



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

Mr. Charles Dupre, Superintendent  
16431 Lexington Boulevard  
Sugar Land, TX 77479

RE: OCR Complaint #06-17-1297  
Fort Bend ISD

Dear Superintendent Dupre,

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Fort Bend Independent School District (FBISD or the District). The Complainant alleged that the FBISD discriminated against [XXXX XXXX] (the Student) on the basis of disability. Specifically, the Complainant alleged the following:

1. The FBISD did not evaluate the Student until [XXXX] 2016, after the Student missed [XXXX] school [XXXX] due to [XX---phrase redacted---XX], even though the FBISD had known the Student was [XXXX] since [XXXX XXXX], and as a result the Student suffered academically [XX---to end of sentence redacted---XX].
2. A nurse at [XX---phrase redacted---XX] harassed the Student by asking teachers to ensure the Student's [XX---phrase redacted---XX] when the Student requested [XX---phrase redacted---XX] by [XXXX] the Student's [XX---to end of sentence redacted---XX].

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 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 based on disability. OCR also enforces 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 prohibit public entities from discriminating on the basis of disability.

The FBISD is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR has jurisdictional authority to process 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.*

## **Issue Investigated**

Based on the complainant's allegation, this office investigated the following issues:

1. Whether the FBISD discriminated against the Student on the basis of disability by failing to timely evaluate the Student's need for regular or special education and related aids and services until [XXXX] 2016, 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 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 the FBISD discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by FBISD staff members (e.g., [XXXX] nurses), which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2016-2017 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.

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 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 the course of this investigation, OCR analyzed FBISD policies and procedures for discrimination against students with disabilities, documents pertaining to the Student's disability, including the Student's Section 504 plan, the Student's academic record, and copies of any correspondence or complaints filed by the Complainant or the Student about the Student's treatment from FBISD nursing staff.

Based on OCR's careful review and analysis of the information obtained, we have determined that there is sufficient evidence to establish that FBISD violated Section 504 or Title II with respect to Issue 1, but there is insufficient evidence to establish a violation with respect to Issue 2. The bases for these determinations are set forth below.

### **Issue 1**

#### **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’ evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student’s initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special education or related services. As a result, OCR applies a “reasonableness” standard to determinations regarding the timeliness of evaluations. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options . . . .

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 FBISD failed to evaluate the Student for a 504 plan until [XXXX XXXX]. The Complainant stated that doctors first diagnosed the Student as [XXXX] in [XXXX XXXX] and FBISD received annual “school packets” from physicians detailing the Student’s specific [XXXX XXXX] and [XXXX XXXX XXXX] needs at the beginning of every school year from [XXXX XXXX] through the current 2016-2017 school year. The Complainant confirmed the Student was enrolled in FBISD schools through this entire period, first at [XX---phrase redacted---XX], then, and currently at [XXXX]. The Complainant indicated that FBISD did not evaluate the Student until [XXXX] 2016 after the [XXXX]-related absences and [XXXX] subsequent request for an evaluation, and that FBISD devised a 504 plan which included accommodations for the Student at that time.

In response to OCR’s data requests, the FBISD produced copies of all the Student’s school packets submitted at the beginning of each school year from 2009-2010 through the current 2016-2017 school year. OCR’s review of these school packets revealed that they contained important medical information on the diagnosis of the Student’s [XXXX XXXX], including instructions on how to identify medical concerns with the Student, how to treat the Student when [XX---phrase redacted---XX], and a descriptive list of [XX---to end of sentence redacted---XX]. FBISD did not

produce any documents indicating that an evaluation occurred for the Student between the date of the first school packet, on [XXXX XXXX XXXX], and the 2016-2017 school year.

Email correspondence revealed the Complainant first notified FBISD via [XXXX] employees that [XXXX] wanted the Student evaluated for a 504 plan on [XXXX], [XXXX XXXX] after the 2016-2017 school year began. On [XXXX XXXX XXXX], an [XXXX] administrator scheduled an initial Section 504 meeting on [XXXX XXXX XXXX]. Following the [XXXX XXXX XXXX] meeting, [XXXX] notified the Student's teachers of interim accommodations the Student would receive during [XXXX] 504 evaluation period. The accommodations included a stipulation that the Student could [XXXX XXXX] if [XX---phrase redacted---XX] but that the Student must be allowed to [XX---phrase redacted---XX], that the Student would take exams one page at a time [XX---phrase redacted---XX], and provided 24 additional hours to complete assignments if the Student [XX---to end of sentence redacted---XX]. These accommodations went into effect [XXXX XXXX] after the Complainant's request for a 504 evaluation. Documents show the Student's initial 504 plan went into effect on [XXXX XXXX XXXX], 44 days after the Complainant's initial request and 35 days after the initial meeting that produced interim accommodations. The Student's first 504 plan,<sup>1</sup> dated [XXXX XXXX XXXX], included all of the interim accommodations plus an additional accommodation allowing the Student to [XX---to end of paragraph redacted---XX].

