



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI  
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TEXAS

May 15, 2015

Dr. Dee Hartt, Superintendent  
Tatum Independent School District  
P.O. Box 808  
510 Crystal Farms Rd.  
Tatum, TX 75691

Ref: 06151131

Dear Dr. Hartt:

This letter is to notify you that the U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office (Office), is closing the above-referenced complaint received in our office on December 8, 2014, and filed against the Tatum Independent School District (TISD), Tatum, Texas. This complaint was filed on behalf of a XXXX student at Tatum High School (the Student),<sup>1</sup> and alleged discrimination against the Student on the basis of her disability (XXXX). Specifically, the complainant alleged the following:

1. The TISD has failed to provide the Student a free appropriate public education (FAPE) when:
  - a. During the 2014-15 school year, the Student's XXXX teacher has failed to provide the Student related aids and services identified as necessary to meet her individual educational needs with regard to classroom testing, as specified in the Student's 504 accommodation plan (e.g., extra time for tests, oral administration of tests, word banks, and reduced choices for multiple choice tests); and
  - b. Beginning in the 2013-14 school year and continuing in to the 2014-15 school year, the TISD has failed on five (5) occasions to provide the Student her approved accommodations, as specified in her 504 accommodation plan, for the administration of state STAAR testing (e.g., small group testing, questions read aloud, use of colored sheet).

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the U.S. Department of Education 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. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability. OCR also enforces

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<sup>1</sup> OCR previously identified the Student in a letter to the TISD dated XXXX.

Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation 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, including elementary and secondary education systems.

The TISD is a recipient of Federal financial assistance from the U.S. Department of Education and is a public elementary and secondary education system. Therefore, OCR has jurisdiction to process this complaint to resolution pursuant to Section 504 and Title II. By letters dated March 13, 2015, OCR informed the parties that it was opening this complaint for investigation.

### **Legal Standard**

The regulation implementing Section 504 at 34 C.F.R. § 104.33 (a) requires recipients of Federal financial assistance that operate a public elementary or secondary education program, such as the TISD, to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction. The Section 504 regulation, at 34 C.F.R. § 104.33(b), defines an "appropriate education" as regular or special education or related aids and services that: (i) are designed to meet individual educational needs of individuals with a disability as adequately as the needs of nondisabled persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards).

Under 34 C.F.R. § 104.35, recipients are to establish standards and procedures for the evaluation and placement of individuals who, because of disability, need or are believed to need special education or related services. Through this process, recipients must determine whether the individual is disabled and, if so, determine the individual's appropriate regular or special education placement and related service needs. With respect to the evaluation process, the Section 504 regulation, at 34 C.F.R. § 104.35(c), provides:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34 [Educational setting].

34 C.F.R. § 104.35(d) provides that recipients are to establish procedures for periodic reevaluation of students who have been provided special education and related services, and 34 C.F.R. § 104.36 requires recipients to establish and implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of individuals who, because of disability, need or are believed to need special education or related services.

The regulation implementing Title II at 28 C.F.R. § 35.130(a) states that a qualified individual with a disability may not be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity. OCR interprets the Title II regulation to require school districts to provide a FAPE to qualified individuals with a disability to the same extent required by the Section 504 regulation.

Accordingly, when evaluating whether a recipient has failed to provide a FAPE, OCR determines the following: (1) whether the recipient evaluated a student in accordance with Section 504 requirements and determined the student had a disability as defined in Section 504; (2) whether the student's needs were determined on an individualized basis; and (3) whether the related aids and services identified through this process as necessary to meet the student's individual needs were provided. If the recipient has not provided the accommodations, OCR evaluates the recipient's rationale for not providing the related aids and services, and whether the recipient's failure adversely affected the student's educational opportunity.

### **OCR's Investigative Activities**

OCR began its investigation of this complaint by requesting a response and supporting documentation from the TISD. Prior to OCR receiving this information, the TISD expressed an interest in voluntarily resolving this complaint. Section 302 of OCR's *Case Processing Manual* (CPM) 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 the complaint. Such a request to resolve the complaint during the course of an investigation must be approved by the Office Director or designee. Further, pursuant to the CPM, 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.

Because the date for responding to OCR's request for information had not yet expired at the time the District expressed an interest in resolving this complaint, the TISD agreed to provide some documentation to OCR for the purpose of developing a resolution agreement which appropriately resolves the complaint allegations. OCR reviewed the following information:

- (1) A Corrective Action Plan submitted to the Texas Education Agency related to the TISD's provision of testing accommodations to students with disabilities;
- (2) Documentation reflecting the notes of an Admission, Review, and Dismissal (ARD) committee meeting held on XXXX, 2015, in which the Student's educational placement was discussed; and
- (3) Documentation reflecting the provision of classroom testing accommodations in the Student's XXXX course during the 2014-15 academic year, as well as documentation evidencing the accommodations approved for the Student as reflected in her Individualized Education Program (IEP) effective XXXX through XXXX.

