



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
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TEXAS

April 16, 2018

VIA MAIL
VIA EMAIL (XXXX)

Mark Kolwe, Superintendent
Tangipahoa Parish School Board
59656 Puleston Rd.
Amite, LA 70433

Re: OCR Complaint No. 06-14-1652

Dear Superintendent Kolwe:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which OCR received on September 26, 2014, and which the complainant filed against the Tangipahoa Parish School Board (TPSB), in Amite, Louisiana. The complainant alleged that the TPSB discriminated against XXXX XXXX (Student) based on disability.

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 the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, 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 certain public entities. The TPSB is a recipient of Federal financial assistance from the Department and is a covered public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

OCR investigated the following issues:

1. Whether, during the 2014-2015 school year, the TPSB 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 (e.g., XXXX XXXX XXXX), and thereby denied the Student a free appropriate public education, 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; and

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

2. Whether, during the 2014-2015 school year, the TPSB discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment directed at him by a teacher, which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2014-2015 school year, in violation of Section 504 and Title II, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively.

During this investigation, OCR reviewed information that the complainant and the TPSB submitted. OCR also conducted interviews with relevant witnesses, including TPSB personnel and the complainant. OCR provided the complainant the opportunity to rebut the TPSB's position; however, the information that the complainant provided did not alter OCR's determination.

I. Issue 1 (Alleged Denial of FAPE):

Prior to the completion of OCR's investigation as to Issue 1, the TPSB informed OCR that it was interested in resolving the complaint. Section 302 of OCR's *Case Processing Manual* provides that a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving it. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the TPSB's request to resolve the complaint as to Issue 1 prior to the conclusion of the investigation.

The TPSB submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint and OCR complaint number 06-16-1403; the TPSB's representative signed the Agreement on April 12, 2018. OCR has determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolve them. Further, OCR accepts the Agreement as an assurance the TPSB will fulfill its obligations under Section 504 and Title II with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. OCR will actively monitor the TPSB's implementation of the Agreement. Please be advised that if the TPSB fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

II. Issue 2 (Alleged Disability Harassment):

A finding that a recipient has violated one of the laws that 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 or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. Based on OCR's careful review and analysis of the information obtained, we have determined that there is insufficient evidence to support a finding of noncompliance with Section 504 and Title II as to Issue 2. The basis for this determination regarding Issue 2 is set forth below.

A. Legal Standard:

Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. According to OCR policy, a violation of Section 504 and Title II may be found if a recipient has created or fostered a disability-based hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic or written) that is based on disability and that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. Harassment must consist of more than casual or isolated incidents to create a disability-based hostile environment. Further, a determination of whether conduct is “severe” or “pervasive” must examine the gravity as well as the frequency of the harassing conduct. A recipient has violated Section 504 and Title II if it has effectively caused, encouraged, accepted, or failed to correct a disability-based hostile environment of which it has actual or constructive notice.

In order to establish a violation of Section 504 and Title II based on a hostile environment, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. Whether a disability-based hostile environment existed must be determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. To be effective, OCR does not require that a recipient’s response to harassing conduct ensure that all future harassment or other discriminatory conduct will be prevented, but rather that the response is reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

B. Findings of Fact:

The complainant alleged that the TPSD failed to take prompt and effective responsive action to address disability-based harassment of the Student by a teacher (Teacher 1) during the 2014-2015 school year. Specifically, the complainant alleged that Teacher 1 made demeaning comments about the Student, such as:

- On XXXX XXXX, 2014, Teacher 1 told all of the students to XXXX XXXX XXXX XXXX and XX—phrase redacted—XX;
- On XXXX XXXX, 2014, Teacher 1 XXXX XXXX XXXX XXXX XXXX XXXX and told the Student XXXX XXXX XXXX XXXX after the Student asked Teacher 1 to repeat something;
- On XXXX XXXX, 2014, Teacher 1 yelled, “XXXX XXXX XXXX XXXX XXXX XXXX XXXX!” at the Student;
- On XXXX XXXX, 2014, Teacher 1 told another teacher, “XXXX XXXX XXXX XXXX!” in reference to the Student;

- On XXXX XXXX, 2014, Teacher 1 accused the Student of XXXX during class and called him a “XXXX XXXX” after the Student told Teacher 1 that he did not understand something;
- On XXXX XXXX, 2014, Teacher 1 would not allow the Student to XXXX XXXX XXXX XXXX XXXX XXXX XXXX after the Student’s principal (Principal) XXXX XXXX XXXX XXXX and stated, “XXXX!” to the Student several times;
- During the week of XXXX XXXX, 2014, Teacher 1 made the Student XX—to end of phrase redacted—XX; and
- On XXXX XXXX, 2014, Teacher 1 told students to stop XXXX for the Student after he XXXX XXXX XXXX XXXX XXXX XXXX.

