



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

Dr. Xavier De La Torre, Superintendent  
Ysleta Independent School District  
9600 Sims Drive  
El Paso, TX 79925

RE: OCR Complaint #06-18-1024  
Ysleta ISD

Dear Superintendent De La Torre,

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 Ysleta Independent School District (the District). The Complainant alleged that the District discriminated against individuals with disability (mobility impairment) by prohibiting [XXXX] from accessing a parking lot near the football stadium because of [XXXX] disability, and retaliating against [XXXX] for making a complaint about getting denied access to the parking lot.

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, 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. § 12132, and its implementing regulations, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by certain public entities.

The District is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR has jurisdictional authority to process complaints of discrimination filed against the District under Section 504 and Title II.

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

1. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because parking at the Riverside High School (the School) within the District is inaccessible to or unusable by persons with disabilities during sports events, in violation of Section 504 and Title II, at 34 C.F.R. §§104.21 - 104.23 and 28 C.F.R. §§35.149 – 35.151, respectively.
2. Whether the District retaliated against the Complainant by intentionally putting nails in the Complainant's vehicle's tires during the 2017-2018 school year,

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because the Complainant filed complaints with the District about the School not allowing [XXXX] to park in accessible parking spaces during sports events, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, 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 reviewed documentation and other information provided by the District, and interviewed relevant District personnel. Based on OCR's review and analysis of this information, we have determined that there is insufficient evidence to establish a violation with respect to issue 2. OCR has resolved issue 1 with a voluntary resolution agreement, as described more fully below.

### **Issue 1**

Prior to the conclusion of OCR's investigation, on March 27, 2018, the District informed OCR that it was interested in resolving complaint allegation 1. Section 302 of OCR's Case Processing Manual (CPM) provides that a complaint allegation may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. The provisions of the resolution agreement will be aligned with the complaint allegation or the information obtained during the investigation and will be consistent with applicable regulations. On July 19, 2018, OCR determined that a resolution under Section 302 of the CPM was appropriate.

On August 9, 2018, the District voluntarily signed a Resolution Agreement (Agreement) to resolve the complaint allegation. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with complaint allegation 1 and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the District will fulfill its obligations under Section 504 and Title II with respect to the complaint allegation addressed. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the District's implementation of the Agreement.

### **Issue 2**

#### **Legal Standard**

In order for an allegation of retaliation to be sustained, OCR must determine whether:

1. A prima facie case of retaliation can be established, which involves consideration of whether:

- a. An individual experienced an adverse action caused by the recipient; and
  - b. The recipient knew that the individual engaged in protected activity or believed the individual might engage in a protected activity in the future; and
  - c. There is some evidence of a causal connection between the adverse action and protected activity
2. The recipient identifies a facially legitimate reason for taking the adverse action other than the protected activity; and
  3. Whether the recipient’s reason is a pretext for retaliation and/or whether multiple motives exist for the recipient taking the adverse action.

If OCR does not find that a prima facie case exists, OCR will conclude that there is insufficient evidence to support a finding of retaliation. If, however, the evidence demonstrates a prima facie case of retaliation, an inference of unlawful retaliation is raised and OCR proceeds to the next stage of the analysis. To ascertain whether this inference might be rebutted, OCR will then determine whether the recipient can identify a non-retaliatory reason for its actions. If such a reason is identified, OCR’s investigation proceeds to the third stage. At the third stage, OCR examines the evidence to resolve what the real reason was (or reasons were) for the intimidation, threat, coercion, or discrimination.

### **Findings of Fact**

The Complainant alleged that the District retaliated against [XXXX] after [XXXX] made complaints about the District allegedly prohibiting [XXXX] from parking [X---phrase redacted---X] in a parking lot behind the School’s football stadium on or around [XXXX XXXX XXXX]. The Complainant is a disabled individual who uses accessible parking spaces. The Complainant alleged that District employees “intentionally” stuck nails in the tires of [X---phrase redacted---X] while it was parked at the School’s football stadium in September 2017, a week after having first made [XXXX] complaint to the District about discrimination on the basis of disability regarding the football stadium parking lot.

In response to OCR’s data request, the District produced copies of the Parent Concern Form, filed by the Complainant, dated [XXXX XXXX XXXX]. The Parent Concern Form showed that the Complainant complained of getting denied access to a parking lot at the School football stadium. The District also produced a copy of the Incident Report from the School Security Officer, dated [XXXX XXXX XXXX]. The Incident Report stated that the Complainant alleged that “unknown person(s) inserted metal nails into [X---phrase redacted---X] tire of [X---phrase redacted---X]” on [XXXX XXXX XXXX], that the Complainant found “seven nails” in the [X---redacted until end of sentence---X]. The Incident Report noted that “as of this report [on [XXXX XXXX XXXX], their [sic] has not been any witnesses that have come forward with any information on this

incident.” The District also produced a statement indicating that the School Principal conducted [XXXX] own investigation by reviewing security footage (deemed inconclusive because the camera angle did not adequately capture the parking lot in question) and questioning the School Registrar and another School employee about the alleged incident. The District’s statement indicated that the School Principal’s investigation did not find evidence the incident occurred or was committed by School personnel.

