



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620  
DALLAS, TX 75201-6810

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

March 9, 2015

Reference: 06141619

Darrell G. Brown, Ph.D, Superintendent  
Birdville Independent School District  
6125 East Belknap St.  
Haltom City, TX 76117

Dear Dr. Brown:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against Birdville Independent School District (BISD), Haltom City, Texas, which was received in our office on September 10, 2014. The complainant alleged that BISD discriminated against his XXXXXXXX (the Student) on the basis of disability. Specifically, the complainant alleged that BISD failed to implement the Student's Individualized Education Program (IEP) during the 2014-2015 school year when the Student was required to remain in rooms that were XXXXX XX XXXXXX on several occasions.

This agency is responsible for determining whether organizations or entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulations, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability.

OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations, at 28 C.F.R. Part 35, which also prohibit discrimination on the basis of disability. Under Title II, OCR has jurisdiction over complaints alleging disability discrimination against public entities, such as public preschools, elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

BISD is both a recipient of Federal financial assistance from the Department and a public elementary and secondary education system. Therefore, OCR had jurisdiction to investigate this complaint pursuant to Section 504 and Title II.

Based upon the complainant's allegation, OCR investigated the following legal issue:

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

Whether BISD discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student’s individual educational needs (i.e., XXXXXXXX XX XXXX XXX XX X XXXX XXXX XX XXXXX XX XXXXXXXX), and thereby denied the Student a free appropriate public education (FAPE) during the 2014-2015 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33, and 28 C.F.R. § 35.130, respectively.

In the course of this investigation, OCR interviewed the complainant and BISD staff, and reviewed documents provided by the complainant and BISD.

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district’s jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.33(b), define an “appropriate education” as the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student’s Section 504 plan, also known as an “individualized education program,” or “IEP.” When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student’s needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student’s individual needs were or are being provided. If they have not been provided, OCR will determine the district’s reason for failing to do so and the impact of the failure.

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

A review of the Student’s records revealed that the Student was evaluated, pursuant to Section 504 and the Individuals with Disabilities Education Act (IDEA), on XXXXX X, XXXX, and that the complainant was present for the deliberations, along with three BISD staff members. In addition to her IEP, which provided for XXXXXX XXXXXXXX and XXXXXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXXX, the Student also had an Individual Healthcare Plan (IHP), dated XXXXXXXXXXX XX, XXXX, which provided instructions for responding in the event that she had a XXXXXXXX, and explained how to manage the Student’s medications. Finally, the Student had a Section 504 Plan, dated

XXX XX, XXXX, for classroom accommodations and standardized testing.<sup>1</sup> In addition to listing classroom accommodations, the Section 504 Plan states: “XXXXX XXX XXX.” BISD provided OCR with a copy of a letter written by the Student’s XXXXXX, indicating that the Student should not be permitted XX XX XXXXXXXX XX XXXX XXXX XXX XXXXXXXXXXXX XX XXXXX XX XXXXXXXX, XX XXX XXXXXXXXXXXX XX XXXXXXXX XX XXXXXXXX. OCR interviewed BISD staff to ascertain how the accommodation related to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX was implemented. OCR notes that there was some disagreement among staff members with respect to the Student’s exact XXXXXXXXXXXXXXXXXXXXXXX. The Spicer Elementary School Section 504 Coordinator, who participated in the development of the Student’s Section 504 Plan, stated that it was the intention of the Section 504 Committee to ensure that the Student would not be exposed to XXXXXXX XX XXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. She and other BISD staff members further explained that XXXXXXXXXXXXXXXXXXXXXXXs were placed in the Student’s classrooms, and in outdoor recreation areas, and that teachers monitored the XXXXXXXXXXXXXXXXXXXXXXX to determine whether the Student could tolerate the XXXXXXXXXXXXXXXXXXXXXXX.

OCR interviewed the Student’s XXXXXXXX teacher, who stated that the Student was in her 8<sup>th</sup> period class during the fall 2014 semester, and that for approximately the first two weeks of school, the air conditioning unit was not functioning properly in her classroom. She stated that, because she was aware of the Student’s medical condition, she would give the Student a homework assignment at the beginning of each class and send the Student to the library in the main building. When asked, the XXXXXXXX teacher stated that the Student did not receive direct instruction during her time in the library. She further informed OCR that the BISD advised the complainant that the Student should not attend Reading and Math summer camp, because it was to be held in a portable classroom. The complainant stated that the Student attended camp on the first day, and was assured that the room would be kept at an appropriate temperature, but that when he arrived to pick her up, she was hot and appeared flushed. He stated that BISD staff never discouraged her attendance at summer camp, but rather assured him that the portable classroom would be kept cool. He stated that he decided not to bring her back to camp after the first day.

OCR also interviewed the librarian, who confirmed that the Student came to the library each day for a period of approximately two weeks. She stated that she did not directly supervise the Student or provide her instruction, and that the Student was free to do whatever she chose, including “peruse the internet.” She stated that on at least one occasion, because there were other Students in the library for a class, the Student chose to sit in the hallway outside the library. The BISD provided OCR with documentation indicating that the air conditioning unit in the relevant portable classroom was replaced on Thursday, September 4, 2014. The first day of school was Monday, August 25, 2014.

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<sup>1</sup> The BISD informed OCR that the Student was re-evaluated in January 2015, and while there were no substantial changes to her accommodations, the three aforementioned documents were merged into one IEP.

Based on the foregoing, OCR has determined by a preponderance of the evidence that BISD failed to provide the related aids and services deemed necessary to meet the Student's individual educational needs during the 2014-2015 school year; these needs were identified as part of BISD's own assessment of the Student's educational needs and BISD's plan for meeting these needs was documented in the Student's Section 504 Plan. Therefore, OCR concluded that BISD denied the Student a FAPE during the 2014-2015 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33, and 28 C.F.R. § 35.130, respectively.

Specifically, OCR determined that BISD's intention in developing the Student's Section 504 Plan was to keep her at a XXXXXXXXXXXX XX XXXXXXXXXXXXXXXX XX XXXXXXXX. There is a disagreement regarding whether the Student was discouraged from attending an academic summer camp, but both the complainant and recipient staff stated that there were problems with regard to maintaining the XXXXXXXXXXXX XXXXXXXXXXXXXXXX in the Student's portable classroom. In addition, the recipient acknowledged that the Student was sent to the library without academic instruction for one class period per day for approximately two weeks in September 2014.

BISD committed to a written resolution agreement (copy enclosed) on March 6, 2015, which addresses the aforementioned compliance concerns. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. OCR will monitor BISD's progress in the implementation of the agreement. Failure to implement the agreement, as scheduled, will result in OCR immediately resuming its investigation.

This concludes OCR's investigation of the complaint and should not be interpreted to address BISD'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.

Please be advised that BISD may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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 provided to our office by your counsel and your staff during the investigation of this complaint. If you have any questions about this matter, please contact Eve Shatteen Bell, the OCR attorney assigned to this complaint, at (214) 661-9682.

Sincerely,

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

cc: Ms. Hayley Turner, Counsel