



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

February 22, 2016

Reference: 06151213

Dr. Guy Sconzo, Superintendent
Humble Independent School District
20200 Eastway Village Drive
Humble, TX 77338

Dear Dr. Sconzo:

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 a complaint against Humble Independent School District (HISD), which was received in our office on January 28, 2015. The complainant alleged that HISD discriminated against his son (the Student) on the basis of disability. Specifically, the complainant alleged that HISD failed to implement the special education and related aids and services in the Student's Section 504 Plan (Plan).

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. HISD 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:

Whether HISD 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., extended time to turn in work), and thereby denied the Student a free appropriate public education during the 2014-2015

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

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.

Please be advised that 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.

In the course of this investigation, OCR interviewed the complainant, the Student, and HISD staff, and reviewed documents provided by the complainant and HISD. OCR found insufficient evidence to indicate that HISD failed to implement the provision of the Student's plan regarding extended time. However, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II because the HISD failed to implement the Student's Plan with respect to small group testing, resulting in the denial of educational benefit to the Student. The basis for OCR's determination is set forth below.

Legal Standard

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.

Findings of Fact and Analysis

At the time the complaint was filed, the Student was a XXXX-year old student in the XXXX grade at XXXX High School in HISD. In his complaint filed with OCR on January 28, 2015, and in subsequent telephone conversations with OCR, the complainant alleged that HISD failed to provide the Student with the services deemed necessary by the District to meet his individual educational needs during the 2014-2015 school year. More specifically, the complainant alleged that the XXXX XXXX teacher deducted points from an assignment for lateness in XXXX 2014, and failed to give the Student one extra day to turn it in. He further alleged that when viewing the Student's grades on the HISD online system for parents, he noted that the XXXX teacher deducted points for two assignments because they were one day late, despite the fact that the Student receives one extra day pursuant to his Plan.

A review of the Student's records revealed that the Student was evaluated pursuant to Section 504 on XXXX XXXX and that the complainant and the Student's mother were present for the deliberations, along with five HISD staff members. The group of knowledgeable persons determined that the Student was a qualified individual with a disability (*i.e.*, XXXX), and was eligible for special education or related aids and services. The Student's Plan lists the following two accommodations:

- The student will receive small group testing for all assessments and assignments. Student will use the library for small group.
- The student has extended time on all assessments and assignments by one day as needed.

OCR spoke with the XXXX XXXX teacher, who stated that the Student turned in the assignment at issue on time, on XXXX XXXX, 2014. She stated that she initially marked it as late in error, that the Student came to her and explained this on XXXX XXXX, 2014, and that she accepted his explanation and changed his grade the same day – returning the XXXX points that had been deducted for lateness. OCR spoke with the complainant who confirmed that the Student's grade was changed from a XXXX to a XXXX.

OCR was unable to speak with the XXXX teacher. However, OCR reviewed electronic mail communication between the XXXX teacher and the complainant in which the complainant inquired about whether the Student was given an extra day to turn in the two assignments at issue. The XXXX teacher indicated that each assignment was handed in two days after its due date, thereby making them one day late pursuant to the Student's Plan. OCR spoke with the Student who stated that he did not recall ever handing in an XXXX assignment two days late.

Based on a review of the above, OCR was provided with no corroborating evidence of the complainant's assertion that Student was not provided with extra time. Thus, by a preponderance of the evidence, OCR determined that there was insufficient evidence to

reach a finding that HISD failed to give the Student the extra time to complete work as required by his Plan.

With respect to the small group testing accommodation, OCR spoke to the XXXX XXXX teacher, who stated that she would allow the Student to choose a desk where he was comfortable for quizzes and tests, and that he would usually choose a desk in the front of the class near her desk. She further stated that she would periodically stop by his desk and ask if he had any questions. OCR also reviewed her log of accommodations, which states: “Small Group Testing implemented with student seat selected by student for ‘comfort’ during testing and in close proximity to teacher for assistance as needed/requested.” OCR spoke with the Student, who stated that the XXXX XXXX teacher never offered him the opportunity to take quizzes or tests in the library prior to the winter break. He stated that he always X---phrase redacted---X during quizzes and tests, in the front of the classroom. He stated that, to the best of his recollection, after Christmas break, he was allowed the option to leave the classroom for tests and quizzes, and that he took some in the library.

OCR reviewed a copy of the XXXX teacher’s Section 504 accommodations log, which listed fifteen occasions on which the Student “refused small group testing.” The Student informed OCR that his XXXX teacher never asked if he wanted to go to the library, but did ask on some occasions whether he wanted to take his tests in the hallway. He stated that he did take some tests in the hallway. When asked, the Student could not recall specifically how many times he took tests in the library or the hallway, in either class.

When asked how taking tests in the classroom as opposed to the library may have affected his performance, the Student stated that it was only important when he “really needed to focus,” and that the library environment allowed him to focus on the necessary tasks accordingly. The complainant provided evidence that the Student had some low grades in quizzes and tests in XXXX XXXX. He informed OCR that, as a result of the Student’s X---phrase redacted---X. Therefore, the complainant explained that taking a test in a full classroom could easily have a negative impact on the Student’s grades.

Based on the foregoing, OCR has determined by a preponderance of the evidence that HISD failed to provide the related aids and services deemed necessary to meet the Student’s individual educational needs during the 2014-2015 school year. Specifically, OCR determined that the XXXX XXXX teacher and XXXX teacher failed to implement the portion of the Student’s plan that requires small group testing in the library. The XXXX teacher’s accommodations log indicates that the Student was denied small group testing on at least fifteen occasions during the 2014-2015 school year. The XXXX XXXX teacher’s accommodations log indicates that the Student was denied small group testing on at least two occasions during the 2014-2015 school year. The Student and the complainant provided evidence indicating that the Student X---phrase redacted---X, and that the failure to provide accommodations affected his ability to focus on graded tests and quizzes. OCR finds that the Student was denied educational benefit due to the impact of HISD’s failure to appropriately provide small group testing. Therefore, OCR concluded that HISD 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.

HISD committed to a written resolution agreement (copy enclosed) on February 22, 2016, which addresses the aforementioned compliance concerns. OCR has determined that this agreement, upon full implementation, will satisfactorily resolve the compliance concerns. OCR will monitor HISD'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 HISD'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 HISD 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 or Eve.Bell@ed.gov.

Sincerely,

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

cc: XXXX XXXX, Counsel