



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

November 19, 2019

Dr. Michael Hinojosa, Superintendent  
Dallas Independent School District  
9400 N. Central Expressway  
Dallas, TX 75231

OCR Complaint No. 06-19-1668

Dear Superintendent Hinojosa:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint that was filed against Dallas Independent School District (District), in Dallas, Texas. The Complainant alleged that the District discriminated against her son (the Student) based on disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability and retaliation in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities and retaliation by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public education system, OCR has jurisdiction over it pursuant to Section 504 and Title II.

OCR initiated an investigation of this complaint pursuant to OCR's Rapid Resolution Process (RRP) at Section 110 of OCR's *Case Processing Manual* (CPM). RRP is an expedited case processing approach that can be used to resolve cases in any of OCR's statutory areas. OCR considered the following issues in RRP:

1. Whether the District discriminated against the Student on the basis of disability when, on or about XXXXXXXXXXXX, the District denied the Student the opportunity to participate in a class field trip, in violation of Section 504, at 34 C.F.R. § 104.37, and Title II, at 28 C.F.R. § 35.130;
2. Whether the District discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by the Student's Teacher and peers XX---to end of phrase ---XX, which was sufficient to constitute a hostile environment, of which it had or should have had notice on or about

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

XXXXXXXXXX, in violation of Section 504 and Title II, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively.

During the investigation of this complaint, OCR spoke with the Complainant, the Student's XXXXXXXXXXXX teacher at XXXXXXXXXXXXXXXXXXXX School (Teacher), and parent witnesses. OCR also reviewed pertinent documentation provided by the District, including the Student's regular and Section 504 education files, written correspondence between the Complainant and the District, District policies and procedures pertaining to field trips and extracurricular events, District policies and procedures prohibiting harassment and discrimination of individuals based on disability, and documentation pertaining to a class field trip to XX – to end of sentence --XX. Finally, OCR provided the Complainant the opportunity to respond to information provided by the District during OCR's investigation.

Based on a careful review of the available evidence, OCR has determined that, with respect to Issue 1, the District expressed interest in resolving the complaint allegation through a voluntary resolution agreement. With respect to Issue 2, the evidence is insufficient to support a finding that the District discriminated against the Student in violation of Section 504 and Title II. OCR's investigative findings, the legal standards applied, and the bases for OCR's determinations are detailed below.

### **Issue 1**

#### *Findings*

During the 2018-19 school year, the Student was XXXXXXXXXXXX old and attended XXXXXXXXXXXX in the District. OCR learned that the Student attended a different District elementary school at the start of the 2018-19 year and transferred to XXXXXXXXXXXXXXXXXXXX sometime after the XX – to end of sentence --XX. Documentation shows that the Student is a qualified individual with a disability who requires accommodations for his disability. Specifically, records indicate that the Student was initially evaluated, pursuant to Section 504, at the start of his XX – to end of phrase --XX, when a team of individuals, including the Complainant, determined the Student required accommodations/services due to XX –to end of sentence--XX.

The Complainant alleged that the Student's XXXXXXXXXXXX class took a field trip on or about XXXXXXXXXXXX, from which the Student was excluded because, according to the Complainant, the Teacher required the Complainant to attend in order to chaperone for the Student because of his "behavioral issues." The Complainant told OCR that she was unable to attend, and thus, the Student was excluded from the trip based on the Teacher's directive. OCR's investigation to date, confirmed that the Student did not attend the field trip. The investigation also revealed conflicting information for the reason the Student did not attend.

Prior to OCR making any compliance determination as to Issue 1, the District expressed interest in resolving the allegation through a voluntary resolution agreement.

Section 110(b) of the CPM states that, "*where a recipient has indicated that it is willing to take action in the future to resolve the complaint...the complaint may be resolved by obtaining a resolution agreement, the implementation of which OCR will monitor.*" Based on the foregoing, OCR has determined that it is appropriate to resolve Issue 1 by obtaining a resolution agreement, the implementation of which OCR will monitor. On November 18, 2019, the District submitted the

enclosed signed Resolution Agreement (Agreement) to OCR. When fully implemented, the Agreement will resolve Issue 1 in the complaint.

In light of the commitments the District has made in the Agreement with regard to Issue 1, OCR finds that Issue 1 is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

This concludes OCR's investigation of Issue 1. However, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

## **Issue 2**

As to Issue 2, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance under Section 504 and Title II. OCR's investigative findings are discussed below. 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 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.

