

Dr. Heath Burns, Superintendent  
Abilene Independent School District  
625 Lexington Ave.  
Abilene, Texas 79605

OCR Reference: 06-14-1399

Dear Dr. Burns:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has made a determination in the complaint filed against the Abilene Independent School District (AISD), Abilene, Texas, on May 1, 2014. The complainant alleged that the AISD discriminated against her son, the Student, based on his disability, in violation of 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 (2014); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35 (2014).

Based on a review of the complaint and information received from the complainant during evaluation, OCR processed the following issues for investigation to determine whether the AISD:

1. Retaliated against the Student, when a teacher told him in front of the class that “he was acting retarded” because the complainant filed previous complaints against the AISD, AISD in violation of 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134; and
2. Subjected the Student to disability harassment, when a teacher told him in front of the class that “he was acting retarded”, and the AISD failed to respond in a prompt and equitable manner to address the harassment, in violation of 34 C.F.R. § 104.7 and 28 C.F.R. § 35.107.

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 this Department, are in compliance with Section 504 and Title II. Section 504 prohibits discrimination on the basis of disability and under Title II, OCR has jurisdiction over complaints

alleging discrimination on the basis of disability that are filed against public entities. The AISD 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 allegations of disability discrimination and retaliation filed against the AISD under Section 504 and Title II.

During OCR's investigation, we reviewed information provided by the complainant and the AISD, which included personnel records, documents, email correspondence and AISD policies and procedures. During the course of the investigation and prior to its completion, the AISD requested to voluntarily resolve this complaint.

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

As stated above, after the investigation began, but before OCR reached an investigative compliance determination, on October 28, 2014, the AISD requested to voluntarily resolve this complaint pursuant to Section 302 of OCR's CPM. Based on the information below, OCR approved the district's request.

The complainant alleged that on April 21, 2014, her son was disciplined by his teacher. The complainant alleged that at this time another student told the teacher that her son was not that bad, to which the teacher allegedly responded, "he is acting retarded." The complainant informed OCR that she believed that this comment was retaliatory. The complainant informed OCR that she had a meeting with the principal and assistant principal to complain about the teacher's treatment of her son, including the alleged statement. The complainant stated in her complaint that she submitted a complaint to the school's administrators but she did not ever receive a response from the AISD.

OCR reviewed the AISD's data submission, to include the Section 504 grievance procedures, which were adopted and published on the district's web site. As written, the grievance procedures include the elements necessary to provide for the prompt and equitable resolution of complaints of discrimination (i.e., timeframes, complaints and responses in writing, impartiality, confidentiality, prohibition of retaliation etc.). However, OCR's investigation thus far revealed concerns on the implementation of these grievance procedures. OCR's investigation determined that the complainant did meet with the Craig Middle School (CMS) administrators, as she alleged, and submitted a written complaint. In the meeting the complainant expressed her overall disapproval on how the teacher interacted with the Student generally and how in a recent discipline referral and corresponding email, the teacher referred to the Student as "dangerous and violent every time you confront him about something." The complainant also informed the administrators that the teacher allegedly referred to the Student as "acting retarded" and she wanted this issue to be addressed as well.

The investigation thus far also showed that the CMS principal responded to the complainant's concerns, to include the allegation of the use of the word "retarded." The AISD informed OCR that the CMS principal interviewed the teacher and the students in the class, including a student identified by the complainant, in an effort to respond to the allegation (i.e., use of the word retarded). The AISD informed OCR that the principal's inquiry did not reveal that the teacher uttered the alleged comment, "[the Student] is acting retarded" or any other use of the word. However, the AISD informed OCR that the principal's investigation revealed that he counseled the teacher on how to properly write discipline referrals but stated that he concluded that the teacher did not make the alleged statement. This consultation between the Principal and the teacher was documented in writing and submitted to the teacher's personnel file. OCR's review of a copy of this personnel document confirmed the AISD's assertion.

Consistent with Section 302 of OCR's Complaint Processing Manual, the AISD submitted the attached Voluntary Resolution Agreement (Agreement) on November 28, 2014, which OCR has determined addresses the compliance issues raised in the complaint and which when fully implemented, will resolve this complaint. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this issue; however, OCR will actively monitor the implementation of the Agreement by the AISD to determine whether the commitments made by the AISD have been implemented consistently with the terms of the Agreement. If the AISD fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the AISD determines a need to modify any portion of the Agreement, the AISD may submit, for consideration, proposed revisions to OCR.

In conclusion, the AISD has agreed to voluntarily resolve this complaint. OCR will monitor the implementation of the attached resolution agreement. As such, OCR is closing this complaint as of the date of this letter and will take no further action relative to this complaint.

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 obligated to advise the institution against which the 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 other 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 your assistance in this matter. If you have any questions, please feel free to contact Ms. Melissa Malonson, at 214.661.9637 or at [Melissa.malonson@ed.gov](mailto:Melissa.malonson@ed.gov). or John Stephens, at 214.661.9600.

Sincerely,

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

CC: Mark Neal, Attorney  
Associate Superintendent for Human & Legal Services