



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN STREET, SUITE 1620
DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

XXXXXXXX XX, XXXX

Dr. John W. Frossard, Superintendent
Beaumont Independent School District
3395 Harrison Avenue
Beaumont, TX 77706

RE: OCR Complaint Number 06-18-1719
Beaumont Independent School District

Dear Dr. Frossard:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, received on XXXX XXXX, XXXX filed against the Beaumont Independent School District (BISD or District), Beaumont, Texas. The complainant alleged that the District discriminated against a student (the Student) based on his disability.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipients), or from an agency that has delegated investigative authority to the 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, 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 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 public entities. Section 504 and Title II also prohibit retaliation. The BISD is a recipient and a public entity. Thus, OCR has jurisdiction to resolve this complaint pursuant to Section 504 and Title II.

OCR opened the following legal issues for investigation:

1. Whether the District discriminated on the basis of disability during XXXX-XXXX school year when it failed to provide the Student notice of procedural safeguards (e.g., failed to provide notice of a XXXX XXXX Section 504 meeting and failed to provide

notice of an updated Section 504 plan), in violation of Section 504 and Title II, at 34 C.F.R. § 104.36, and 28 C.F.R. § 35.130, respectively.

2. 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 educational needs (e.g., XXXX XXXX and XXXX XXXX XXXX XXXX XXXX XXXX XXXX) and thereby denied the Student a free appropriate public education (FAPE) during the XXXX – XXXX school year and XXXXXX XXXX Term, in violation of Section 504 and Title II, at 34 C.F.R. § 104.33, 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 that it is more likely than not that unlawful discrimination occurred). Where 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 law.

OCR’s investigation of this complaint included a careful review of information gathered through written documentation provided by the complainant and the District. Regarding Issue 1, prior to the conclusion of OCR’s investigation, the District voluntarily entered into a Resolution Agreement (Agreement) which, when fully implemented, resolves Issue 1. Regarding Issue 2, OCR determined there is insufficient evidence to support a finding of noncompliance by the District under Section 504 or Title II. The basis for OCR’s determination is outlined below.

Issue 1

OCR reviewed data and information provided by the District. Documents reviewed by OCR revealed, a record showing that the District sent notice to the Student and/or complainant on XXXX XXXX, XXXX regarding the scheduling of a Section 504 meeting for XXXX XXXX, XXXX. The records also show a 504 plan was updated on XXXX XXXX, XXXX. Regarding notice of procedural safeguards and the provision of a copy of an updated Section 504 plan, the District informed OCR that some information and records are not readily available or verifiable as XXXX XXXX XXXX XXXX XXXXXXXXXXXX XXXXXXXXXXXX involved are no longer employed by the District. On XXXX XXXX, XXXX, the District informed OCR that it was interested in resolving Issue 1 prior to the conclusion of OCR’s investigation. Section 302 of OCR’s Case Processing Manual (*CPM*) provides that a complaint 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 allegations or the information obtained during the investigation and will be consistent with applicable regulations. On XXXX XXXX, OCR determined that a resolution under Section 302 of the CPM was appropriate.

On XXXXXXXX XXXX, XXXX, the District voluntarily signed the Agreement. A copy of the Agreement is enclosed. OCR determined that the provisions of the Agreement are aligned with the complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance the District will fulfill its obligations under Section 504 and Title II with respect to the complaint allegation. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the District’s implementation of the Agreement. If the District fails to implement the Agreement, OCR will resume enforcement activities with respect to Issue 1.

Issue 2

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.

Findings of Fact

The complainant alleged that the District failed to provide the Student XXXX XXXX and XXXXXXXX XXXX XXXX XXXX XXXX XXXX during the XXXX-XXXX school year and XXXX XXXX Term. OCR reviewed data submitted by the District. OCR’s review of the Student’s 504 plan indicates it does not include the accommodation of “XXXX XXXX and XXXX XXXX XXXX.” During OCR’s XXXXXXXX, XXXX clarification call with the

Student and complainant, the Student informed OCR that the District has provided XXXX XXXX and XXXX XXXX the past two school years.

The investigation also revealed that the District conducted a Section 504 hearing with an impartial hearing officer on XXXX XX, XXX to consider whether the Student was provided all of his Section 504 accommodations on the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX exams. After hearing evidence and considering the discussion and documents provided by the District and on behalf of the Student, the Hearing Officer ruled that there was no credible evidence that the Student’s accommodations were not provided for the XXXX XXXX XXXX XXXX exams and that the accommodations were not also provided at other administrations.

On XXXX XXXX XXXX, OCR contacted the Complainant to provide XXXX the opportunity to rebut information provided by the District. The Complainant did not offer any rebuttal information.

Analysis

OCR’s review indicates that the Student was evaluated by a group of persons knowledgeable about the Student (504 committee) and the information considered in accordance with Section 504 requirements. The 504 committee determined that the Student is a qualified individual with a disability and established a 504 plan for the Student, however, the 504 plan did not include the accommodation of “XXXX XXXX and XXXX XXXX XXXX.” Based on the information and documentation regarding whether the placements, aids, and services identified by the District as necessary to meet the student’s individual needs were or are being provided, while the complainant alleged the 504 plan provided for “XXXX XXXX and XXXX XXXX XXXX”, as noted above, OCR’s review indicates such an accommodation was not a part of the Student’s 504 Plan. As further noted above, regarding implementation of the Student’s 504 Plan with respect to XXXX XXXX XXXX testing, the Hearing Officer ruled that there was no credible evidence that accommodations were not provided. OCR’s review of the District’s due process proceeding indicates there was a comparable resolution process pursuant to legal standards acceptable to OCR. Thus, OCR finds insufficient evidence to support a conclusion of noncompliance under Section 504 and Title II with respect to Issue 2.

OCR is closing this complaint effective the date of this letter. This letter is not intended, nor should it be construed, to cover any other matters that are not specifically 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 individual may file another complaint alleging such treatment.

Regarding issue 2, the complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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, you may contact Marvin Macicek, the investigator assigned to the complaint, by phone at (214) 661-9636, or by email at marvin.macicek@ed.gov. You may also contact me at (214) 661-9648, or by email at timothy.caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
Dallas Office