The complainant informed OCR that she believed that Teacher 1 was targeting the Student due to his disability, because XXXX is a symptom of his XXXX.

The complainant alleged that she met with school personnel multiple times about Teacher 1’s behavior. The complainant alleged that she met with Teacher 1 and the Student’s assistant principal (Assistant Principal) on XXXX XXXX, 2014, regarding the Student feeling like Teacher 1 was “picking on” him. According to the complainant, she explained at that meeting that the Student has XX—to end of sentence redacted—XX. The complainant further alleged that the Principal told her on XXXX XXXX, 2014 that she would XXXX XXXX XXXX XXXX, but the complainant believed the Principal had not done so. The complainant alleged that she met with the Principal and the Section 504 Chairperson on XXXX, 2014, to discuss Teacher 1’s behavior and provided XX—to end of sentence redacted—XX. The complainant also alleged that she met with the Principal about Teacher 1 on XXXX XXXX, 2014.

OCR reviewed the Student’s Individual Accommodation Plan (IAP) dated XXXX XXXX, XXXX. The IAP indicates that the Student was an XXXX grader at XXXX XXXX XXXX XXXX XXXX during the 2014-2015 school year. According to the IAP, the Section 504 committee determined that the Student should receive services for the disabilities of XXXX and XXXX. The IAP sets forth the following accommodations, in relevant part: XX—to end of sentence redacted—XX. These three accommodations were not included in his previous IAP, dated XXXX XXXX.

OCR reviewed the TPSB’s “Equal Education Opportunities” policy, which states, “[N]o person shall be denied the benefits of any education program or activity on the basis of . . . handicap.” OCR also reviewed the TPSB’s “Parent/Student Rights in Identification, Evaluation and Placement Section 504 of the Rehabilitation Act of 1973” document. This document states that individuals may “[f]ile a local grievance with the Section 504 Coordinator to resolve complaints of discrimination other than those involving identification, evaluation, educational program or placement” and that, in that case, “[t]he school system policy will be followed.” Additionally, OCR reviewed the TPSB’s Student & Parent Handbook for 2014-2015, which includes a “Student Grievance Procedure” to “resolve possible problems that relate to the administration of the policies of the school district.” OCR also reviewed the TPSB’s Bullying and Hazing policy, which includes reporting and investigation procedures.

OCR reviewed a letter from the complainant to the Principal dated XXXX XXXX, 2014. In the letter, the complainant wrote,

I pointed out to you at the meeting [on XXXX XXXX, 2014] that in my opinion [Teacher 1] had crossed the line from basic discipline to regularly intimidating and embarrassing [the Student], and it seems that [Teacher 1] has been disciplining [the Student] for his disability. You agreed to talk to [Teacher 1] concerning issues identified. . . . You offered the option for [the Student] to XX—to end of sentence redacted—XX. After careful consideration, I don't think this would be in the best interest of [the Student].

OCR also reviewed an undated letter from the Student's XXXX XXXX provider, stating, "XX—quotation redacted—XX."

OCR reviewed an email dated XXXX XXXX, 2014, in which the complainant informed the Principal that Teacher 1 had called the Student "XXXX!" several times and would not allow him to XXXX XXXX XXXX XXXX XXXX. Furthermore, OCR reviewed a letter from the complainant to the Principal dated XXXX XXXX, 2014, which states,

I thought that we were on the same page with [the Student's] immediate XXXX XXXX XXXX XXXX, but after speaking with [the Student] today about his schedule, I found out that he once again XXXX XXXX XXXX XXXX XXXX. I was under the impression that XXXX XXXX XXXX XXXX XXXX XXXX XXXX was effective immediately as was communicated by you, and by [the Assistant Principal].

The TPSB provided OCR with a declaration from the Principal, executed on XXXX XXXX, 2015, under penalty of perjury. In the Principal's declaration, she states that she investigated the complainant's allegations that Teacher 1 was harassing the Student and did not find evidence of "any discriminatory or harassing conduct." According to the declaration, the Principal offered alternatives for the Student "in an effort to help him feel more comfortable, including XX—to end of quotation omitted—XX," but the complainant declined these alternatives. The Principal also stated in the declaration that she agreed to discuss "appropriate manner of communications" with the Student with Teacher 1. The Principal explained in the declaration the Student was ultimately XXXX XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX and that Teacher 1 had XX—to end of sentence redacted—XX.