In reaching a determination on this issue, OCR interviewed the Complainant and the Teacher. OCR also reviewed documentation provided by the Complainant and the District, including written correspondence between the Complainant and the Teacher.

### *Legal Standard*

Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. According to OCR policy, a violation of Section 504 and Title II may be found if a recipient has created or fostered a disability-based hostile environment, i.e., harassing conduct (e.g., physical, verbal, graphic or written) that is based on disability and that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. Harassment must consist of more than casual or isolated incidents to create a disability-based hostile environment. Further, a determination of whether conduct is "severe" or "pervasive" must examine the gravity as well as the frequency of the harassing conduct. A recipient has violated Section 504 and Title II if it has effectively caused, encouraged, accepted, or failed to correct a disability-based hostile environment of which it has actual or constructive notice.

In order to establish a violation of Section 504 and Title II based on a hostile environment, OCR must find that: (1) a disability-based hostile environment existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment. Whether a disability-based hostile environment existed must be

determined from the totality of the circumstances, such as the frequency and/or severity of the discriminatory conduct, whether the conduct is physically threatening or humiliating, and what kind of psychological harm results from the conduct (psychological harm is not required, but is taken into account). If OCR finds that a hostile environment existed and the recipient had notice of its existence, OCR then determines whether the recipient responded appropriately by taking reasonable, timely, and effective steps to respond to the specific incidents of harassment and discrimination. To be effective, OCR does not require that a recipient's response to harassing conduct ensure that all future harassment or other discriminatory conduct will be prevented, but rather that the response is reasonably calculated to end the harassment, prevent its recurrence, and make whole any victims of the harassment.

The Title II regulation does not set a lesser standard than under Section 504. Accordingly, OCR interprets the Title II regulation to prohibit a hostile environment on the basis of disability to the same extent as is prohibited under the Section 504 regulation. Under the Title II regulation at 28 C.F.R. § 35.171(a)(3), OCR uses its Section 504 procedures to investigate Title II complaints.

### *Findings and Analysis*

The Complainant alleged that on or about XXXXXXXXXXXX, the Student was harassed by the Teacher and his peers when the Teacher allowed students XX – to end of sentence --XX. The Complainant explained that, on occasion, the Student, XX – to end of sentence -- XX. The Complainant explained to OCR that these types of behavior are manifestations of his disability, XX – to end of sentence -- XX. She also told OCR that she learned about the incident from the Student's Teacher, who told her that the Student was XX – to end of sentence --XX.

The Teacher informed OCR that during the incident in question, the students were sitting on the classroom carpet XX – to end of sentence --XX. The Teacher told OCR that this behavior was not uncommon for the Student and his 504 Plan afforded the Student an opportunity to have XX – to end of sentence --XX. According to the Teacher, the Student told her that he XX – to end of sentence --XX. The Teacher acknowledged that the Student was XX—to end of phrase --XX during the incident in question but adamantly denied that she or other students XX – to end of sentence --XX.

OCR provided the Complainant the opportunity to rebut the District's position and to provide any further information in support of her claim. The Complainant provided OCR with a text message exchange between her and the Teacher XXXXXXXXXXXX; and OCR determined that the Teacher informed the Complainant of the Student's behavior, including the Student XX – to end of sentence --XX. However, the information did not include evidence of the alleged harassing behavior by the Teacher and the Student's peers. The investigation determined that the Complainant and the Teacher often communicated XXXXXXXXXXXX regarding the Student's education, to include his behavior. OCR also found that the only other available witnesses were the Student's XXXXXXXXXXXX classmates.

Ultimately, OCR's investigation was unable to substantiate that the Student was subjected to harassment based on his disability XX – to end of phrase --XX, as alleged. The Teacher denied that the incident occurred as described by the Complainant, and the only other available witnesses at the time were XX – to end of sentence --XX. Because OCR is unable to reconcile the conflicting accounts, OCR's investigation cannot substantiate that the incident of disability harassment occurred as alleged. Therefore, OCR determined that it was unnecessary to continue on with the analysis and

that the evidence is insufficient to substantiate that the District discriminated against the Student in violation of Section 504 and Title II, with regard to Issue 2.

*Conclusion*

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 be advised 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. The complainant may have a 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 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, please contact Linda Floyd, the attorney assigned to this complaint, at (214) 661-9657, or linda.floyd@ed.gov. You may also contact me at (214) 661-9600.

Sincerely,

/s/

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

Enclosure