



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

August 21, 2020

OCR Case # 06201252

Steven Solis, Associate Director  
Jubilee-Kingsville  
201 N. 19<sup>th</sup> St.  
Kingsville, TX 78363

*Via email (Steven.Solis@jubileeacademic.org)*

Dear Mr. Solis:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above referenced complaint against Jubilee-Kingsville (the School), in Jubilee, Texas. The Complainant alleged the District discriminated against a student (the Student) on the basis of disability.

OCR is responsible for enforcing 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 prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department (recipients). 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, which prohibit discrimination by public entities on the basis of disability. The District is a recipient and a public entity. Therefore, OCR has jurisdiction to investigate allegations of discrimination filed against the District under Section 504, and Title II.

A finding that a recipient or public entity 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.

During its investigation of this complaint, OCR considered evidence and statements submitted by the Complainant and the School. OCR also interviewed the Complainant, School officials, and four of the Student's classmates. OCR resolved Issue 1 by obtaining a resolution agreement pursuant to Section 302 of OCR's Case Processing Manual (CPM). Regarding Issue 2, OCR determined that there is insufficient evidence to support a conclusion of noncompliance by the School under Section 504 and Title II. The basis for this determination is set forth 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 School discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by a School teacher (i.e., statement(s) that XX-pharse redacted-XX), which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2019 - 2020 school year, in violation of Section 504 and Title II, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively.

OCR’s preliminary review of information included that provided to OCR by the Complainant and some of the Student’s classmates through their parents. The Complainant alleged the Student’s homeroom teacher (Teacher 1) made a comment in front of the class that XX-pharse redacted-XX and subsequently made similar comments in front of the class regarding XX-pharse redacted-XX. The Complainant alleged, as a result of the comments, the Student faced unwanted attention from classmates based on his disability. The Complainant also stated that another teacher asked the Student about the comments because she overheard the Student’s classmates talking about XX-pharse redacted-XX. One classmate identified Teacher 1 as making comments in class about XX-pharse redacted-XX. Another student also identified the Student as the subject of comments from a teacher in front of the class regarding XX-pharse redacted-XX. OCR’s preliminary review reflects a concern that Teacher 1 may have caused a hostile environment based on disability regarding the Student during the 2019-2020 school year.

Prior to the completion of OCR’s investigation, the School proactively notified OCR of its interest in voluntarily resolving Issue 1. Section 302 of the CPM provides that an allegation 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 School’s request to resolve Issue 1 prior to the conclusion of the investigation.

The School voluntarily signed the enclosed resolution agreement (Agreement) on August 20, 2020. OCR determined the Agreement resolves Issue 1, upon implementation. Thus, OCR is closing the investigation of Issue 1 as of the date of this letter. OCR will monitor the School’s implementation of the Agreement to ensure all commitments are satisfied.

## **Issue 2**

Whether the School 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 educational needs [i.e. XX-pharse redacted-XX], and thereby denied the Dyslexia Students a free appropriate public education during the 2019-2020 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

The Complainant alleged the Student’s teachers do not use XX-phrase redacted-XX even though it is written into his 504 plan. The Complainant stated that the Student’s 504 plan included a Behavior Intervention Plan (BIP) with consequences listed and includes a limitation XX-phrase redacted-XX. The Complainant alleged the Student was given XX-phrase redacted-XX in violation of the BIP. The Complainant stated that she receives calls regarding the Student’s behavior thirty minutes into the day, which she indicated is not enough time to follow his behavior plan before calling her. The Complainant alleged even though she created a form for tracking the Student’s behavior, the School refused to use it. The Complainant also stated that the XX-phrase redacted-XX was not documented, and she believed it was not implemented.

OCR reviewed an email sent from the Complainant to the 504 Coordinator for the School (504 Coordinator). In this email, the Complainant refers to the Student’s XX-phrase redacted-XX and states that she is XX-phrase redacted-XX. The Complainant states that she sees XX-phrase redacted-XX. The Complainant’s proposed form included XX-phrase redacted-XX. The Complainant also provided OCR with a copy of a text message from the 504 Coordinator stating that upon review the School would not use the Complainant’s form and requested contact to schedule a meeting.

OCR reviewed the Student’s 504 plan and BIP which was provided by both the Complainant and the School. The Student was evaluated on September 5, 2019 by two Section 504 Coordinators, a campus administrator, a classroom teacher, and the Complainant (504 Committee). The 504

Committee looked at teacher feedback, discipline records, and information from you to evaluate the Student. The targeted behavior for the BIP is that the Student “XX-phrase redacted-XX” The classroom strategies are: “XX-phrase redacted-XX” The list of consequences includes XX-phrase redacted-XX. There is also an “other” consequence to “XX-phrase redacted-XX.”

