



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, 2019

Re: OCR Complaint Nos. 06161522; 06171533; 06181232; 06181381; 06191043

Warren Drake, Superintendent
East Baton Rouge Parish School Board
1050 S. Foster Drive
Baton Rouge, LA 708806

Via first class mail

Dear Superintendent Warren Drake:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed processing of the above-referenced complaints, which were filed against the East Baton Rouge Parish School Board (EBRPSB or District), in Baton Rouge, Louisiana. The complainants alleged that the EBRPSB discriminated against multiple students on the basis of disability, and retaliated against students and complainants.

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 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 regulations at 34 C.F.R. Part 104. Section 504 prohibits 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 public entities. Additionally, the implementing regulations for Section 504 at 34 C.F.R. § 104.61, and Title II at 28 C.F.R. § 35.134, prohibit retaliation. The EBRPSB is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has personal jurisdictional authority to process these complaints for resolution.

With respect to Complaint #06161522, OCR opened the allegation for investigation, and investigated the following issue:

1. Whether the EBRPSB discriminated students at the Ryan Detention Center (RDC) on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the students individual education needs (teachers are not provided copies of students' approved Section 504 or IEP accommodations), and thereby denied students a free appropriate public education during the 2015-2016 school

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year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and C.F.R. § 35.130, respectively.

With respect to Complaint #06171533, OCR opened the allegations for investigation, and investigated the following issues:

1. Whether the EBRPSB 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., class work and tests to be read allowed for all core content areas; and directions to be repeated and modified to ensure understanding), and thereby denied the Student a free appropriate public education during the XXXX-XXXX 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;
2. Whether the EBRPSB discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by other students (i.e., alleged incidents indicated within Allegation 2), which was sufficient to constitute a hostile environment, of which it had or should have had notice during the XXXX-XXXX 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;
3. Whether the EBRPSB discriminated against the Student on the basis of disability by failing to provide the Student with a free appropriate public education (FAPE) when the EBRPSB failed to reevaluate the Student's educational placement after the EBRPSB knew, or should have known, that the effects of bullying/harassment may have affected the Student's receipt of Section 504 services, in violation of Section 504 and Title II, at 34 C.F.R. § 104.35, and 28 C.F.R. § 35.130, respectively;
4. Whether the EBRPSB discriminated against the Student on the basis of disability by failing to timely and/or properly evaluate XXXX need for regular or special education and related aids and services after the Complainant notified the EBRPSB of the Student's XXXX XXXX and requested an evaluation on several occasions from XXXX XXXX through the end of the XXXX-XXXX school year, and thereby denied the Student a free appropriate public education (FAPE) during the XXXX-XXXX school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively;
5. Whether the EBRPSB discriminated against the Student on the basis of XXXX disability by failing to provide the Student with an equal opportunity to participate in nonacademic services during the XXXX-XXXX school year (i.e., the Student was not permitted to go to XXXX between approximately XXXX XXXX and the end of the XXXX-XXXX school year), in violation of Section 504 and its implementing regulations at 34 C.F.R. § 104.37, and Title II and its implementing regulation at 28 C.F.R. § 35.130(a);
6. Whether the EBRPSB retaliated against the Student in or around XXXX XXXX, because the Complainant complained to EBRPSB District staff members in XXXX

XXXX and thereafter that XXXX requested evaluation of the Student had not been completed and that the Student was not receiving XXXX accommodations, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively, when:

- (a) The Student was XXXX XXXX with other students, and the Student's teacher told the Student to go XXXX at the other end of the XXXX without a XXXX and by XXXX;
 - (b) The Student's teacher gave the Student approximately 200 pages of homework on one day and indicated that if the homework was not completed during that weekend, the Student would receive bad conduct on XXXX grade reports; and
 - (c) The Student's teacher gave the Student classwork without providing directions and then pointed at the Student and stated that XXXX was refusing to do XXXX work; and
7. Whether the EBRPSB retaliated against the Complainant in or around XXXX XXXX, when the Complainant was provided with a letter indicating that XXXX was banned from the XXXX unless XXXX provided 24-hours notice each time XXXX went to the XXXX, and an EBRSPB Assistant Superintendent told the Complainant via phone that if the Complainant went to the XXXX again, the Complainant would be arrested or receive a citation, because the Complainant made a request to the XXXX SRO to make a police report concerning an incident of disability-based harassment against the Student on or around XXXX XXXX XXXX, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

With respect to Complaint #06181232, OCR opened the allegation for investigation, and investigated the following issue:

1. Whether the EBRPSB 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., denial of counseling, small group testing, extended time), and thereby denied the Student a free appropriate public education during the XXXX-XXXX 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.