OCR interviewed the School Security Officer. The School Security Officer stated the Complainant reported the incident of someone allegedly putting nails into [X---phrase redacted---X] tires in [XXXX XXXX]. The School Security Officer reported creating a formal report based on the Complainant’s allegations. The School Security Officer stated that [XXXX] did not formally investigate the matter, but instead “kept [XXXX] ears open for anyone else reporting similar behavior.” The School Security Officer reported that no witnesses ever came forward. The School Security Officer explained that [XXXX] standard procedure for handling complaints of crimes, such as destruction of property or theft, involve [XXXX] speaking to witnesses if witnesses come forward. The School Security Officer reported that the Complainant alleged that the School Registrar and other School employees, seated at kiosks in view of [X---phrase redacted---X] in the parking lot, should have seen when the unknown person allegedly placed nails in [X---phrase redacted---X] tires. The School Security Officer reported that the Complainant did not show any visual proof of the alleged damage or the alleged repairs, and only verbally informed the School Security Officer of the alleged incident. The School Security Officer reported that [XXXX] did not find any evidence of any person, District employee or otherwise, having caused damage to the Complainant’s [X---phrase redacted---X], including, but not limited to, placing nails in the tires.

OCR interviewed the School Registrar. The School Registrar reported [XXXX] duties on a School football gameday include overseeing ticket sales, game clocks, scoreboards, calling for security or emergency medical services, and other logistical issues. The School Registrar reported observing the Complainant attempting to park in a parking lot at the School football stadium on August 31, 2017. The School Registrar reported that the Complainant approached a gate, exited [X---phrase redacted---X], removed a chain on the gate, opened the gate, returned to [X---phrase redacted---X], and drove into the parking lot. The School Registrar reported confronting the Complainant and informing [XXXX] that [XXXX] could not park in the gated lot, and must instead park in one of the pay lots. The School Registrar reported the Complainant stated [XXXX] can park anywhere [XXXX] wants without having to pay because of the Americans with Disabilities Act, but that the Complainant then left the gated parking lot, parked [X---phrase redacted---X] in another lot, and returned to the School Registrar to further complain. The School Registrar reported that [XXXX] explained to the Complainant that the parking lot in question was reserved for coaches and District administrators, and that accessible parking spaces in that parking lot are reserved for coaches and District administrators who need accessible parking. The School Registrar reported the Complainant showed up at the School football stadium for a football game on Thursday, [XXXX XXXX XXXX] one week following the prior parking incident. The School Registrar reported the Complainant parked to the right side of the ticket kiosk where [XXXX] worked on gameday. The School Registrar reported the Complainant began selling [XXXX] on school grounds, which the School Registrar explained is against school policy. The School Registrar reported that the

Cheerleading Coach confronted the Complainant and told [XXXX XXXX] could not sell [XXXX] on campus.

The School Registrar reported that the Complainant went to the School on Friday, September 8, 2017 and formally complained that the School Registrar had “slashed the tires on [X---phrase redacted---X]” the evening before. The School Registrar denied having slashed tires on the Complainant’s [XXXX], and reported [XXXX] was unaware of anyone having slashed the tires on the Complainant’s [XXXX]. The School Registrar further denied that [XXXX] stuck nails into the Complainant’s [XXXX] tires and reported [XXXX] was not aware of this allegation, only the allegation that [XXXX] slashed the Complainant’s [XXXX] tires. The School Registrar explained that [X---phrase redacted---X] was a “slow [XXXX]” and an event such as someone alleging that someone slashed a person’s vehicle’s tires would have quickly gotten to [XXXX], in [XXXX] official capacity handling security logistics.

OCR attempted to contact the Complainant multiple times to offer [XXXX] the opportunity to provide additional information regarding [XXXX] complaint allegations. OCR called the Complainant on February 28, 2018, March 1, 2018, and March 2, 2018, at the telephone number [XXXX] provided OCR. The Complainant did not respond to these attempts from OCR nor did [XXXX] contact OCR after those attempts were made.

### **Legal Analysis**

OCR must first determine whether a prima facie case of retaliation can be established. The first step is to determine whether the Complainant was subjected to an adverse action caused by the recipient. OCR found a significant conflict in the evidence. While the Complainant alleges that District employees intentionally put nails into the tires of [X---phrase redacted---X] on or around September 7, 2017, the School Security Officer reported that the Complainant offered no evidence to the District besides [XXXX] verbal allegations, such as photographs or a bill for repairs completed, that [XXXX] found nails in [X---phrase redacted---X], let alone that District employees placed the nails in [XXXX] tires. Further, the School Registrar reported that no allegations of any incident regarding the Complainant’s [X---phrase redacted---X] surfaced on September 7, 2017, when [XXXX] was seated in view of the Complainant’s [X---phrase redacted---X]. In addition, the School Principal’s investigation conducted contemporaneously with the alleged incident did not find evidence the incident occurred or that School personnel were responsible for the incident. OCR could not resolve this conflict in the evidence. A preponderance of the evidence does not establish that the Complainant experienced an adverse action caused by the recipient, and thus, OCR did not find evidence sufficient to establish a finding of noncompliance by the District under Section 504 and Title II with respect to Issue 2 of the complaint.

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 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 [XXXX] or [XXXX] 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 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 this complaint, at (214) 661-9613 or [Kyle.Gruber@ed.gov](mailto:Kyle.Gruber@ed.gov), or me at (214) 661-9638 or [Lori.Bringas@ed.gov](mailto:Lori.Bringas@ed.gov).

Sincerely,

Lori Bringas  
Supervisory Attorney/Team Leader  
Dallas Office