OCR reviewed the Student’s referral from December 3, 2019. The referral checks off reasons for the referral including: “XX-phrase redacted-XX” On the “Other” line it includes “XX-phrase redacted-XX” The penalty/administrative actions on the referral are: conference with student, distancing/time out, parent conference, and in school suspension with two dates for the suspension.

OCR reviewed teacher notes regarding the Student’s misbehavior. On October 10, 2019, the notes indicate that the Student was asked to take a break after he XX-phrase redacted-XX. On October 21, 2019, he was asked to take a break to calm down after being disruptive and making a threat to another student. Records indicate the Student left class with the 504 Coordinator after XX-phrase redacted-XX on October 22, 2019. On February 28, 2020, the notes indicate the Student was offered a break or to go to the 504 Coordinator’s room, but he declined both.

OCR also reviewed a copy of the Student’s XX-phrase redacted-XX used by the School. The XX-phrase redacted-XX included XX-phrase redacted-XX.

OCR interviewed the 504 Coordinator. The 504 Coordinator stated that teachers received the Student’s XX-phrase redacted-XX at the beginning of August, and while a new XX-phrase redacted-XX was created every six weeks, sometimes another XX-phrase redacted-XX was provided within that time because the Student did not have it with him and needed another XX-phrase redacted-XX. The 504 Coordinator also stated that the XX-phrase redacted-XX included XX-phrase redacted-XX on a weekly basis. With respect to consequences, the 504 Coordinator stated that the BIP consequences do not limit consequences for behaviors outside the targeted behavior of the BIP. Regarding the December 3, 2019 referral that resulted in two days of ISS, the 504 Coordinator stated that the Student XX-phrase redacted-XX, which was a behavior outside of that addressed in the BIP. The 504 Coordinator stated that shortly before the Student’s referral, he XX-phrase redacted-XX. The Student then went to her room for cooling off but was not in the mood to talk. The 504 Coordinator then walked him to administration, and he became upset. According to the 504 Coordinator, the Student was XX-phrase redacted-XX when he was taken to the front office and administration was trying to cool him down. Regarding implementation of XX-phrase redacted-XX for the Student, the 504 Coordinator stated that sometimes the Student came to her room, but it would have been documented by teachers in the XX-phrase redacted-XX.

OCR interviewed Teacher 1, who stated that she had a copy of the Student’s XX-phrase redacted-XX from her first day teaching the Student in August. Teacher 1 also stated that she used the XX-phrase redacted-XX daily when the Student had XX-phrase redacted-XX and follow the steps in the XX-phrase redacted-XX. She stated that she implemented XX-phrase redacted-XX by allowing the Student to go to a classroom library area or let her know if he wanted to go to the 504 classroom. Teacher 1 stated that the Student did a good job letting her know if he needed XX-phrase redacted-XX, which was about three times a week. Teacher 1 described what occurred on December 3, 2019 before she gave the Student the administrative referral – the Student had been XX-phrase redacted-XX. In the classroom, Teacher 1 stated that another student had XX-phrase

redacted-XX. According to Teacher 1, the Student XX-phrase redacted-XX. Teacher 1 stated that since it occurred as soon as they were in the classroom, she separated the students and called an administrator and the 504 Coordinator to escort the Student from class.

OCR interviewed the Student’s social studies teacher (Teacher 2). Teacher 2 stated that she had the Student’s behavior folder from the beginning of the school year. Teacher 2 stated that if the student was doing well, she made sure to include good behavior in the folder. Teacher 2 also indicated when the Student misbehaved, it would be XX-phrase redacted-XX. With respect to XX-phrase redacted-XX, Teacher 2 stated that there was a place to write it on XX-phrase redacted-XX if needed.

OCR interviewed the Student’s math teacher (Teacher 3). Teacher 3 stated that she had the Student’s XX-phrase redacted-XX from the beginning of the school year. Teacher 3 stated that the XX-phrase redacted-XX was for XX-phrase redacted-XX and also had goals based on the 504 plan. Teacher 3 stated that when the Student needed XX-phrase redacted-XX, she provided support or, on one or two occasions, the Student went to the 504 Coordinator’s classroom. Teacher 3 stated that they would call the Student’s mother to let her know what happened and what actions the School was taking.

OCR interviewed the Student’s science teacher (Teacher 4). Teacher 4 also stated that she received the Student’s XX-phrase redacted-XX at the beginning of the school year. Teacher 4 stated that it had a XX-phrase redacted-XX. Teacher 4 stated that she would mark the XX-phrase redacted-XX at the end of class and give it back to the Student. Teacher 4 stated that, since she received the XX-phrase redacted-XX at the end of the day, she made sure all the other teachers had signed it. Regarding the XX-phrase redacted-XX, Teacher 4 stated that the Student would let her know if he needed a break and had permission to leave if he told her that he needed a break. Teacher 4 stated that she used the XX-phrase redacted-XX less than once a week in her class.

