



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

March 4, 2020

Mr. Thad Roher, Superintendent
Friendswood Independent School District
302 Laurel Drive
Friendswood, Texas 77546

OCR Complaint No. 06-19-1855

Dear Superintendent Roher:

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 filed against Friendswood Independent School District (District), in Friendswood, Texas. The Complainant alleged that the District discriminated against XXXXX (the Student) based on disability when, during the XXXX-XXXX school year, the District failed to XX---to end of phrase---XX (i.e., XX---to end of phrase---XX). The complaint also alleged that the District retaliated against the Student when, on approximately XXXX X, XXXX, the District XX---to end of phrase---XX.

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:

Issue 1: Whether the District discriminated against the Student on the basis of disability by denying the Student a free appropriate public education (FAPE) during the XXXX-XXXX school year, when the District XX---to end of phrase---XX (i.e., XXXXXXXXXXXX) of the Student's educational needs XX---to end of phrase---XX (i.e., XX---to end of phrase---XX), in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33, 104.35, and 28 C.F.R. § 35.130, respectively; and

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 2: Whether the District retaliated against the Student during the XXXX-XXXX school year when XX---to end of phrase---XX because the Complainant advocated for the Student’s rights on the basis of disability, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

During the processing of this complaint, OCR conducted interviews with the Complainant and several District staff and administrators. OCR also reviewed pertinent documentation provided by the District, including the Student’s regular and Section 504 education files, the Student’s XX---to end of phrase---XX, written correspondence between the Complainant and the District, and the District’s policies and procedures pertaining to the evaluation of students with disabilities pursuant to Section 504 and Title II. 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 retaliated 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 – Section 504 Evaluation

The Complainant alleged that the District failed to conduct a manifestation determination review (MDR) of the Student’s behavior XX--to end of phrase---XX.

During the XXXX-XXXX school year, the Student attended XX grade at XXXXXXXXXXXXXXXX (School). Documentation shows that the Student is a qualified individual with a disability who requires specialized services/accommodations for his disability (XXXXXXXXXXXXX). A review of the Student’s XX---to end of phrase---XX during the XXXX-XXXX school year.

The District provided documentation to OCR that indicates an MDR occurred on XXX XX, XXXX. However, OCR had concerns regarding the process and procedures utilized to conduct the MDR based on a review of the documentation and OCR interviews with District staff.

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 February 21, 2020, the District submitted the enclosed signed Resolution Agreement (Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations 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 into Issue 1 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 issue 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 – Retaliation

Legal Standard

Section 504 and Title II prohibit recipients from intimidating or retaliating against individuals who engage in an activity protected under Section 504 and Title II, including complaining of discrimination based on disability, filing a disability discrimination complaint with OCR, or participating in an OCR investigation. OCR interprets the regulations it enforces to require satisfaction of the following three elements to find a *prima facie* case of retaliation:

- (1) The individual experienced an adverse action caused by the recipient; and
- (2) The recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity; 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.

Findings and Analysis

The Complainant also alleged that the District retaliated against the Student when, on approximately XXXX, XXXX, the School’s XXXXXXXXXXXX contacted the XXXXXXXX (XXXX) to XX---to end of phrase---XX. The Complainant asserted that the XXXXXXXX contacted the XXXX because of the Complainant’s continuous advocacy for the Student’s rights on the basis of his disability.

Regarding the retaliation analysis, the investigation showed that the Student was subjected to adverse action when XX---to end of sentence---XX. OCR also determined that the Complainant engaged in ongoing protected activities during the XXXX-XX school year of which the District was aware (i.e., XX---to end of phrase---XX). Thus, OCR inferred a causal connection between the adverse action (XX---to end of phrase---XX) and the protected activities referenced above. Having established a *prima facie* case of retaliation, OCR considered whether the District articulated a legitimate, non-retaliatory and non-pretextual reason for XX---to end of sentence---XX.

The weight of the evidence gathered by OCR indicates that, on approximately the morning of XXXXX, XXXX, the Student XX---to end of sentence---XX. The District reported to OCR that the Student’s XXXX led the District to conduct an extensive investigation of the matter, including XX---to end of phrase---XX. The District asserted, and the documentation reflects that, during the XXXX-XXX school year, the Student had previously XX---to end of phrase---XX, and that the XXXX

incident was the Student's XXXXXXXXX report XX---to end of phrase---XX, which was recorded in his discipline record. Documentation also reflects that the Student had not been XX---to end of phrase---XX but was instead “counseled” by the School counselor. In addition, the same XXXXX who XX---to end of phrase---XX, also counseled the Student in the XXXX-XXXX school year because the Student was involved in an incident wherein he and his friends XX --- to end of sentence ---XX.

In OCR's interview with the XXXXXXXXXX, he told OCR that the XXXX is typically contacted when a behavioral incident involves more serious matters such as XXXXXXXX, as in this case, where the Student XX---to end of sentence---XX. Ultimately, according to the School, once the XXXX became involved the XXX determined that it was necessary to XX---to end of phrase---XX once the District's investigation of the matter concluded that XX---to end of sentence---XX. XX---to end of sentence---XX.

OCR also reviewed the District's Student Code of Conduct which indicates that conduct relating to a XXXXXXXXXXXXX is considered a serious offense that warrants mandatory placement at the District's Alternative Education Placement (DAEP). Further, the District's policies include a XX---to end of phrase---XX on disciplinary matters involving serious offenses, at which point, XX---to end of phrase---XX, may take the necessary actions pursuant to the laws of the state of Texas. XX---to end of sentence---XX.

OCR determined that the weight of the evidence supports that the District's reasons for its actions were legitimate. OCR carefully considered whether there was any evidence that the District's explanation was a pretext for discrimination. OCR found that the District did not deviate from its standard response when it responded to the Student's XX---to end of phrase---XX. OCR also found that the District took the same action with another student (Student A), who was non-disabled, and whose conduct was found to constitute XX --- to end of sentence ---XX. Specifically, the District contacted XXXXXX for assistance in the incident with Student A who allegedly XX---to end of phrase---XX. Student A was also XX---to end of sentence---XX.

OCR provided the Complainant the opportunity to respond to the District's assertions regarding this issue, but the Complainant did not provide any additional information. Based on the weight of the evidence, OCR finds the District's articulated reasons to be legitimate and non-discriminatory. OCR did not find evidence that the District's explanation was a pretext for discrimination.

Conclusion

Based on the foregoing, OCR determined that there was insufficient evidence to support a finding that the District retaliated against the Student XX---to end of sentence---XX. As such, OCR will take no further action regarding Issue 2 and is closing this allegation as of the date of 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.

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 with regard to Issue 2 within 60 calendar days of the date indicated on this letter. An appeal can be filed electronically, by mail, or fax. The Complainant must either submit a completed online appeal form at <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>, or mail a written statement of no more than ten (10) pages (double-spaced, if typed): if submitted by mail, please send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted via e-mail, send to OCR@ed.gov; if submitted via fax, please send to 202-453-6012. The filing date on an appeal is the date the appeal is postmarked, submitted electronically or submitted via fax. In the appeal, the Complainant must explain why he believes 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. OCR will forward a copy of the Complainant’s appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the Complainant’s appeal.

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 Carolyn Ruiz, the attorney assigned to this complaint, at (214) 661-9610, or carolyn.ruiz@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

Cc: XXXXXXXXXXX, Counsel
(via email at XXXXXXXXX)