



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

Dr. Thomas Randle  
Superintendent  
Lamar Consolidated Independent School District  
3911 Avenue I  
Rosenburg, TX 77471

OCR Ref. No. 06181535

Superintendent Randle:

The United States Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of your complaint, which received by our office on [redacted], and filed against the Lamar Consolidated Independent School District (LCISD), in Rosenberg, Texas. OCR determined that the Complainant alleged that the Student was discriminated against on the basis of national origin. Specifically, the Complainant alleged that one of the Student's teachers refused to reteach and reassess the Student, as required by LCISD policy, for assignments that [redacted] failed in [redacted]. The Complainant also alleged that LCISD discriminated against the Student on the basis of disability, by assigning the Student in-school suspension during [redacted], and placing the Student in an alternative learning center during [redacted]. The Complainant felt that this was discriminatory because the Student had [redacted], and therefore the school should have employed other means to address his behavior.

Based on these allegations, OCR opened the following issues for investigation:

1. Whether the LCISD treated the Student differently on the basis of national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason, and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities or privileges provided by Lamar CISD during the [redacted], in violation of Title VI, at 34 C.F.R. § 100.3 when:
  - a. One of the Student's teachers did not re-teach the Student, as required by LCISD policy, when he failed an assignment in [redacted].
  - b. One of the Student's teachers did not permit the Student to retake tests, as required by LCISD policy, when he failed a test in [redacted]
2. Whether the LCISD discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services despite having notice that the Student needed or was believed to need such aids and services due to his alleged disabilities, 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 and 104.35, and 28 C.F.R. § 35.130, respectively.

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

This agency 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 regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation 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, including public elementary and secondary educational institutions. In addition, OCR 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 the Department are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. 100.3, which prohibit discrimination on the basis of race, color, or national origin. LCISD is a public entity and a recipient of federal financial assistance. Therefore, OCR has jurisdiction over this recipient.

During the investigation, OCR obtained information from the Complainant, and reviewed documentation pertaining to the Student during the [redacted] school year, including but not limited to the Student's disciplinary record, 504 records, academic performance, internal records of communications concerning the Student's behavior, and communications between staff and the Student's parent. OCR also conducted interviews with relevant witnesses, and reviewed documentation from the Student's parent. OCR provided the complainant the opportunity to rebut the District's position; however, the information that the complainant provided did not alter OCR's determination.

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 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, with respect to Issue 1, there is insufficient evidence to establish that the LCISD violated Section 504/Title II. However, OCR has agreed to resolve Issue 2 via a Resolution Agreement with the District. The reasons for these determinations are set forth below.

### **Issue 1**

The Title VI implementing regulations, at 34 C.F.R. § 100.3(b)(1), prohibit recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's race. In considering allegations that a recipient has discriminated on the basis of race, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent).

Absent direct evidence that a recipient discriminated on the basis of race, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of racial discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another race. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for racial discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

### Findings of Facts & Analysis

The Complainant alleged that the Student's [redacted] teacher (Teacher) refused to reteach and reassess the Student, as required by a LCISD policy, for assignments that [redacted] failed in [redacted]. The Complainant believed that the LCISD treated the Student differently in this way (i.e. refusing to reteach and reassess him) because of his national origin ([redacted]). OCR's investigation revealed that the LCISD has a policy which requires all teachers to provide students with corrective instruction and a reasonable opportunity to reassess failure to master TEKS on major grades. "Major grades" are assessments of complex assignments, typically requiring one to five days to complete, and for which students receive advanced notice. The highest possible grade for such reassessment is a 70. Local exams, minor grades, district exams, compositions, and student projects are not subject to reassessment. The Student handbook indicated that grades of 69 and below constituted an "F."

OCR's investigation showed that the Student was enrolled in the [redacted] grade at Adolphus Elementary School at the commencement of the [redacted] school year. The Student was transferred into the teacher's class in [redacted]. OCR determined that the Student's national origin was [redacted].

Evidence indicates that this teacher did provide re-teaching and reassessment opportunities to students in class who had failed major assignments. However, OCR's review of the Student's grades in [redacted] during [redacted] failed to yield any evidence of a major grade in which the Student scored less than a 70, which would have necessitated a reassessment. The Student's major grades ranged from [redacted] during this time period in the Teacher's classes. In addition, OCR has not reviewed any evidence of any other students in the Student's [redacted] classes during this time period that were permitted an opportunity for re-teaching and reassessment on minor assignments, or on major assignments on which they scored a 70 or above. As such, consistent with the LCISD policy, OCR determined that the Student was not entitled to re-teaching or re-testing because he never scored below a 70 on a major assignment and therefore was not treated differently.

Based on the foregoing, OCR has insufficient evidence to demonstrate that the Student was discriminated against by being denied the benefit alleged by the Complainant in this matter. Accordingly, OCR has insufficient evidence to find a violation of Title VI on this basis.

## **Issue 2**

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' 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. Where a student who has not previously been identified as disabled receives discipline that constitutes a significant change in placement, OCR expects that the student be provided with due process procedures associated with discipline for students with disabilities if the recipient knew or should have known that the student was disabled prior to the misbehavior.

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 Facts*

OCR's investigation determined that at the time of the [redacted] school year, the Student had been enrolled at the Adolphus Elementary School for [redacted]. Prior to the commencement of the school year in question, the Student received interventions during the [redacted] school years. The LCISD also created a Behavior Intervention Plan (BIP) for the Student, which was in place during the school year in question. Both the RTIs and BIP were responses to [redacted]; OCR has obtained no evidence that these efforts were intended to address any medical diagnoses. The Student did not receive these interventions pursuant to Section 504 procedures or any other formal special education processes.

OCR obtained evidence, which also indicated that the LCISD disciplined the Student repeatedly and often during the school year for actions which demonstrated [redacted]. However, the LCISD did not refer the Student for an evaluation until [redacted], at the parent's request, after he was referred for his behavior to the disciplinary alternative school. The LCISD ultimately determined that the Student did qualify for Section 504 related aids and services due to diagnoses of [redacted].

OCR identified concerns regarding whether or not the LCISD knew or should have known to refer the Student for a Section 504 evaluation.

Prior to the conclusion of OCR's investigation, Lamar CISD expressed an interest in voluntary resolution of this issue, pursuant to OCR's Case Processing Manual (CPM) Section 302. On July 9, 2019 Lamar CISD 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.

This concludes OCR's investigation of the complaint and should not be interpreted to address the LCISD'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. Please also note that the Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination concerning Issue 1 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or fax. In the appeal, the Complainant must explain why they believe the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would result in a different finding; failure to do so may result in dismissal of the appeal.

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, such individuals 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, 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 me by telephone at (214) 661-9640 or by e-mail at [kulsoom.naqvi@ed.gov](mailto:kulsoom.naqvi@ed.gov). You may also contact me at (214) 661-9600 or [melissa.malonson@ed.gov](mailto:melissa.malonson@ed.gov).

Sincerely,

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

CC: Liz Mylin, Rogers, Morris & Grover LLP, Counsel for Lamar CISD, via email at  
[lmylin@rmgllp.com](mailto:lmylin@rmgllp.com)