With respect to Complaint #06181381, OCR opened the allegations for investigation, and investigated the following issues:

1. Whether the EBRPSB 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., Teacher 1 and Teacher 2 failed to provide extended time (1 1/2 time) and small group testing, resulting in the Student receiving low grade for those classes), and thereby denied the Student a free appropriate public education during the XXXX-XXXX 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;

2. Whether the EBRPSB 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., when Teacher 1 and Teacher 2 failed to adhere to the Student's IEP, by not providing the Student with XXXX approved academic accommodations (i.e., extended time (1 1/2 time), five days prior notice of tests; and small group testing, and provide accurate study guides, resulting in the Student receiving poor grades (i.e., "O") for the academic semester and on XXXX academic transcript), and thereby denied the Student a free appropriate public education during the XXXX-XXXX 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;
3. Whether the EBRPSB 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., failed to develop and implement a HP and a BIP after determining one was necessary), and thereby denied the Student a free appropriate public education during the XXXX-XXXX 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;
4. Whether the EBRPSB 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., Teacher 3 failed to provide extended time on assignments, homework, tests, projects, small group testing; study guides for quizzes, five day notice prior to finals and/or unit tests, take small exams verse large tests, and provide accurate study guides), and thereby denied the Student a free appropriate public education during the XXXX-XXXX 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;
5. Whether the EBRPSB retaliated against the Student by a) grading the Student's assignments harsher and in a manner inconsistent with classroom and EBRPSB's policies and procedures (i.e., not assigning grades based on the grading rubric); b) set different deadlines for the Student's assignments when compared to the other students in the class; and c) failed to inform the Student of new assignments that were assigned when the Student excused from Teacher 3's class and/or school during the XXXX-XXXX school year, because the Student or Complainant filed complaints and/or grievances alleging disability discrimination, in violation of Section 504 and Title 11, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively; and
6. Whether the EBRPSB discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by EBRPSB staff members, which was sufficient to constitute a hostile environment, of which it had or should have had notice during the XXXX-XXXX school year, in violation of Section 504 and Title 11, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively.

With respect to Complaint #06191043, OCR opened the allegations for investigation, and investigated the following issues:

1. Whether EBRPSB 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., provide parent prior notice of tests; conduct parent-teacher meetings every two weeks; sign and utilize student homework tracking form), and thereby denied the Student a free appropriate public education during the XXXX-XXXX and XXXX-XXXX school years, 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
2. Whether EBRPSB retaliated against the Complainant when, in XXXX XXXX, the SPED director told the XXXX XXXX that XXXX should not send personal emails XXXX XXXX XXXX XXXX, in retaliation for the Complainant raising concerns in XXXX XXX that the Student was not receiving XXXX disability accommodations, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

Prior to OCR issuing final investigative determinations, the EBRPSB requested to resolve the above indicated complaints by voluntarily entering into a Resolution Agreement (Agreement). Under OCR's procedures, a complaint may be resolved at any time when, prior to the point that the OCR Regional Office issues a final determination under Section 303 of OCR's Case Processing Manual, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement.

On February 21, 2019, the EBRPSB voluntarily entered into the enclosed Agreement¹, which, when fully implemented, resolves the above indicated complaints. The Agreement is aligned with the complaint allegations and the information obtained during the investigation, and is consistent with applicable law and regulations. Specifically, the Agreement requires the EBRPSB to provide training regarding the requirements of Section 504 and Title II with respect to providing a FAPE to all qualified students with disabilities residing within the EBRPSB's jurisdiction; provide training regarding prohibitions against retaliation by the EBRPSB against individuals for opposing an act or policy that is unlawful under any of the laws that OCR enforces or otherwise asserting rights protected by the laws that OCR enforces; provide training concerning processing, investigating and resolving complainants or other reports of harassment based on disability; provide training regarding the obligation under Section 504 and Title II to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford qualified students with a disability an equal opportunity for participation in such services; review and if necessary revise its policies, procedures, and practices at the RDC for distributing IEPs/Section 504 plans to teachers and staff members; reaffirm in writing to students, staff, and parents its obligation to address incidents of harassing conduct based on disability and the prohibitions against retaliation; convene a group of knowledgeable persons to assess the appropriateness of compensatory and or remedial services with respect to individual identified

¹ For complaint numbers 06171533, 06181232, 06181381, and 06191043, the Agreement contains two parts: one part concerning all complaint numbers referenced above and a second part concerning specified individual complaint numbers.

student(s); conduct an evaluation of individual identified student(s), pursuant to Section 504 and Title II; complete an investigation into all allegations of disability-based harassment of individual identified student(s) and provide the respective complainant(s) notice of the outcome of the investigation(s); affirm in writing that the District will provide nonacademic and extracurricular services and activities, in such manner as is necessary to afford the identified student(s) an equal opportunity to participate; complete review, and if necessary, revision of identified individual student grade report(s); and rescind and clarify indications in a previous identified EBRPSB letter. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding the above indicated complaints. However, OCR will actively monitor the EBRPSB implementation of the Agreement to ensure compliance with Section 504 and Title II with regard to the issues investigated.

This concludes OCR's investigation of the above indicated complaints and 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 individual OCR cases. 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. Please also note that the complainants may have the 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, complainants 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, you may contact Michael J. Pillera, Civil Rights Attorney, at 214-661-9614 or by email at Michael.Pillera@ed.gov, or Paul Edward Coxe, Supervisory Attorney/Team Leader at 214-661-9608 or by email at Paul.Coxe@ed.gov.

Sincerely,

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

Enclosure

cc: XXXX XXXX, Esq., XXXX XXXX for the EBRPSB (via email at XXXX);
XXXX XXXX XXXX, Esq., XXXX for the EBRPSB (via email at XXXX)