



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
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TEXAS

Dr. Michael Hinojosa, Superintendent
Dallas Independent School District
3700 Ross Ave.
Dallas, TX 75204

Re: OCR Docket #06161518

Dear Superintendent Hinojosa:

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 against the Dallas Independent School District (DISD or District), Dallas, Texas, which was received in our office on XXXX XX, XXXX. The complainant alleged that the District discriminated against XXXX (the Student) on the basis of XXXX disability and retaliated against the Student during the XXXX-XXXX school year. Specifically, the complainant alleged that: (1) the District failed to implement the Student's Section 504 plan and individual behavior plan; and (2) the District's employees retaliated against the Student by threatening to retain XXXX in the Xth XXXX after the complainant alleged that the District failed to implement the Student's Section 504 plan or individual behavior plan.

OCR is responsible for determining whether 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 (recipients), are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. This agency is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulations at 28 C.F.R. Part 35, which prohibit disability discrimination by public entities. 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. Section 504 and Title II prohibit retaliation against persons who seek to enforce their rights under these laws.

The DISD is a recipient of Federal financial assistance from the Department and is a covered public entity. Therefore, OCR has jurisdiction to investigate this complaint under Section 504 and Title II.

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

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 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.

During this investigation, OCR analyzed information provided by the complainant and requested from the District. Additionally, OCR interviewed the complainant and relevant District employees. Based on the information obtained during this investigation, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504/Title II regarding Issue 1. OCR also determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504/Title II regarding Issue 2. The bases for OCR's determinations are outlined below.

Legal Issue 1

Whether the District discriminated against the Student based on XXXX disability by failing to provide regular or special education and related aids and services deemed necessary to meet XXXX individual educational needs, thereby denying the Student a free appropriate public education (FAPE) during the XXXX-XXXX school year, in violation of the Section 504 and Title II implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

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

The complainant alleged that the Student was denied a FAPE during XXXX enrollment in the District during the XXX-XXXX school year. The complainant further alleged that the Student received XXXX XXXX and was XXXX on multiple occasions as a result of the District's failure to provide the Student with a FAPE.

The District's records indicated that the Student was enrolled in the XXXX to end of paragraph redacted XXXX.

The Student's educational records showed that XXXX was previously identified as an individual with XXXX XXXX XXXX XXXX(XXXX) during XXXX XXXX XXXX year at XXXX. At that time, a Section 504 Committee (Committee) approved the following services/supports for the Student's instructional and behavioral needs on a daily basis:

- XXXX to end of list redacted XXXX.

The above-referenced modifications remained in effect when the Student began the XXXX XXXX.

On XXXX XX, XXXX, another Committee convened to re-evaluate and revise the Student's Plan. OCR's investigation showed that the complainant, the Student, several of the Student's teachers, a school counselor, and XXXX. Assistant Principal of XXXX participated in the Section 504 meeting. The XXXX reviewed and considered information gathered from a variety of sources, *i.e.*, the Student's educational records, disciplinary records, attendance report, and teacher input. Additionally, the District provided the complainant with notice of procedural safeguards, including XXXX right to request a due process hearing.

The revised Plan went into effect on XXXX XX, XXXX, and was maintained by the District until the end of the XXXX-XXXX school year. The revised Plan included the above-referenced modifications and those listed below:

- XXXX to end of list redacted XXXX.

OCR examined the evidence to determine whether the Student was denied any of the instructional or behavioral modifications prescribed in the Plan. OCR interviewed XXXX of the Student's teachers at XXXX.¹ Each teacher reported that the Student's initial Plan and the revised Plan were implemented as required. Each teacher also described how the initial Plan and the revised Plan were implemented. XXXX to end of paragraph redacted XXXX.

¹ OCR did not interview the XXXX XXXX and XXXX XXXX during the investigation, because the individuals XXXX XXXX XXXX XXXX by the District at the time of this investigation.

As noted above, the Student attended XXXX for approximately XXXX XXXX during the XXXX-XXXX school year. The District reported that the administrators at XXXX were unaware of the Student's Plan, due to a computer error in the District's XXXX XXXX. The District further reported that the Student's teachers at XXXX failed to implement the services in the Student's Plan during the Student's enrollment, due to the error. The Student's grade report reflected that XXXX received XXXX to end of sentence redacted XXXX. However, the disciplinary records XXXX to end of sentence redacted XXXX. The records indicated that the Student received XXXX to end of sentence redacted XXXX.

