



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

January 9, 2019

VIA MAIL
VIA EMAIL (XXXX)

Christie Whitbeck, Superintendent
Bryan Independent School District
801 S. Ennis St.
Bryan, TX 77803

Re: OCR Complaint No. 06-17-1234

Dear Superintendent Whitbeck:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which OCR received on December 19, 2016, and which the complainant filed against the Bryan Independent School District (Bryan ISD or District), in Bryan, Texas. The complainant alleged that the District discriminated against XXXX XXXX (Student) on the basis of disability.

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. The District is a recipient of Federal financial assistance from the Department and is a covered public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

OCR investigated the following issues:

1. Whether Bryan ISD discriminated on the basis of disability during the 2016-2017 school year when it failed to provide the complainant notice of procedural safeguards following a Section 504 evaluation meeting in September 2016, in violation of Section 504 and Title II, at 34 C.F.R. § 104.36, and 28 C.F.R. § 35.130, respectively; and
2. Whether Bryan ISD 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., XXXX XXXX XXXX XXXX)

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

XXXX XXXX/XXXX and placing responsibility on the Student to secure his accommodations), and thereby denied the Student a free appropriate public education during the 2016-2017 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.

During this investigation, OCR reviewed information that the complainant and the District submitted. OCR also interviewed the complainant. OCR provided the complainant the opportunity to rebut the District's position; however, the information provided did not alter OCR's determination.

I. Issue 1 (Alleged Failure to Provide Procedural Safeguards):

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. Based on OCR's careful review and analysis of the information obtained, we have determined that there is insufficient evidence to support a finding of noncompliance as to Issue 1. The basis for this determination is set forth below.

A. *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 free appropriate public education (FAPE) to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations, at 34 C.F.R. § 104.36, state that:

[a] recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

The regulations implementing Section 504, at 34 C.F.R. § 104.36, state that compliance with the requirements of the Individuals with Disabilities Education Act (IDEA) is one way to satisfy the procedural safeguards requirements of Section 504. The regulations implementing the IDEA, at 34 C.F.R. § 300.504, specify that parents must receive a copy of the procedural safeguards once per school year, except that a district must also provide a copy upon initial referral or parent request for evaluation, upon receipt of the first state complaint of the school year, upon receipt of the first due process complaint of the school year, in accordance with discipline procedures, and upon a parent's request.

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.

B. Findings of Fact:

The complainant alleged that the District failed to inform him of standards and communications he believes are required by law regarding the Student's Section 504 plan accommodations during the 2016-2017 school year. The parties do not dispute that the Student was a XXXX grader at the District's Bryan High School during the 2016-2017 school year.

OCR reviewed documentation showing that the Student's Section 504 committee met to review the Student's accommodations on XXXX XXXX, XXXX, XXXX XXXX, XXXX, and XXXX XXXX, XXXX, including meeting notices and Section 504 plans from those meetings. OCR also reviewed receipts that the Student's XXXX signed, acknowledging that she received a copy of the Notice of Parent and Student Rights Under Section 504 (Notice) on XXXX XXXX, XXXX, and XXXX XXXX, XXXX, along with the copies of the Notice that she received on those dates. The Notice states, in relevant part:

- “You have the right to notice prior to any action by the district in regard to the identification, evaluation, or accommodation plan of your child.”
- “You have the right to examine relevant records.”
- “You have the right to an impartial hearing with respect to the District's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney, if desired.”
- “If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction.”

OCR provided the complainant the opportunity to rebut the District's position during a telephone conference on December 10, 2018. During the call, the complainant took issue with the fact that the District notified XXXX XXXX (the Student's XXXX) of Section 504 meetings via email. The complainant also expressed his belief that the District had to provide ten days' notice of meetings.

C. Analysis:

The evidence shows that the Student's XXXX received a copy of the Notice containing the procedural safeguards on XXXX XXXX, XXXX, and XXXX XXXX, XXXX, in connection with Section 504 meetings that occurred on those dates. During the time period at issue in this complaint, there was one additional Section 504 meeting—on XXXX XXXX, XXXX—for which the Student's XXXX did not receive a Notice.

OCR concludes that the Notice satisfies the requirements of Section 504. The evidence does not indicate that any of the triggers to provide procedural safeguards set forth in the IDEA occurred between XXXX XXXX, XXXX, and XXXX XXXX, XXXX. Section 504 does not prohibit districts from notifying parents of meetings via email or require ten days' notice of meetings.

In light of the fact that the District provided a copy of the Notice at least once during the 2016-2017 school year, OCR cannot determine that the District failed to meet its obligations with respect to notifying the Student's parent of procedural safeguards. OCR therefore has insufficient evidence to find a violation of the applicable laws and regulations with respect to Issue 1.

II. Issue 2 (Alleged Failure to Implement):

Prior to the completion of OCR's investigation as to Issue 2, the District informed OCR that it was interested in resolving the complaint. 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 it. The provisions of the resulting 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 as to Issue 2 prior to the conclusion of the investigation.

The District submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the District's representative signed the Agreement on January 9, 2019. 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. 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.

III. Conclusion:

In conclusion, based on the above findings of fact, and under a preponderance of evidence standard, OCR concludes that there is insufficient evidence to find that the District violated Section 504 or Title II as alleged with respect to Issue 1. OCR therefore will take no further action regarding Issue 1. OCR has approved the District's request to resolve the complaint prior to the conclusion of the investigation as to Issue 2.

This determination 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 a 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, the complainant may file another complaint alleging such treatment.

The complainant has a right to appeal OCR’s determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 or concerns regarding this matter, you may contact the attorney investigator assigned to this case, Katherine Fearn, by telephone at (214) 661-9653 or by email at katherine.fearn@ed.gov, or you may contact me at (214) 661-9600.

Sincerely,

/s/

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

Enclosure

cc: XXXX XXXX XXXX, XXXX, XXXX XXXX
(XXXX)

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