



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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TEXAS

June 2, 2020

Dr. Jami Wilson, Superintendent  
Denton Independent School District  
1307 N. Locust Street  
Denton, Texas 76201

OCR Ref # 06-19-1358  
Denton Independent School District

Dear Dr Wilson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Denton Independent School District (District), Savannah Elementary School (School). The Complainant alleged that the District discriminated against her daughter (the Student) on the basis of disability. She also alleged retaliation.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (recipients). OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District is a recipient and a public entity. Section 504 and Title II also prohibit retaliation. Thus, OCR has jurisdiction to resolve this complaint pursuant to 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. 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.

During the investigation of this complaint, OCR gathered and analyzed information and documentation provided by the District. Additionally, OCR obtained information through interviews with the Complainant and District employees. OCR determined that there is insufficient evidence to find a violation of Section 504 or Title II with respect to Issues 1, 2a and 2b below. With respect to Issue 2c below, OCR resolved the issue prior to the conclusion of its investigation pursuant to Section 302 of OCR's Case Processing Manual (CPM). The reasons for OCR's determination are explained below.

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

## Issue 1

Whether the District treated the Student differently on the basis of disability in the context of an educational program or activity (i.e., on XXXXXXXX XX XXXX, when the Student was segregated from other nondisabled students during an attendance awards party; and when the Student did not receive a snack reward as other nondisabled students) 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 the District during the 2018-2019 school year, in violation of or Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

## Legal Standard

The Section 504 implementing regulations, at 34 C.F.R. § 104.4, 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 disability. In considering allegations that a recipient has discriminated on the basis of disability, 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 disability, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of disability 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 without a disability. 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 a pretext for disability discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

## Findings of Fact

The Complainant alleged that the District treated the Student differently than nondisabled students when on XXXXXXXX XX XXXX, the Student was separated from her nondisabled peers during an attendance awards party and was not provided a party snack. The Complainant stated that when the Student and other award-recipients convened in Teacher A's classroom for the party, the Student was required to sit outside the classroom door. The Complainant also stated that while the Student's peers were provided goldfish crackers as a snack during the party, the Student was not provided any snack.

OCR's review of information indicates that the District evaluated the Student in accordance with Section 504 requirements XXX XX XXXX. The District developed a 504 Plan for the Student that included provisions to prevent the Student's exposure to food allergens, along with guidelines for emergency treatment for an allergic reaction. The Student's 504 Plan for the 2018-2019 school included the following accommodations:

1. XX---information redacted---XX.
2. XX---information redacted---XX.
3. XX---information redacted---XX.
4. XX---information redacted---XX.
5. XX---information redacted---XX.
6. XX---information redacted---XX.
7. XX---information redacted---XX.
8. XX---information redacted---XX.

OCR's review also indicated that the School hosted quarterly attendance award parties for students. District records indicate that the attendance award party for the first quarter was held in Teacher A's classroom on XXXXXXXX XX, XXXX. A total of 71 students were identified as recipients of the first quarter reward party on XXXXXXXX XX, XXXX. The 71 Students were divided into two separate classes where they watched a movie as a reward.

OCR interviewed the School Principal (Principal), who stated that the award parties were planned for the entire school year. The planning session occurred at the beginning of the school year – nine weeks in advance of the first award party. Additionally, the Principal stated students are identified once after each nine-week grading period is complete. The Principal indicated that the students are generally identified less than a week before the scheduled party.

OCR interviewed Teacher A, who stated that she did not provide the Student any XXXXXXXX XXXXXXXX during the reward party because she was aware that the Student was allergic to dairy and eggs and that the crackers included these allergens. Teacher A also stated that she took precautions to prevent the Student's exposure to any allergens by moving the Student to a seat near the classroom door and separate her from the area where other students were eating XXX XXXXXXXX. In addition, Teacher A stated that she wiped down the Student's chair and seating area with Clorox wipes. Teacher A stated that she confirmed with the Student that the Student could watch the reward movie from her seat near the door. Teacher A stated that she moved the Student away from the eating area and withheld the party snack from the Student solely to prevent the Student from suffering from an allergic reaction in accordance with the Student's 504 Plan. Teacher A stated that she did not observe the Student exhibiting any allergic reactions during the party. Nor did the Student report any allergic reaction. Teacher A stated that she was unaware the Student may have had an alternative or safe snack available to her in her homeroom because she was not the Student's regular teacher.

Teacher A indicated that there were no snacks were given to the Student because all available would have violated the Student's 504 plan.

OCR conducted a rebuttal interview with the Complainant and provided her the opportunity to respond to the information above. The Complainant confirmed that the Student did not report an allergic reaction during attendance award party. She also stated that the Student did not ask Teacher A for an alternate snack that was available in her backpack. The Complainant stated that Teacher A reacted properly by not providing the Student any XXXXXXXX XXXXXXXX and

separating the Student from others who were eating XXX XXXXXXXXX. However, the Complainant stated that the School did not take sufficient precautions to prevent the Student's exposure to allergens by instituting a campus-wide ban on XXXXX, XXXX, and XXXX, or failing to exclude the Student's allergens from the party room and providing the Student an allergen-free snack.