In a supplementary written response to OCR, FBISD explained to OCR that the complete list of meetings to determine the Student's eligibility for a 504 plan and/or an IEP was four meetings that occurred during the 2016-2017 school year, beginning on [XXXX XXXX XXXX]. FBISD confirmed that no meetings to determine the Student's eligibility for a 504 plan occurred prior to [XXXX XXXX XXXX].

OCR interviewed two FBISD employees as part of this investigation: the [XXXX XXXX XXXX] (RN) and the [XX---phrase redacted---XX] (LVN).

The RN informed OCR that [XXXX] has known the Student since [XXXX] first enrolled at [XXXX] as a freshman student in the 2014-2015 school year and has known the Student was [XX---phrase redacted---XX]. The RN added that the Student has had [XX---to end of sentence redacted---XX]. In OCR's interview with the LVN, [XXXX], too, acknowledged that [XXXX] has known the Student since [XXXX] freshman year and has known about [XX---to end of paragraph redacted---XX].

OCR contacted the Complainant on April 18, 2017 and offered [XXXX] the opportunity to provide additional information regarding [XXXX] complaint allegations. The Complainant restated that the FBISD never once offered to evaluate the Student prior to [XXXX] 2016, dating back to the Student's initial [XXXX] diagnosis before the [XXXX XXXX] school year.

## Legal Analysis

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<sup>1</sup> The Student received a revised 504 plan on [XXXX XXXX XXXX].

Based on the information above, OCR has determined there is sufficient evidence to find a pattern of continuing discriminatory practice from FBISD against the Student in violation of Section 504 and Title II. OCR found that FBISD first received actual notice of the Student’s disability in the form of a school packet from a licensed physician in [XX---phrase redacted---XX] school year. Further, OCR found that FBISD received the same type of school packet for the Student on an annual basis at the beginning of each subsequent school year, from [XXXX XXXX] until the current 2016-2017 school year. Each school packet contained a diagnosis of the Student’s [XXXX XXXX] and offered details on [XXXX XXXX] and [XXXX] needed [XXXX].

The evidence indicates the Student was entitled to an evaluation under Section 504, beginning in [XXXX XXXX], to determine whether the Student was a qualified individual with a disability and, if so, whether the Student needed special education or related services. Despite having notice of the Student’s disability, FBISD did not evaluate the Student to determine [XXXX] eligibility for accommodations pursuant to Section 504 until [XXXX] 2016 – [XXXX] years after FBISD first received notice. Thus, OCR determined there is sufficient evidence to indicate the District is in violation of Section 504 and Title II with respect to Issue 1.

## **Issue 2**

### **Legal Standard**

Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. According to OCR policy, a violation of Section 504 and Title II may be found if a recipient has created or fostered a disability-based hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic or written) that is based on disability and that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. Harassment must consist of more than casual or isolated incidents to create a disability-based hostile environment. Further, a determination of whether conduct is “severe” or “pervasive” must examine the gravity as well as the frequency of the harassing conduct. A recipient has violated Section 504 and Title II if it has effectively caused, encouraged, accepted, or failed to correct a disability-based hostile environment of which it has actual or constructive notice.

In order to establish a violation of Section 504 and Title II based on a hostile environment, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. Whether a disability-based hostile environment existed must be determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. To be effective, OCR does not require that a recipient’s response to harassing

conduct ensure that all future harassment or other discriminatory conduct will be prevented, but rather that the response is reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

### **Findings of Fact**

The Complainant alleged that [XXXX] nurses harassed the Student by claiming that [XXXX] was lying [XX---to end of sentence redacted---XX]. Specifically, the Complainant claimed that [XX---to end of paragraph redacted---XX].

In response to OCR’s data request, FBISD produced documents revealing that the Complainant emailed [XXXX] administrators on October 20, 2017, to note that [XXXX] had an unspecified concern about the RN. Documents indicate that the Complainant spoke with [XXXX] administrators about this concern on October 21, 2017, and on October 24, 2017, the Complainant emailed [XXXX] administrators to express [XXXX] satisfaction at the issue being resolved.

OCR’s review of the Student’s Section 504 plan revealed that the 504 plan in place during the Fall 2016 semester stated that the Student should [XX---to end of paragraph redacted---XX].

[XX---paragraph redacted---XX]

[XX---paragraph redacted---XX]

[XX---paragraph redacted---XX]

The RN denied ever verbally harassing the Student. The RN denied [XX---to end of paragraph redacted---XX].