Analysis

Based on the above information, the Student was evaluated in accordance with Section 504 regulatory requirements. Specifically, the Section 504 committee determined that the Student met the District's eligibility requirements to receive accommodations under Section 504, based on his disability; the Section 504 committee included a group of persons knowledgeable about the Student, including the complainant, who determined the Student's needs on an individualized basis after reviewing the information considered. Additionally, the preponderance of the evidence indicated that the teachers at XXXX provided the Student with the placements, aids, and services identified by the District as necessary to meet the Student's individual needs. But the evidence indicates the District denied the Student appropriate educational services from XXXX XX, XXXX, XXXX XX, XXXX, while attending XXXX because of a computer error resulting in a failure of XXXX instructors receiving the Student's 504 Plan. As noted above, this resulted in the Student receiving XXXX to end of sentence redacted XXXX. Accordingly, OCR has determined that there is sufficient evidence to support a finding of noncompliance with Section 504 and Title II with respect to this issue.

Legal Issue 2

Whether the District retaliated against the Student by threatening to retain the Student in the XXXX XXXX, because the complainant advocated on behalf of the Student's disability-related rights during the XXXX-XXXX school year (*e.g.*, XXXX complained that the District failed to implement the Student's Section 504 plan), in violation of Section 504 and Title II at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

Legal Standard

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) An individual (*i.e.*, the complainant or other alleged injured party) experienced an adverse action caused by the recipient;
- (2) The recipient knew the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and
- (3) There is some evidence of a causal connection between the protected activity and the adverse action.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

Findings of Fact

The complainant identified the XXXX XXXX of XXXX as the individual who threatened to retain the Student in the XXXX XXXX. The XXXX XXXX denied to OCR that XXXX ever threatened the Student. The XXXX XXXX reported that XXXX informed the Student about the possibility of retention in the XXXX XXXX because the Student often skipped classes and had disciplinary problems. According to the XXXX XXXX, XXXX told the Student that XXXX would be required to attend summer school if XXXX failed to meet the necessary standards for grades, behavior, and school attendance. The XXXX XXXX also told the Student that if summer school was necessary and XXXX failed to attend, XXXX would be retained in the Xth XXXX.

OCR contacted the complainant to provide XXXX the opportunity to respond to the information provided by the XXXX XXXX; however, the complainant never responded to OCR's contacts.

Analysis

The first step in OCR's retaliation analysis is to determine whether the District subjected the complainant to an adverse action. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Under that perspective, petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. There are no per se exclusions, however; the surrounding circumstances are critical to OCR's investigation. Whether an action is adverse is judged from the perspective of a reasonable person in the complainant's position.

OCR's investigation revealed a significant conflict in the evidence regarding whether an adverse action occurred. While the complainant alleged that the Student was threatened by the XXXX XXXX, the District provided evidence indicating that the XXXX XXXX's statements were intended to advise the Student of the potential negative consequences if XXXX failed to conform to the District's standards required for acceleration to the next grade level. Without corroborating evidence for the complainant or District's assertions, OCR was unable to resolve this conflict in the evidence.

The investigation did not establish by a preponderance of the evidence that the District took an adverse action against the Student. Thus, a *prima facie* claim of retaliation was not established. Therefore, OCR has determined that there is insufficient evidence to establish that the District retaliated against the complainant in violation of Section 504 and Title II.

Regarding issue 1, the District entered into a Resolution Agreement (Agreement) with OCR on July 26, 2017, to resolve the compliance concern addressed above. The Agreement, when fully implemented, will resolve the issues in this complaint. The signed Agreement is enclosed with this letter. OCR will monitor the District's implementation of the Agreement. Under the Agreement, the District will consider whether the Student is in need of compensatory services as a result of the District's failure to previously implement the Student's Section 504 Plan during the XXXX-XXXX school year. If appropriate, the District will develop a plan for the provision of compensatory services to the Student, including timeframes for the provision of compensatory services. Additionally, the District will evaluate and/or revise its policies and procedures with regard to students receiving services under Section 504/Title II to ensure that the District continues to provide services when a student transfers to another school within the District. The evaluation will determine the processes necessary to ensure that the District take all steps reasonably designed to ensure that students with disabilities enrolled in the District are not denied a free appropriate public education (FAPE). The District will provide training to its staff regarding any revised policies and procedures to ensure that the District continues to provide services when a student transfers to another school within the District.

OCR is closing the investigation stage of this complaint as of the date of this letter. This letter should not be interpreted to address the District'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 the District 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 individual 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.

If you have any questions about this letter, please contact Alex D. Coulter, the investigator assigned to investigate this complaint, at (214) 661-9655 or by e-mail at Alex.Coulter@ed.gov. You may also contact me, at (214) 661-9648 or by e-mail at Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum

Team Leader/Supervisory Attorney
Dallas Office
Office for Civil Rights

cc: XXXX