



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

December 19, 2018

Re: OCR Docket #06181803

Dr. Joe Alcorta, Superintendent
Dalhart Independent School District
701 East 10th
Dalhart, Texas 79022

Via first class mail and e-mail (joe.alcorta@dalhartisd.org)

Dear Dr. Alcorta,

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint which was received in our office on July 31, 2018, and filed against the Dalhart Independent School District (DISD), in Dalhart, Texas. The Complainant alleged that the DISD discriminated against her daughter (Student) on the basis of disability.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipient), 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), 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The DISD is a recipient and public entity. Therefore, OCR has jurisdiction to resolve this complaint under Section 504 and Title II.

OCR opened the following legal issues for investigation:

1. Whether the DISD 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., failing to implement the Student's XX---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.

2. Whether the DISD discriminated against the Student on the basis of disability by failing to properly evaluate the Student’s need for regular or special education and related aids and services despite having notice that, because of the Student’s alleged disabilities, the Student needed or was believed to need such aids and services, 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 104.35, 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 to prove that a particular proposition is more likely than not). 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.

In reaching our determination, OCR reviewed documents provided by the DISD. In addition, OCR interviewed the Complainant and reviewed information provided by her. Regarding Issue 1, the DISD has voluntarily entered into a Resolution Agreement (Agreement) which, when fully implemented, resolves Issue 1. Regarding Issue 2, OCR found insufficient evidence to support a conclusion of noncompliance under Section 504 and Title II. OCR’s review and analysis for each issue is explained below.

Issue 1:

Whether the DISD 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., failing to implement the Student’s XX---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.

Prior to the completion of OCR’s investigation of Issue 1, the DISD informed OCR that it was interested in resolving the complaint. 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 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 DISD’s request to resolve this complaint prior to conclusion of the investigation.

The DISD voluntarily signed the enclosed Agreement on December 17, 2018, which OCR has determined addresses Issue 1 and, when fully implemented, resolves the issue. As of the date of this letter, OCR is closing the investigation of Issue 1. However, OCR will monitor implementation of the Agreement. If the DISD fails to implement the Agreement, OCR will resume enforcement activities with respect to Issue 1.

Issue 2

Whether the DISD discriminated against the Student on the basis of disability by failing to properly evaluate the Student’s need for regular or special education and related aids and services despite having notice that, because of the Student’s alleged disabilities, the Student needed or was believed to need such aids and services, 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 104.35, and 28 C.F.R. § 35.130, respectively.

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’ 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. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

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 alleges the DISD held a Section 504 meeting for the Student during the spring 2018 semester despite knowing she could not attend the meeting at that time. Documentation

obtained by OCR indicates the Student was enrolled in the Dalhart XX---phrase redacted---XX during the 2017-2018 school year. Documentation obtained by OCR indicates on XX---phrase redacted---XX Staff sent the Complainant written notice regarding a Section 504 meeting for the Student. In response to the notice, the Complainant stated she could not attend the meeting at the proposed time and asked XX---word redacted---XX staff to contact her to schedule a different meeting time. The documentation indicates the Complainant signed the Section 504 meeting notice and a document indicating she received procedural safeguards.

Documentation obtained by OCR indicates XX---word redacted---XX Staff held the aforementioned Section 504 meeting for the Student on XX---phrase redacted---XX. The Student's Section 504 committee consisted of the Student's principal and teachers (Committee). The meeting records indicate the Complainant did not attend the meeting. According to the documentation, the Committee drew upon a variety of sources of information including, but not limited to, an educational screening, teacher information, medical information, and past information provided by the Complainant regarding the Student's disability. Documentation provided to OCR indicates the Committee determined the Student was a qualified person with a disability, and made placement decisions for the Student.

Analysis:

OCR's review indicates a group of persons knowledgeable about the Student evaluated the Student and determined that she was a qualified person with a disability. As noted above, the evidence indicates the Complainant was notified of the evaluation. Section 504 and Title II regulations do not require that the Complainant be a member of the group of persons knowledgeable about the Student evaluated. The evidence also indicates the Student's needs were determined on an individualized basis by DISD Staff during a meeting which took place in XX---phrase redacted---XX. The evidence indicates the Student was evaluated for related aids and services in accordance with all Section 504 regulatory requirements. Therefore, a preponderance of the evidence does not establish a violation of Section 504 or Title II with respect to Issue 2.

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. A complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the recipient may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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 about this letter, please contact Najwa-Monique Sharpe, the attorney assigned to investigate your complaint, at (214) 661-9642, or by e-mail at najwa-monique.sharpe@ed.gov. You may also contact me at 214-661-9648 or by e-mail at timothy.caum@ed.gov.

Sincerely,

/s/

Timothy D. Caum
Supervisory Attorney/Team Leader
OCR, Dallas Office