



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

DATE

Reference: OCR # 06171487

Mr. Larry Mynarcik, Superintendent
Bynum Independent School District
704 Toliver
Bynum, TX 76631

Dear Superintendent Mynarcik:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the investigation opened pursuant to the complaint referenced above, which was filed against the Bynum Independent School District (BISD or District) in Bynum, Texas. The Complainant alleged that the BISD discriminated against [**redacted**] (hereinafter called “the Student”) on the basis of [**redacted**] disability.

This agency is responsible for determining whether organizations 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), 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 public elementary and secondary education systems and institutions. OCR has determined that the BISD is a recipient of Federal financial assistance from the Department and is also a public entity. Therefore, OCR has jurisdiction to investigate this complaint under Section 504 and Title II.

OCR opened the following issues for investigation:

1. Whether the BISD 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., [**redacted**]), and thereby denied the Student a free appropriate public education during the [**redacted**] school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33–104.35 and 28 C.F.R. § 35.130, respectively; and
2. Whether the District discriminated against the Student on the basis of disability by failing to re-evaluate the Student’s need for regular or special education and related aids and services despite having notice that, because of alleged harassment of the Student, [**redacted**] educational needs may have changed, and thereby denied the Student a free appropriate public education during the [**redacted**] school year, in violation of Section 504 and Title II and

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their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

During the investigation, OCR reviewed documentation pertaining to the Student, including but not limited to the Student's 504 records, academic performance, internal records of communications concerning the Student's behavior, and communications between staff and the Student's parent. OCR also reviewed statements from various staff that taught the Student during the relevant time period. OCR has resolved Issue 1 through a voluntary resolution entered by the recipient prior to the conclusion of the investigation, pursuant to Section 302 of OCR's Case Processing Manual (CPM) and is dismissing Issue 2 pursuant to CPM Section 108(m). The reasons 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, 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.

Facts and Analysis

The Complainant has alleged that Bynum ISD teachers did not provide the Student with the accommodations in his 504 plan (i.e., [**redacted**]) during the 2016-2017 school year.

OCR's investigation determined that at the start of the 2016-2017 school year, the Student had a 504 plan in place which had been created the previous year by a properly composed 504 Committee. That 504 plan recognized that the Student had a disability of [**redacted**], and included among its accommodations the provision of [**redacted**]. During the [**redacted**] school year, the Student's teachers were on notice that the Student required these accommodations.

Based on the information gathered during the investigation, OCR has concerns that one of the Student's teachers may have placed the responsibility for ensuring that the Student received his accommodations on the Student himself and therefore did not receive this related aid in two classes taught by this teacher. Moreover, written information received by OCR suggests that there were a number of times that the Student did not remind the teacher to provide the necessary accommodations. For the foregoing reasons, OCR has concerns that the Student did not receive all of the agreed upon related aids and services in accordance with the requirements of Section 504 and Title II in two of his classes.

Prior to the conclusion of OCR's investigation, Bynum ISD expressed an interest in voluntary resolution of this issue, pursuant to OCR's Case Processing Manual (CPM) Section 302. On October 10, 2019 Bynum ISD entered into the attached Agreement, which adequately addresses these concerns. OCR has determined the provisions of the Agreement are aligned with this complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the Recipient will fulfill its obligations under Section 504 and Title II with respect to this issue. 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 issue. However, OCR will actively monitor the Recipient's implementation of the Agreement. Please be advised that if the Recipient fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

Issue 2

Section 108(m) of OCR's Case Processing Manual (CPM) states that OCR will dismiss an allegation where OCR is currently investigating the same or similar allegations based on the same operative facts involving the same recipient in an OCR complaint, directed investigation, or compliance review. The Complainant had alleged that Bynum ISD failed to take actions concerning reported incidents of bullying against the Student by other students in his class during the [**redacted**] school year. In [**redacted**] allegations, the Complainant did not specify on what basis the Student was experiencing bullying. The Complainant also did not state that [**redacted**] was concerned about the bullying affecting the Student's access to FAPE.

The Complainant did say that the bullying consisted of other students [**redacted**], and she emphasized that with regard to the Student's accommodations, her concern was that teachers and school staff did not ensure that the Student [**redacted**]. Based on the information provided by the Complainant, OCR concludes that the allegations that the Complainant has raised concerning students [**redacted**] are substantially similar to the allegations already opened in Issue 1, concerning the District's alleged failure to ensure that the Student [**redacted**]. For the foregoing reason, OCR will dismiss this allegation pursuant to CPM Section 108(m).

Conclusion

This letter concludes OCR's investigation of this complaint 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 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 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.

If you have any questions, please feel free to contact the attorney-investigator, Kulsoom Naqvi, by telephone at (214) 661-9640 or by e-mail at: Kulsoom.Naqvi@ed.gov. You may also contact me by telephone at (214) 661-9600.

Sincerely,

Melissa Malonson
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Attachment: Resolution Agreement