OCR interviewed the Principal regarding the complainant's harassment allegations. The Principal stated during her interview with OCR that the Section 504 meeting in XXXX was a response to the complainant's concerns about Teacher 1 singling out the Student. The Principal explained that she XXXX XXXX XXXX XXXX following the complainant's complaint and as a result of the complainant's concerns, and she witnessed him XXXX XXXX XXXX XXXX but did not witness him calling the Student names, yelling at him, or referencing his disability. The Principal stated that she shared her findings with the complainant, but the complainant still believed that Teacher 1 was attacking the Student. According to the Principal, Teacher 1 XXXX XXXX, which may have been intimidating to the Student. The Principal stated that the Student

was XXXX XXXX XXXX XXXX XXXX XXXX in XXXX, after the complainant refused the option of the Student XXXX XXXX XXXX XXXX. The Principal said that she met with the complainant about her concerns again in XXXX or XXXX. The Principal explained that, around the time of that meeting in XXXX or XXXX, Teacher 1 informed the Principal that he was XXXX XXXX XXXX XXXX XXXX, and the Principal told him not to speak to the Student anymore.

OCR also interviewed the Assistant Principal regarding the complainant’s harassment allegations. During the interview, the Assistant Principal stated that she met with the complainant regarding her complaints about Teacher 1. The Assistant Principal stated that she understood that the Student told Teacher 1 (XXXX XXXX) something like “XXXX XXXX XXXX XXXX,” and in response Teacher 1 said, “XXXX XXXX XXXX XXXX.” The Assistant Principal stated that she thought the matter was resolved after Teacher 1 apologized to the complainant and the Student, and the Student apologized to Teacher 1 for the “XXXX” comment. The Assistant Principal explained that she never witnessed Teacher 1 yelling at the Student, calling him names, or referencing his disability, corroborating the Principal’s assertions. According to the Assistant Principal, the Student was ultimately XXXX XXXX XXXX XXXX XXXX, and Teacher 1 later XXXX.

OCR shared the TPSB’s position with the complainant and offered the complainant the opportunity to rebut the TPSB’s position. The complainant stated that the Student was not XX—to end of sentence redacted—XX.

C. Analysis:

In order to establish a violation of Section 504 and Title II based on a hostile environment, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. For the purposes of this analysis, OCR assumes, without deciding, that Teacher 1’s actions created a hostile environment.

Second, OCR considers whether the TPSB had notice of the alleged hostile environment. The evidence indicates that the complainant complained to school personnel on multiple occasions about Teacher 1’s actions toward the Student, beginning around XXXX XXXX. OCR therefore concludes that the TPSB had actual notice of the hostile environment.

Third, OCR considers whether the TPSB failed to respond adequately to redress the alleged hostile environment. The TPSB maintains policies prohibiting discrimination based on disability and providing grievance procedures for student complaints. The Principal’s declaration and interview indicate that she investigated the complainant’s allegations, including XXXX XXXX XXXX XXXX and speaking with Teacher 1, and could not conclude that harassment occurred. However, the TPSB did not provide OCR with any documentation or interview statements from the Principal’s investigation. The evidence indicates that the TPSB took multiple actions in response to the complainant’s allegations regarding Teacher 1, including holding an IAP meeting on XXXX XXXX, 2014, modifying the Student’s IAP to add accommodations XX—to end of phrase redacted—XX, and meeting multiple times with the complainant. The evidence shows

that school administrators offered to XXXX XXXX XXXX XXXX XXXX XXXX XXXX and allow him to XXXX XXXX XXXX XXXX XXXX XXXX XXXX in XXXX XXXX, but the complainant refused. The evidence indicates that, despite the Principal's conclusion that no harassment occurred, the school XXXX XXXX XXXX XXXX XXXX XXXX XXXX in XXXX or XXXX in light of the complainant's concerns, and Teacher 1 XXXX XXXX XXXX XXXX around the same time.

OCR concludes that, assuming the allegations here constituted a hostile environment, the TPSB had notice of that hostile environment. However, the evidence shows that the TPSB took reasonable, timely, effective steps to end any harassment of the Student, prevent its recurrence, and make the Student whole—including, but not limited to, modifying the Student's IAP to include accommodations XXXX XXXX XXXX XXXX XXXX XXXX XXXX after the complainant began complaining to school administrators about Teacher 1's behavior toward the Student. For these reasons, OCR finds that there is insufficient evidence to support a conclusion of noncompliance with Section 504 and Title II as to Issue 2 of this investigation and will take no further action regarding this issue.

III. Conclusion:

In conclusion, OCR has approved the TPSB's request to resolve the complaint prior to the conclusion of the investigation as to Issue 1.

Based on the above findings of fact, and under a preponderance of evidence standard, OCR concludes that there is insufficient evidence to find that the TPSB violated Section 504 and Title II as alleged with respect to Issue 2. OCR therefore will take no further action regarding Issue 2. This determination should not be interpreted to address the TPSB'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 a right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that a recipient 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, it 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.

If you have any questions or concerns regarding this matter, you may contact the attorney investigator assigned to this case, Katherine Fearn, by telephone at (214) 661-9653 or by email at katherine.fearn@ed.gov, or you may contact me at (214) 661-9600.

Sincerely,

/s/

Melissa Huling Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

cc: XXXX XXXX XXXX, XXXX, XXXX XXXX
(XXXX)