



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

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

February 6, 2020

Paul Castro, Superintendent  
A+ Unlimited Potential Charter School  
2410 Hamilton Street  
Houston, TX 77004

Ref: #06-19-1886

Dear Mr. Castro:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the A+ Unlimited Potential Charter School (School), Houston, Texas, which was received on September 26, XXX. The Complainant alleged that the School discriminated against XXX XXX (the Student) on the basis of disability. Specifically, the Complainant alleged that the School:

1. failed to evaluate the student for Section 504 services during the XXX-XXX school year;
2. moved the Student from the XXX campus to the XXX campus without considering XXX disability status around XXX or XXX XXX; and
3. disciplined the Student without considering whether the Student's behaviors were related to XXX disabilities, in XXX and XXX XXX.

This agency 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), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits 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 regulation 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, including public elementary and secondary educational institutions.

The School is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational institution. Therefore, OCR has jurisdiction to process this complaint to resolution pursuant to Section 504 and Title II.

Based on the Complainant's allegations and OCR's jurisdictional authority, OCR investigated the following legal issues:

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

1. *Whether the School discriminated against the Student on the basis of disability by failing to 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 disability, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education during the XXX-XXX 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; and*
2. *Whether the School discriminated against the Student on the basis of disability by making a significant change in the Student’s placement without conducting an evaluation of the Student when a) it moved the Student from the XXX campus to the XXX campus around XXX or XXX XXX and b) suspended the Student XXX and XXX XXX, in violation of Section 504, at 34 C.F.R. § 104.35, and Title II, at 28 C.F.R. § 35.130, respectively.*

During our complaint resolution proceedings, OCR collected and analyzed information provided by the Complainant and the School, including pertinent policies, procedures, and student records. OCR also provided the Complainant with the opportunity to respond to information provided by the School.

#### Legal Standard for Issue #1 and #2

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 (or may need a change in services). As a result, OCR applies a “reasonableness” standard to determinations regarding the timeliness of evaluations, including re-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 . . . .

If a student with a disability transfers to a school district from another district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to

evaluate the student consistent with the Section 504 procedures and determine which educational program is appropriate for the student.

Additionally, OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement requiring a reevaluation under Section 504. OCR also considers transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement. 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.

**ISSUE #1:**

*Whether the School discriminated against the Student on the basis of disability by failing to 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 disability, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education during the XXX-XXX 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.*

Background

The Complainant alleged that the School failed to provide the Student with accommodations listed in an Individualized Education Program (IEP) developed by XXX XXX XXX XXX. The Complainant maintained that XXX informed the School that the Student was serviced as a student with a disability by the school that XXX XXX XXX the XXX XXX XXX and that XXX provided the School with supporting documentation XXX XXX for the XXX-XX school year.

The Student began the XXX school year at the School's XXX XXX but was later XXX to the XXX XXX for the remainder of the school year. According to the School administrators, the School did not receive any information from the Complainant, the Student's previous school, or through the Texas Records Exchange system (TREx) informing the School that the Student had a disability or was previously serviced by a Section 504 plan, and the Student did not exhibit any behaviors that would have led the School staff to believe that the Student may have had a disability. OCR also interviewed other School staff who interacted with the Student during the XXX-XXX school year. They generally indicated that the Student lacked motivation but did not exhibit signs of a disability and that they were unaware of the Student being designated as a student with a disability.

A XXX XXX informed OCR that in April XXX, XXX overheard a discussion between the Complainant and the Student that prompted XXX to question the Complainant about the Student's XXX XXX. The Complainant then emailed the Section 504 plan from the Student's XXX XXX to the School on May 6, XXX. The XXX stated that even though XXX and XXX staff had met with the Complainant on numerous occasions, the Complainant did not inform the School that the Student was previously receiving services for a disability until after the Complainant was notified XX – remainder of paragraph redacted – XX.

The School provided OCR with a copy of the Student's XXX XXX XXX-XXX completed by the Complainant and dated July 7, XXX, which reflects that the Student received Section 504 accommodations XXX XXX XXX XXX. The School stated that despite the fact that the enrollment packet reflects that the Student was receiving services under Section 504, the Complainant, when asked, did not state that the Student needed additional assistance, but rather XXX indicated that the Student was able to do the work and needed to get more serious about XXX work.

### Analysis

The School maintained that it was not aware that the Student was serviced as a student with a disability by the Student's XXX XXX and that it had no reason to believe the Student needed disability-related services. Therefore, the School did not recognize the Student as a student with a disability and thus did not take steps outlined in Section 504 with regards to the evaluation and placement of the Student. However, the documentation demonstrated that the Complainant informed the School that the Student received 504 accommodations by annotating it on the XXX XXX for XXX-XXX school year. Based on this documentation, OCR has concerns that the School did not properly evaluate the Student under Section 504 after XXX XXX to the School in the XXX-XXX school year.

### **ISSUE #2:**

*Whether the School discriminated against the Student on the basis of disability by making a significant change in the Student's placement without conducting an evaluation of the Student when a) it moved the Student from the XXX campus to the XXX campus around XXX or XXX XXX and b) suspended the Student in XXX and XXX XXX, in violation of Section 504, at 34 C.F.R. § 104.35, and Title II, at 28 C.F.R. § 35.130, respectively.*

### Background

The Complainant alleged that the School moved the Student from the School's XXX campus to the XXX campus and disciplined the Student with numerous suspensions without considering the Student's disability during the XXX school year.

With regard to relocating the Student to the XXX campus, XXX informed OCR that both the Complainant and XXX thought that moving the Student to the XXX campus was in the Student's best interest. The School also confirmed that it did not consider the Student's disability when disciplining the Student, as the Student was not recognized as a student with a disability. The Student's disciplinary record during the XXX-XXX school year reflects that the Student received zero in-school suspensions and XXX out-of-school suspensions for a total of XXX XXX.

### Analysis

As established above, the School did not recognize the Student as a student with a disability. Therefore, the School did not consider whether the Student was subjected to a significant change in placement, or evaluate the Student pursuant to Section 504, when it transferred the Student from the XXX campus to the XXX campus and imposed disciplinary sanctions against the Student. As described in Issue #1, OCR received documentation reflecting that the Complainant noted in an XXX XXX provided to the School at the beginning of the XXX-XXX school year that the Student had been receiving services under Section 504 at XXX XXX XXX.

### Resolution

OCR's *Case Processing Manual*, Section 302, states that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination, the recipient expresses an interest in resolving the allegations, and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. After the investigation of this complaint began, but before OCR reached an investigative compliance determination, the School expressed a desire to voluntarily resolve the complaint in its entirety, and OCR determined that resolution of the complaint was appropriate.

The School submitted the enclosed Resolution Agreement (Agreement), to memorialize the steps that it will take to resolve the compliance issues raised by the complaint allegations. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance issues raised by the

complaint allegations. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the School's efforts to implement the Agreement. Please be advised that if the School fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant has been notified of this action.

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. The Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Please be advised that the School 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.

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 Tamara Williams, the OCR Investigator assigned to this complaint, at (214) 661-9607, or at [tamara.williams@ed.gov](mailto:tamara.williams@ed.gov). You may also contact me at (214) 661-9638, or at [lori.bringas@ed.gov](mailto:lori.bringas@ed.gov).

Sincerely,

Lori Howard Bringas  
Supervisory Attorney/Team Leader  
Office for Civil Rights  
Dallas Office

Enclosure (as stated)