## **Analysis**

OCR found no direct evidence of discriminatory intent based on disability, with respect to the Student's attendance and provision of snacks at the reward party. Thus, OCR applied a disparate treatment analysis to determine whether the facts support a *prima facie* case of discrimination based on disability. Whereas the Complainant alleged that the Student was excluded from the party when she was forced to sit outside Teacher A's classroom, Teacher A reported that she never removed the Student from her classroom and instead moved the Student's seat close to the door to separate her from students who were eating XXXXXXXXX XXXXXXXXX. Thus, there was insufficient evidence to establish that the Student was treated differently than her nondisabled peers. However, the evidence shows that Student was seated apart from her nondisabled peers during the party. In addition, while the Student's nondisabled peers were provided XXXXXXXXX XXXXXXXXX during the party, the Student was not provided XXXXXXXXX or any other snack. Thus, OCR finds the evidence supports a *prima facie* case of discrimination based on disability with respect to the District's separating the Student from her peers and failure to provide her a snack during the reward party.

Because a *prima facie* case of different treatment was established, OCR considered whether the District articulated a legitimate non-discriminatory reason for the different treatment. OCR finds Teacher A's assertion that she separated the Student from her peers who were eating XXXXXXXXX XXXXXXXXX and did not provide XXXXXXXXX XXXXXXXXX to the Student to avoid exposing the Student to allergens to be legitimate and nondiscriminatory. Additionally, Teacher A was unaware that snacks were located in the Student's backpack.

OCR then considered whether the legitimate, non-discriminatory reasons identified by the District were pretext for discrimination based on disability. As noted above, the Student's 504 plan provided for preferential seating as it related to the Student's exposure to allergens. Specifically, the Student's 504 plan states the Student should be seated at a separate table or desk in class, regardless of whether students were eating in class, and at a table for students with allergies while in the cafeteria. And as noted above, the Student did not receive an alternative snack because Teacher A did not have one and she was unaware that the Student had alternative snacks in her backpack. Thus, a preponderance of the evidence does not establish that the District's legitimate, non-discriminatory reason was a pretext for discrimination based on disability.

## **Issue 2**

Whether the District retaliated against the Student when: (a) the Student received excessive punishment (required to walk laps during recess on XXXXXXXXX XX, XXXX); (b) the Student's grades were lowered in her math and science class; and (c) the District sent an email that indicated the Student's 504 Plan would not be followed on XXXXXXXXX XX, XXXX, because the

complainant advocated for the Student's needs based on disability, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

### **Legal Standard**

In order for an allegation of retaliation to be sustained, OCR must determine whether:

1. An individual experienced an adverse action caused by the recipient;
2. The recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and
3. There is some evidence of a causal connection between the adverse action and the protected activity.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

### **2 (a)**

#### **Findings of Fact**

The complainant alleged that Teacher B required the Student to walk laps during recess on XXXXXXXX XX, XXXX, as retaliation for the complainant's advocacy that began on XXXXXX, XX, XXXX, when the complainant contacted the Student's teacher about the Student's allergic condition regarding XXXXXXXX and XXXXXX. The Complainant stated that the Teacher B told her via email the Student was required to walk because she was talking in class. The Complainant acknowledged that the Student may have been talking during class but stated that she believed the Student's punishment was not justified.

OCR was unable to interview Teacher B because she is no longer an employee of the District. However, the District provided OCR a XXXXXXXXXX XX, XXXX email in which Teacher B indicated why the Student was required to walk during recess. Teacher B's email stated that classroom rules prohibited students from talking during a campus-wide practice academy. If a student violated those rules, then the student was required to walk laps during recess. Teacher B's email indicates that the Student was required to walk laps during recess because she continued to talk during practice academy, despite being told not to do so.

OCR contacted the complainant and provided her the opportunity to respond to the information above. The complainant stated that Teacher B had left the district and the complainant was no longer concerned about that incident.

#### **Analysis**

Based on a review of the information above, OCR determined that a *prima facie* case of retaliation was established. The evidence indicates that the Student suffered an adverse act when Teacher B required the Student to walk laps during recess. The evidence also indicates that the Complainant engaged in protected activity when she advocated for the Student regarding her disability on XXXXXX XX, XXXX. Because adverse act occurred within close proximity to the Complainant's engagement in protected activity, OCR inferred a causal connection between the adverse act and a protected activity.

Having established a *prima facie* case of retaliation, OCR considered whether the District articulated a legitimate, non-retaliatory basis for requiring the Student walk during recess. OCR finds Teacher B's assertion that the Student was required to walk laps because she was talking in class during the practice exam class to be legitimate and non-retaliatory.

