



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

VIA MAIL

VIA EMAIL (bgotta@neisd.net)

Brian G. Gottardy, Superintendent
North East Independent School District
8961 Tesoro Drive
San Antonio, TX 78217

Re: OCR Complaint No. 06-17-1042

Dear Dr. Gottardy:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint for resolution. On October 13, 2016, OCR received the complaint, which the complainant filed against North East Independent School District (District), in San Antonio, Texas. The complainant alleged that the District discriminated against his XXXX (Student) on the basis of disability. He also alleged retaliation.

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 the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit 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 certain public entities, including public elementary and secondary education systems. The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the provision against retaliation under Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 C.F.R. Part 100. Title II also has a provision prohibiting retaliation at 28 C.F.R. § 35.134. The District is a recipient of Federal financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

Based on the complainant's allegations, OCR opened for investigation the following legal issues:

1. Whether the District discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services despite having notice that, because of the Student's alleged disabilities, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education during the 2016-2017 school year, in

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

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;

2. Whether District discriminated against the Student on the basis of disability when a District police officer inappropriately restrained the Student during 2016-2017 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively; and
3. Whether the District retaliated against the complainant and his wife by XX---phrase redacted---XX during the 2016-2017 school year, because the complainant and his wife alleged that the District discriminated against their children based on disability, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

During its investigation, OCR reviewed information that the District and the complainant provided. Prior to the completion of OCR's investigation, the District informed OCR that it was interested in resolving the complaint allegations through a voluntary resolution agreement. Section 302 of OCR's *Case Processing Manual* 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 allegation. The provisions of the resulting voluntary resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the District's request to resolve the complaint prior to the conclusion of the investigation.

The District voluntarily submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the District sent the signed the Agreement to OCR on April 7, 2017. OCR has determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolves them. Further, OCR accepts the Agreement as an assurance the District will fulfill its obligations under Section 504 and Title II with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the District's implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

This letter sets forth OCR's determination in the individual OCR case identified above. 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 be advised 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 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 cooperation extended to OCR in our efforts to resolve this complaint. If you have any questions regarding this letter, please contact Katherine Fearn, the attorney assigned to the matter, at (214) 661-9654 or katherine.fearn@ed.gov. You may also contact Melissa Huling Malonson, the Team Leader, at (214) 661-9600 or at melissa.malonson@ed.gov.

Sincerely,

/s/

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

cc: XXXX XXXX XXXX, XXXX XXXX
(XXXX)