OCR also interviewed the Associate Director and Superintendent of Coastal Bend Region who signed the discipline assigned on the Student’s December 3, 2019 referral (Associate Director). The Associate Director stated that the Student was assigned XX-phrase redacted-XX because the Student XX-phrase redacted-XX. The Associate Director stated that the Student XX-phrase redacted-XX. The Associate Director also indicated the Student was XX-phrase redacted-XX. The Associate Director stated that he did not want to take the Student out of school, so he determined it was best to assign XX-phrase redacted-XX and work with the 504 Coordinator on XX-phrase redacted-XX. As for input from others, the Associate Director stated that he took input from Teacher 1 and the 504 Coordinator regarding what occurred. The Associate Director stated that the Student did not deny anything that happened. Regarding the Student’s BIP, the Associate Director indicated that he had not seen the Student’s BIP because that is reviewed by the building Principal and the 504 Coordinator. The Associate Director also stated that Teacher 1 and the 504 Coordinator reported they had followed guidelines in the Student’s BIP, with the 504 Coordinator trying to get the Student to calm down as her room is a calming room for him.

OCR interviewed the Complainant on July 24, 2020 and provided an opportunity to respond to the District’s information above. The Complainant stated that the School was inconsistent regarding phone calls regarding the Student. The Complainant stated on one occasion the Student received a

referral but you did not receive a phone call. The Complainant stated that the School used a XX-phrase redacted-XX, but it was inconsistently filled out, which is why the Complainant decided to create her own with more information. The Complainant again indicated the School denied using her form. With respect to XX-phrase redacted-XX, the Complainant stated that the Student told her that he was not allowed to leave class for XX-phrase redacted-XX, and the School did not have any documentation. With respect to the XX-phrase redacted-XX assigned to the Student, the Complainant stated that she did not see how the Student's behavior fell outside the targeted behaviors because he was XX-phrase redacted-XX.

### Legal Analysis

The evidence indicates that the School evaluated the Student on September 5, 2019 in accordance with Section 504 requirements and determined he is a qualified student with a disability. OCR also found that the Student's needs were determined on an individualized basis and the 504 Committee members comprised a group of persons knowledgeable about the student and the information considered (i.e. two Section 504 Coordinators, a campus administrator, a classroom teacher, and yourself).

Regarding whether the School provided the services identified as necessary to meet the needs of the Student, OCR found a significant conflict in the evidence. With respect to the XX-phrase redacted-XX, while the Complainant initially stated the Student's teachers did not use a XX-phrase redacted-XX, she then indicated it was not consistently filled out. And as noted above, all of the Student's teachers reported that they filled out his XX-phrase redacted-XX on a daily basis. The School provided a copy of his XX-phrase redacted-XX that was used prior to spring break, which was filled out each day until the Student's last day in the classroom. With respect to behavior consequences, while the Complainant stated that the Student should not have received XX-phrase redacted-XX when the Student's BIP only allows for XX-phrase redacted-XX, the 504 Coordinator stated that the behavior consequences are only for the targeted behaviors. As noted above, the 504 Coordinator stated that the Student's behaviors resulting in the XX-phrase redacted-XX fell outside the BIP targeted behaviors. With respect to a XX-phrase redacted-XX, the Complainant stated that she did not believe it was implemented because the Student told her this was not provided and the School did not provide her documentation. As noted above, the Student's teachers all reported that they implemented the XX-phrase redacted-XX, and the notes provided to OCR indicate the Student received and was offered a XX-phrase redacted-XX on multiple days. OCR was unable to resolve these conflicts in the evidence. Therefore, a preponderance of the evidence does not establish that the Student was denied services under his 504 plan or BIP as alleged.

### Conclusion

OCR resolved Issue 1 prior to the conclusion of OCR's investigation pursuant to Section 302 of the CPM. Regarding Issue 2, OCR found insufficient evidence of a violation of Section 504 or Title II with respect to the issue investigated. 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.

Regarding Issue 2, OCR found insufficient evidence of a violation of Section 504 or Title II with respect to the issue investigated. This concludes OCR’s investigation of the complaint and should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Regarding Issue 2, 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.

Regarding Issue 2, 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 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 about this letter, please contact Brian Aurelio, the attorney assigned to this complaint, at (214) 661-9661 or Brian.Aurelio@ed.gov, or you may contact me at (214) 661-9648 or Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum  
Supervisory Attorney/Team Leader  
Dallas Office