The Student's IEP provides that the Student was to receive the following classroom testing accommodations from XXXX through XXXX: word bank for short answer/fill-in blank tests,

“chunking” for vocabulary tests, oral administration, small group administration, extra time, preferential seating, and permission to leave the classroom for test taking. For STAAR testing, the Student’s IEP indicates that the Student was to receive preferential seating, small group administration, and oral administration.

OCR also reviewed the Corrective Action Plan (the “Plan”) submitted by the TISD to the Texas Education Agency (“TEA”). This information revealed that, after investigating a parent complaint, the TISD learned that some students did not receive appropriate accommodations for statewide STAAR testing, specifically, proper oral administration of tests, in XXX and XXXX 2014. Thus, the TISD submitted to TEA an online incident report within which the TISD also committed to take certain remedial actions to ensure that staff is adequately prepared to administer accommodations for students with disabilities taking statewide tests, including the following:

- Providing explanations regarding allowable accommodations in initial test administrator training;
- Ensuring that initial test administrator training will be pre-approved by the District Testing Coordinator;
- Including a copy of rules for oral testing accommodations with testing administrators’ materials for each student who receives oral accommodations; and
- For subsequent testing administrator training after the initial testing, the Campus Testing Coordinator will send a copy of their testing presentation for test administrators to the District Testing Coordinator prior to the training for approval and after training submit a sign-in sheet verifying that all testing administrators have been trained prior to test administration.

The information submitted by the TISD does not indicate whether the Student was found to be one of the students affected by the incorrect oral administration of STAAR tests in the District.

OCR also reviewed the ARD committee documentation submitted by the TISD. This information reveals that the Student is currently in the XXXX grade at Tatum High School and previously received special education services in the District as a result of a diagnosis of XXXX. On XXXX, an ARD committee meeting was held, at which the committee determined that the Student no longer met the eligibility criteria to receive special education services. Specifically, the committee determined that the Student’s evaluation results did not indicate that she suffered from a XXXX which would render her eligible to receive special education services. The ARD committee notes indicate that the Student has been referred to the campus Section 504 committee for consideration. As of the date of this letter, OCR has not received documentation evidencing the Student’s Section 504 evaluation results.

Finally, OCR received some documentation from the District evidencing that testing accommodations specified in the Student’s IEP may not have been provided consistently for classroom tests for XXXX during the 2014-15 year. Specifically, the documentation provided by the District shows that, during the 2014-15 school year, Tatum High School teachers have used an “Accommodation Documentation Form” with a listing of specific accommodations

along with check boxes to indicate the accommodation was provided. The accommodations listed, however, do not match the accommodations which are to be provided to the Student as reflected in her IEP, and the form used by Tatum High School teachers does not indicate that the list published is “non-exhaustive.” Absent from the list of accommodations as reflected in the Accommodation Documentation Form are reduced options for multiple choice tests and word banks, both of which were to be provided to the Student for classroom tests as reflected in her IEP.

OCR has not made a determination regarding whether, as alleged by the complainant, the TISD denied the Student a FAPE in violation of Section 504 or Title II. Rather, prior to OCR concluding its investigation and making a compliance determination, on April 21, 2015, the TISD’s request to voluntarily resolve this complaint was approved by the Dallas Office.

On May 13, 2015, the TISD voluntarily submitted to OCR an agreement to resolve the complaint (Resolution Agreement), which was signed by the TISD on May 6, 2015. A copy of the Resolution Agreement is enclosed. OCR has determined that the provisions of the Resolution Agreement are aligned with the complaint allegations and the information obtained during OCR’s investigation, as summarized above, and that the Resolution Agreement appropriately resolves this complaint. OCR accepts the Resolution Agreement as an assurance that the TISD will fulfill its obligations under Section 504 and Title II with respect to the complaint allegations. The dates for implementation and specific actions are detailed in the Resolution Agreement. OCR will monitor the implementation of the Resolution Agreement.

### **Conclusion**

Based on the above, OCR is closing its investigation of this complaint as of the date of this letter. This letter should not be interpreted to address the TISD’s compliance with any 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 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 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.

If you have any questions or concerns regarding this letter, please contact Rachel Caum, the OCR Attorney assigned to this complaint, at (214) 661-9632, or at [rachel.caum@ed.gov](mailto:rachel.caum@ed.gov), or me, at (214) 661-9608, or [paul.coxe@ed.gov](mailto:paul.coxe@ed.gov).

Sincerely,

Paul Edward Coxe  
Supervisory Attorney/Team Leader  
Office for Civil Rights  
Dallas Office

Enclosure