OCR also interviewed the [XXXX] LVN. The LVN recalled one occasion where the Student asked [XX---to end of sentence redacted---XX]. [XX---sentence redacted---XX]. The LVN denied ever verbally harassing the Student and further denied telling the Student’s teachers [XX---to end of paragraph redacted---XX].

OCR contacted the Complainant on April 18, 2017 and offered [XXXX] the opportunity to provide additional information regarding [XXXX] complaint allegations. OCR asked if the Complainant recalled the names of any specific teachers whom [XXXX] believed the RN [XX---phrase redacted---XX] and [XXXX] identified two individuals: the Student’s Anatomy and Physiology Teacher (A&P Teacher) and the Soccer Teacher. The Complainant added that the A&P Teacher approached [XXXX] and spoke to [XXXX] directly about what the RN [XX---phrase redacted---XX], and that the Student overheard the RN speaking to the Soccer Teacher while in the [XXXX] clinic about the same. OCR inquired about the October 20, 2017 concern [XXXX] raised to [XXXX] administrators and [XXXX] stated the concern was the aforementioned alleged statements made by the RN [XX---to end of sentence redacted---XX]. The Complainant also alleged that the Student overheard the RN telling the LVN that the RN believed the Student [XX---to end of sentence redacted---XX].

OCR then interviewed the A&P Teacher and the Soccer Teacher. The A&P teacher stated [XX---sentences redacted---XX]. The A&P Teacher further denied ever having a conversation with the Complainant about the RN or LVN and only recalled a few conversations with the Complainant about the Student's academics and assignments.

The Soccer Teacher stated that [XX---sentences redacted---XX]. The Soccer Teacher also denied ever having a conversation in the [XXXX] clinic with the RN where the Student was present.

### **Legal Analysis**

Based on the information above, there is a significant conflict in the evidence regarding whether the Student was the target of any such conduct allegedly harassing on the basis of disability. The Complainant reported the [XXXX] nurses told the Student's teachers that they believed the Student [XX---phrase redacted---XX]; however, FBISD witnesses report that no such conduct occurred and that [XXXX] had no notice of the conduct the Complainant alleges in [XXXX] complaint. Because OCR's investigation revealed no corroborating evidence that [XXXX] nurses harassed the Student, OCR was unable to resolve this significant conflict in the evidence. Thus, OCR is unable to establish by a preponderance of the evidence that the Student was harassed by FBISD personnel, that any alleged conduct was sufficiently severe, pervasive, or persistent so as to constitute a hostile environment based on disability, or that any conduct by FBISD personnel warranted a meeting to determine if the Student's needs had changed with respect to the provision of FAPE. Accordingly, OCR has determined that the evidence is insufficient to support a conclusion of noncompliance under Section 504 and Title II with regard to Issue 2.

### **Conclusion**

Consistent with Section 303(b) of OCR's *Complaint Processing Manual* (CPM), the FBISD submitted a Resolution Agreement (Agreement) on August 8, 2017, which OCR has determined addresses the compliance concerns identified during OCR's investigation. The Agreement requires FBISD to train all school administrators, medical staff, and faculty on the requirements to evaluate under Section 504 and Title II, including identification of students and referral methods for ensuring an evaluation occurs. The Agreement requires FBISD to revise its policies and procedures for Section 504 and Title II compliance with an emphasis on identifying and evaluating students according to the Americans with Disabilities Amendments Act of 2008 (ADAAA). The Agreement also requires FBISD to conduct review of all students at [XXXX] to determine if there are students who may need an initial referral to determine need for special education or related aids and services. Lastly, the Agreement requires FBISD to conduct an evaluation of the Student to determine if there is a need for compensatory services for failing to evaluate the Student from [XXXX XXXX] until [XXXX] 2016. A copy of the Agreement is enclosed. The dates for specific actions are detailed in the Agreement.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the implementation of the Agreement by the

District to determine whether the commitments made by the FBISD have been implemented consistently with the terms of the Agreement. If the FBISD fails to implement the Agreement, as specified, OCR will resume its investigation of the above issues. If the District determines a need to modify any portion of the Agreement, the District may submit, for consideration, proposed revisions to OCR.

This concludes OCR's investigation of the complaint and should not be interpreted to address the recipient'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 file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the FBISD may not harass, coerce, intimidate, or discriminate against any individual because they have filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a 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 regarding this letter, please contact Kyle Gruber, the attorney assigned to investigate your complaint, at (214) 661-9613 or [Kyle.Gruber@ed.gov](mailto:Kyle.Gruber@ed.gov), or Timothy D. Caum, Supervisory Attorney, at (214) 661-9648 or [Timothy.Caum@ed.gov](mailto:Timothy.Caum@ed.gov).

Sincerely,

Taylor D. August  
Regional Director  
OCR Dallas Office