OCR next considered whether the District's legitimate, non-discriminatory reason was pretext for retaliation. There was no evidence presented by the complainant or the district that other students were not required to walk laps for talking in class, or that the Student walked more laps than similarly situated students. Additionally, the complainant asserted that Teacher B's policy regarding talking in class involved an excessive punishment for any student. Thus, a preponderance of the evidence does not establish that the District's legitimate, nondiscriminatory reason was a pretext for retaliation.

## 2 (b)

### Findings of Fact

The Complainant alleged that the Student's grades started declining in Math and Science after she first advocated for the Student's disability rights on XXXXXX XX, XXXX. OCR received a copy of the Students records that included the Student's math and science grades for the first, second and third quarters of the 2018-19 school year.

OCR noted that the District's grading scale was as follows: 1=Beginning; 2= Developing; and 3= Meets Standard.

The Student received 3s in the math instructional topics for all grading periods through XXXX XX, XXXX. OCR's review of the Student's report cards indicated that the Student either received a 2 or a 3, in science topics. OCR's review of the Student's grades did not indicate that the Student's grades declined during the relevant timeframe.

OCR contacted the Complainant for a rebuttal interview and provided the opportunity to respond to the information above. The Complainant stated that the Student's grades were no longer a concern and provided no additional evidence to support the allegation.

### Analysis

Regarding whether the Student was subjected to an adverse action as alleged, OCR found a significant conflict in the evidence. While the Complainant alleged the Student's grades were

lowered in her math and science classes, the evidence provided by the District indicates the Student's grades did not lower during the relevant timeframe. OCR was unable to resolve this conflict. Thus, a preponderance of the evidence does not establish that the Student experienced an adverse action as alleged.

## 2 (c)

### Findings of Fact and Preliminary Analysis

The findings of fact for 2(c) are the same as those found under 2(a) and (b) above. Additionally, the Complainant stated that the District sent her an e-mail on XXXXXXXX XX, XXXX, indicating the Student's 504 plan accommodation that excluded XXXX, XXXX and XXXX would be removed effective immediately. The complainant indicated that the email was received the day before X XXXXXXX XXXXXXXXXXXXXXXXXXXX'X XXX (Party). The complainant provided the email to OCR.

OCR reviewed evidence submitted by the District that contained emails, statements and photographs from the Party, including the XXXXXXXX, XX, XXXX email sent from the Principal referenced by the Complainant. The Principal's email, in relevant part, stated:

“I am reaching out to you to inform you of a change for the XXXXXXXX party in regards to [the Student's] food allergy. After collaborating with [the] area superintendent, it has been decided that other students will be allowed to have food items that may contain identified allergens for [the Student]. I know this is a grave concern for you and wanted to ensure you were aware. Moving forward, we need to know how you would like to proceed. Would you like [the Student] to attend the party tomorrow? If she does, teachers will help monitor her. If not, we will be able to provide an alternative activity for her. Please let me know your preference.”

OCR conducted an interview with the Principal, who confirmed that he sent the email referenced above. The Principal indicated that, despite his XXXXXXXX XX email, he did not allow XXXXX, XXXX XX XXX XXXXXXXXXXX in the classroom the day of the Party. The Principal told OCR that the email was sent in error to the Complainant based on incomplete information. The Principal indicated that, after he sent the email, he reviewed some additional District policies and determined that the removal of the accommodation would have violated the Student's 504 plan. The Principal stated that he held a meeting with the Complainant the next day, before the scheduled party, indicating that the accommodation would remain. The Principal stated that he advised the Complainant that before any changes could occur to the Student's 504 plan, the 504 Committee would have to meet first and consider the proposed changes.

Prior to completing the investigation, the District informed OCR that it was interested in resolving Issue 2(c). Section 302 of OCR's CPM provides that a complaint allegation may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint allegation 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.

OCR determined that a resolution agreement is appropriate to resolve Issue 2(c). On Date May 29, 2020, the District signed a signed resolution agreement (Agreement) regarding Issue 2(c). The provisions of the Agreement are aligned with allegation 2(c) and appropriately resolves it. The dates for implementation and specific actions are detailed in the Agreement. Effective the date of this letter, OCR is closing the investigation of allegation 2c. OCR will, however, monitor the District's implementation of the Agreement.

## **Conclusion**

OCR found insufficient evidence of a violation of Section 504 and Title II with respect to Issues 1, 2a, and 2b. Additionally, Issue 2c was resolved prior to the conclusion of OCR's investigation by the enclosed Agreement pursuant to Section 302 of the CPM. This concludes OCR's investigation of the complaint and should not be interpreted to address the recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Regarding Issues 1, 2a, and 2b, 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 Issues 1, 2a, and 2b, 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 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 a 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.

If you have any questions, please contact Alex D. Coulter, the investigator assigned to this complaint, at (214) 661-9655, or by email at [alex.coulter@ed.gov](mailto:alex.coulter@ed.gov). You may also contact me at (214) 661-9648.



Sincerely,

Timothy D. Caum  
Supervisory Attorney/Team Leader  
Dallas Office