he denied retaliating against the Student and stated that the Student was suspended in accordance with the District's discipline policy for fighting. The principal informed OCR that the Student was suspended because she engaged in a fight instead of avoiding it. According to the principal, he interviewed both students involved and each of them stated that they fought because they disliked one another. The principal also stated that it is his practice to suspend any and all students that participate in a fight.

Further, OCR's review found no evidence of pretext. The District's policy categorizes fighting as a level II offense and lists OSS for up to 3 days as an appropriate sanction for disciplinarians to use for level II offenses. OCR's review of school discipline records indicates that for the present school year there were eight students (three of which with a disability) disciplined for fighting (a level II offense) and all eight, including Student, were disciplined with one day Out-of-School Suspension for their conduct. On May 24, 2014, OCR asked the complainant if she had any other information regarding this issue but none was provided. Further, OCR received no information to contradict the principal's statement.

As such, based on the information obtained during this investigation, OCR determined that there is insufficient evidence to determine that the Student was subjected to retaliation in violation of Section 504 and Title II. Therefore, OCR will take no further action with regard to allegation 2.

Regarding allegation 2, 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's procedures, we are obligated to advise 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 OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event we receive 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 privacy.

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Thank you for the cooperation that you and your staff extended to OCR in our efforts to resolve this complaint. If you have any questions regarding this matter, please feel free to contact Sharon A. Gilmore at (214) 661-9616 or me at (214) 661-9678.

Sincerely,

/S/

Adriane P. Martin
General Supervisory Attorney/Team Leader
Dallas Office

Enc: as stated