



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

July 7, 2015

Dr. Steve Flores, Superintendent
1311 Round Rock Avenue
Round Rock, TX 78681

RE: OCR Case No. 06151151
Round Rock Independent School District

Dear Superintendent Flores:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has reached a resolution of the above-referenced complaint, which was received in this office on XXX. In this complaint, the complainant alleged that the Round Rock Independent School District (District), Round Rock, Texas, discriminated against XXX (the Student) on the basis of disability. Specifically, the complainant alleged that:

1. In approximately XXX, the District changed the Student's educational placement by removing him from the instructional arrangement stated in his ARD/IEP and Mediation Agreement without following the proper procedures (no notice to the Student's parent, no Admission Review & Dismissal (ARD) decision by the ARD committee), and as a result, the Student is not being educated in the least restrictive environment;
2. From the beginning of the Fall 2014 semester through the present (January 2015), the District failed to provide the Student the services required by his educational plans (e.g., not providing educational instruction on each academic subject in his class schedule, not providing educational instruction from his assigned teacher(s), not providing him breaks and recess, etc.); and
3. In XXX and XXX, the District treated the Student differently than students without a disability by failing to provide him a classroom, requiring him to stay at home because there was no classroom available for him, and, thereby, failing to provide the Student a full instructional day.

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 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR is also responsible for

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enforcing 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 public entities. As a recipient of Federal financial assistance and a public education entity, the District is subject to OCR's jurisdiction under Section 504 and Title II.

OCR opened the above allegations to investigate the following issues:

1. Whether the District discriminated against the Student on the basis of disability by denying him a free appropriate public education (FAPE) during the Fall 2014 semester by making a significant change in the Student's educational placement without following the requisite procedures regarding evaluation and placement, in violation of Section 504 at 34 C.F.R. § 104.35 and Title II at 28 C.F.R. § 35.130.
2. Whether the District discriminated against the Student on the basis of disability by denying him a FAPE during the 2014-2015 school year by failing to provide him the related aids and services determined necessary to meet his individual educational needs, in violation of Section 504 at 34 C.F.R. § 104.33 and Title II at 28 C.F.R. § 35.130.
3. Whether the District discriminated against the Student on the basis of disability by failing to provide him a classroom, requiring him to stay at home because there was no classroom available for him and failing to provide him a full instructional day, in violation of Section 504 at 34 C.F.R. § 104.4 and Title II at 28 C.F.R. § 35.130.

Legal Standards

The relevant portion of the regulations implementing Section 504, located at 34 C.F.R. § 104.33, requires a recipient to provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction. The term "appropriate public education" is defined in pertinent part as, "... the provision of regular or special education and related aids and services that (1) are designed to meet individual educational needs of handicapped persons."

When investigating an issue of whether a district has failed to provide an appropriate public education when it has not given a student all or some of the modifications determined to be necessary to meet individual educational needs, OCR's investigative approach is whether a recipient failed to provide the services that it identified, through the appropriate process, as necessary to meet individual educational needs and whether the placement, aids, and services identified by the district through this process as necessary to meet individual needs were provided. If the evidence is sufficient to conclude that a school district has not provided all or some of the related aids and services deemed necessary, OCR must then determine whether the failure to provide certain accommodations or services constituted a denial of FAPE.

Section 504 at 34 C.F.R. § 104.35 requires a recipient that operates a public elementary or secondary education program or activity to conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the

initial placement of the person in regular or special education and any subsequent significant change in placement.

Section 504's implementing regulation at 34.C.F.R. §104.4 provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

When investigating an issue of whether a recipient discriminated against a student on the basis of disability, OCR examines whether there is any direct evidence of discriminatory intent. Absent direct proof of discriminatory intent, OCR looks to whether the group of students was treated differently than a group of similarly situated individuals without a disability with regard to a service, benefit, privilege, etc. from the recipient. If OCR cannot establish different treatment of the similarly situated students, the different treatment analysis will end and no violation will be found. If such different treatment is established, OCR must then determine whether the recipient had a legitimate nondiscriminatory reason for its action. Finally, if one or more legitimate non-discriminatory reasons for the different treatment are identified, OCR must determine whether the recipient's asserted reasons for its actions are a mere pretext for discrimination. OCR also examines whether any evidence suggests that the recipient treated the individual in a manner inconsistent with its established policies and procedures, or whether any other evidence of discrimination exists.

Investigative Summary

With regard to Allegation 1, the complainant alleged that the District changed the Student's educational placement by removing him from the instructional arrangement stated in his ARD/IEP and Mediation Agreement without following the proper procedures, and as a result, the Student was not educated in the least restrictive environment. However, the District denied making any changes to the Student's placement stating that his placement is still the agreed upon placement but when he is unable to sustain in that setting, he is removed to a more private area.

With regard to Allegation 2, the complainant alleged that the District failed to provide the Student the services required by his educational plans (e.g., not providing educational instruction on each academic subject in his class schedule, not providing educational instruction from his assigned teacher(s), not providing him breaks and recess, etc.). The District denied this allegation stating that even when the Student is moved to a more private setting, the staff who work with the Student continue to get his materials and assignments from the resource teachers and work with the Student to integrate him back into the actual resource and general education classrooms.

With regard to Allegation 3, the complainant alleged that the District failed to provide the Student a classroom, requiring him to stay at home because there was no classroom available for him, and, thereby, failed to provide the Student a full instructional day. The District responded to this allegation stating that when the Student becomes XXX to end of sentence. The District explained that it takes time to XXX to end of paragraph.

Prior to OCR conducting interviews of the District's employees and prior to obtaining additional data from the District, the District expressed interest in resolving the complaint via a voluntary resolution agreement. Consistent with OCR's Case Processing Manual (CPM) Section 207(b), the District submitted the attached Resolution Agreement (Agreement) on July 6, 2015, which OCR has determined addresses the allegations in this complaint and which, when fully implemented, will resolve the complaint.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by the District to determine whether the commitments made by the District have been implemented consistently with the terms of the Agreement. If the District fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the District determines a need to modify any portion of the Agreement, the District may submit, for consideration, proposed revisions to OCR. Effective the date of this letter, OCR is closing the investigation portion as related to this complaint. This letter is not intended nor should it be construed to cover any matters not specifically addressed herein.

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 any investigation, proceeding or hearing held in connection with a complaint.

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 regarding this letter, please contact Tiffany Gray, the attorney assigned to this matter, at 214-661-9611, Tiffany.Gray@ed.gov, or me at 214-661-9608, Paul.Coxe@ed.gov.

Sincerely,

Paul Edward Coxe

Supervisory Attorney-Team Leader
Office for Civil Rights
Dallas Office