



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

June 20, 2019

VIA MAIL AND EMAIL

Dr. Paul Clore, Superintendent
608 College St.
Portland, TX 78374
pclore@g-pisd.org

Re: OCR Complaint No. 06-19-1114

Dear Dr. Clore:

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 complaint. The complaint was filed against Gregory-Portland Independent School District (the District), in Portland, Texas. The complainant alleged that the District discriminated against her son (the Student) on the basis of disability.

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 District is a recipient of Federal financial assistance from the Department and is a covered public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

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 compliance determination, OCR reviewed documents provided by the District and information obtained during OCR's interviews with District staff. In addition, OCR interviewed you and reviewed information provided by you. Based on our review and analysis of the information obtained, OCR has determined there is insufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to Issue 1. With respect to Issue 2, OCR approved the District's request to resolve the issue prior to the conclusion of the investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). The basis for OCR's determination is explained below.

Issue 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

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

educational needs (e.g., failing to consistently and correctly use XX---phrase redacted--XX), and thereby denied the Student a free appropriate public education during the 2018-2019 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.

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:

Evidence reviewed by OCR indicates the Student was enrolled XX---phrase redacted--XX (the School) during the 2018-2019 school year. The evidence indicates the District had previously determined the Student was a qualified individual with a disability and developed an individual education plan (IEP), which was in place at the start of the 2018-2019 school year. The evidence indicates that IEP did not include XX---to end of sentence redacted--XX. Documentation reviewed by OCR indicates the Student’s Admission Review and Dismissal (ARD) Committee met on December 7, 2018, to discuss the results of an XX---to end of sentence redacted--XX. The evidence indicates the ARD committee was comprised of persons familiar with the Student, the meaning of the evaluation data and the placement options. Evidence reviewed by OCR indicates that the ARD Committee determined the Student required XX---to end of sentence redacted--XX. The District updated his IEP accordingly.

The complainant alleged the District discriminated against the Student based on his disability by failing to consistently and correctly utilize XX---phrase redacted--XX as required by the Student’s IEP. OCR interviewed District staff members familiar with the use of the Student’s XX---to end of sentence redacted--XX. The evidence indicates that the XX---to end of sentence redacted--XX. Both Teacher A and Teacher B indicated they XX---phrase redacted--XX every day after it was added to his IEP. Documentation reviewed by OCR demonstrated each teacher kept a weekly log tracking when the Student’s accommodations were utilized, including XX---to end of sentence redacted--XX. A review of the accommodations logs support the teachers’ statements to OCR. During interviews with OCR, the two teachers explained that they were responsible for XX---to end of sentence redacted--XX at the beginning of the school day. Each teacher

indicated that if she were to be absent, the Special Education teacher would XX---phrase redacted--XX for the substitute teacher. Both teachers indicated XX---to end of sentence redacted--XX. If there was a XX---phrase redacted--XX, each teacher indicated she was familiar with how to trouble-shoot the issue and reestablish the XXXX. Each teacher indicated that XX---phrase redacted--XX were infrequent and did not result in the Student missing any instruction time, because the teacher XX---to end of sentence redacted--XX. The teachers also indicated the Student's academic progress was not impacted by these infrequent minor occurrences.

Evidence reviewed by OCR indicates that each week, the Student left his primary classroom to attend physical education, XX---phrase redacted--XX, music class and computer lab. OCR interviewed District staff, including teachers and aides, who worked with the Student in those settings. Each witness interviewed indicated Teacher A and Teacher B would XX---phrase redacted--XX when she transferred it to the responsible teacher or aide. The witnesses reported using the XX---phrase redacted--XX every day after it was implemented in the Student's IEP and having very few or no XX---to end of sentence redacted--XX. District staff indicated XX---to end of sentence redacted--XX. Each witness indicated they had been provided instructions on how to XX---to end of sentence redacted--XX. Staff indicated XX---phrase redacted--XX did not negatively impact the Student's academic progress.

On May 6, 2019, OCR contacted the complainant to provide an opportunity to respond to the information provided by the District. The complainant indicated District staff had some issues when first XX---phrase redacted--XX, and that it was a learning process. The complainant indicated that those initial issues were resolved quickly, in large part XX---to end of sentence redacted--XX. The complainant indicated that XX---to end of sentence redacted--XX. The complainant also indicated her working relationship with the District has improved with respect to meeting the Student's needs during the time since this complaint was filed.

Legal Analysis:

The evidence indicates that on December 7, 2018, 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. The evidence indicates that the Student's needs were determined on an individualized basis by a group of persons knowledgeable about the Student and the information considered. As a result of that meeting, the Student's IEP was modified to include XX---to end of sentence redacted--XX. Regarding whether the District failed to consistently and correctly implement XX---phrase redacted--XX during the Fall 2018 semester, the investigation yielded significant conflicts in the evidence. While the complainant indicated the XX---phrase redacted--XX, the District reported that the XX---phrase redacted--XX every day. As noted above, District staff also indicated that any issues XX---phrase redacted--XX were minor, infrequent and XX---to end of sentence redacted--XX. The evidence also indicated these minor occurrences did not cause the Student to miss instruction or negatively impact his academic progress. The complainant also reported that XX---phrase redacted--XX during the Spring 2019 Semester. OCR was unable to resolve this conflict in the evidence. Thus, a preponderance of the evidence did not establish that the District failed to provide regular or special education and related aids and services deemed necessary to meet the Student's individual education needs.

Issue 2:

Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the District because the interior doors (including the Student's classroom door and the doors to the cafeteria and XX---phrase redacted--XX restrooms) at XX---phrase redacted--XX (the School) are inaccessible to or unusable by persons with disabilities, 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.

During OCR’s investigation to date, OCR reviewed information provided by the complainant and the District, and conducted interviews with District staff. The evidence reviewed by OCR indicates that the School was built in 1993. At the time the school was built, the 1991 ADA Standards for Accessible Design (1991 Standards) or the Uniform Federal Accessibility Standards (UFAS) were the applicable accessibility standards. Under both the 1991 Standards and UFAS, five pounds is the maximum allowable force to push or pull open interior doors. OCR’s review of the information indicates that the identified doors require more than five pounds of force to open. Prior to the conclusion of OCR’s investigation, the District informed OCR that it was interested in resolving Issue 2 to address the above-referenced compliance concern.

Section 302 of OCR’s CPM 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 District’s request to resolve Issue 2 prior to conclusion of the investigation.

The District voluntarily signed the enclosed resolution agreement (Agreement) on June 19, 2019. OCR determined the Agreement addresses the allegation and, when fully implemented, resolves the issue under investigation. Thus, OCR is closing the investigation of Issue 2 as of the date of this letter. OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR will resume investigative activities.

Conclusion:

Based on the information above, OCR finds there is insufficient evidence to support a conclusion of noncompliance with Section 504 or Title II regarding Issue 1. This determination should not be interpreted to address the District’s compliance with any other statutory or regulatory provision or to address any issues other than those addressed in this letter. OCR approved the District’s request to resolve Issue 2 prior to the conclusion of the investigation.

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.

With respect to Issue 1, 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 or incorrect, 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 a 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 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 Stephanie Inman, the attorney assigned to investigate your complaint, at (214) 661-9651, or by e-mail at stephanie.inman@ed.gov. You may also contact me at 214-661-9648 or by e-mail at timothy.caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/ Team Leader
Dallas Office

Enclosure: Resolution Agreement

CC Via Email:
Cynthia Buechler, Attorney for the District
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