



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

April 2, 2018

VIA MAIL
VIA EMAIL (XXXX)

Paul Cruz, Superintendent
Austin Independent School District
1111 W. Sixth St.
Austin, TX 78703

Re: OCR Complaint Nos. 06-17-1471 and 06-18-1065

Dear Dr. Cruz:

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 complaints for resolution. The above-referenced complaints were received in our office on March 9, 2017, and October 24, 2017, respectively, and filed against the Austin Independent School District (District), in Austin, Texas. The same complainant filed both of the above-referenced complaints and alleged that the District discriminated against XXXX XXXX (Student) on the basis of disability. The complainant 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. 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 covered public entity. Therefore, OCR has jurisdictional authority to process these complaints for resolution under Section 504 and Title II.

Based on the complainant's allegations, OCR opened for investigation the following legal issues in connection with complaint number 06-17-1471:

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

1. Whether the District 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 education needs (e.g., the District failed to XX—to end of phrase redacted—XX, ensure XX—to end of phrase redacted—XX and verify that classroom materials were XXXX XXXX), 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.
2. Whether the District discriminated against the Student on the basis of his disability by failing to provide the Student with an equal opportunity to participate in nonacademic services during the 2016-2017 school year (i.e., requiring the Student to XXXX XXXX XXXX XXXX XXXX XXXX), in violation of Section 504 and its implementing regulation at 34 C.F.R § 104.37, and Title II and its implementing regulation at 28 C.F.R. § 35.130; and
3. Whether the District retaliated against the complainant (i.e., when the District’s XXXX was intimidating to the complainant during XXXX XXXX, when the District’s XXXX XXXX contacted the Student’s XXXX without the complainant’s consent and by showing bias in favor of the Student’s XXXX over the complainant during XXXX XXXX and in communications), because the complainant advocated on behalf of XXXX XXXX, in violation of Section 504 and Title II at 34 C.F.R. §104.61, and 28 C.F.R. § 35.134, respectively.

OCR opened for investigation the following legal issues in connection with complaint number 06-18-1065:

1. Whether the District 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 education needs (i.e., not allowing the Student to XX—to end of phrase redacted—XX, not allowing the Student to XX—to end of phrase redacted—XX, not providing XX—to end of phrase redacted—XX, and XX—to end of phrase redacted—XX), and thereby denied the Student a free appropriate public education during the 2017-2018 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; and
2. Whether the District retaliated against the complainant (i.e., did not allow her to be a XXXX XXXX during the 2017-2018 school year, did not allow her to be a part of the XXXX XXXX XXXX XXXX during the 2017-2018 school year, did not allow her to XXXX XXXX XXXX for a XXXX XXXX XXXX XXXX in November 2017, and showed bias in favor of the Student’s XXXX over the complainant in communications and at XXXX XXXX during the 2017-2018 school year), because the complainant advocated on behalf of XXXX XXXX based on his disabilities, 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 determined that complaint 06-18-1065 was appropriate to be resolved via OCR's Rapid Resolution Process (RRP).

During its investigations, OCR reviewed information provided by the District. Prior to the completion of OCR's investigations, the District informed OCR that it was interested in resolving the complaint allegations for both complaints through a single 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 these complaints prior to the conclusion of the investigations.

The District voluntarily submitted the enclosed Resolution Agreement (Agreement) to resolve these complaints; the District signed the Agreement on March 22, 2018. 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 these complaints. 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 these complaints. 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 cases 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 these complaints. If you have any questions regarding this letter, please contact Katherine Fearn, the attorney assigned to the matter, at (214) 661-9653 or katherine.fearn@ed.gov. You may also contact me at (214) 661-9600.

Sincerely,

/s/

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

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