



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

July 26, 2021

Re: OCR Complaint #06211163

Dr. Mike Waldrip, Superintendent
Frisco Independent School District
5515 Ohio Drive
Frisco, Texas 75035

Via email (mikewaldrip@friscoisd.org)

Dear Dr. Waldrip:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, which was received in our office January 20, 2021, filed against the Frisco Independent School District (FISD or District), in Frisco, Texas. The Complainant alleged that the FISD discriminated against XXXX XXXX (Student) on the basis of disability and retaliated against the Student. Specifically, the Complainant alleged:

1. The FISD did not have an admission, review, and dismissal (ARD) meeting or otherwise determine the Student's individual needs and placement until XXXX XXXX XXXX, although the Student: (a) While in a virtual-learning placement between XXXX XXXX XXXX XXXX XXX, was not able to participate in class due to XXXX disability, was receiving failing grades, was not able to complete assignments, and was informed by teachers several times each day that XXXX needed to turn on XXXX camera and microphone or be marked absent; and (b) Was not receiving any instruction or taking part in any educational placement between XXXX XXXX XXXX XXXX;
2. The FISD did not provide the Student with the following accommodations indicated in XXXX Individualized Education Plan (IEP):
 - a. A task list between XXXX XXXX XXXX XXX;
 - b. A visual schedule throughout the XXXX school year;
 - c. Class notes throughout the XXXX school year;
 - d. Positive/concrete reinforcement throughout the XXXX school year;
 - e. Supplemental aids-all subjects throughout the XXXX school year;
 - f. Graphic organizers throughout the XXXX school year; and

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- g. Check often for comprehension and understanding throughout the XXXX school year; and
3. The FISD retaliated against the Student because the Complainant filed a complaint with OCR in or around XXXX XXXX and a complaint with the Texas Education Agency (TEA) in or around XXXX, when on or around XXXX XXXX XXXX XXX, a rag used with cleaning chemicals was left with the Student to fidget with, the Student experienced XXXX XXXX XXXX XXXX, and FISD staff members, including the Superintendent, would not provide the Complainant with information about the chemical used.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department (recipients), or an agency that has delegated investigative authority to this Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, which prohibit 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. §§ 12131 *et seq.*, and its implementing regulations 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. The FISD is a recipient and a public entity. Therefore, OCR has jurisdiction to process this complaint for resolution.

OCR opened the following issues for investigation:

1. Whether the FISD failed to reevaluate the Student prior to making significant changes in placement (i.e., virtual placement between XXXX XXXX XXXX XXXX XXXX; undetermined educational placement between XXXX XXXX XXXX XXXX XXXX), in violation of Section 504 and Title II, at 34 C.F.R. § 104.35, and 28 C.F.R. § 35.130, respectively;
2. Whether the FISD 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., task list, visual schedule, class notes, positive/concrete reinforcement, supplemental aids, graphic organizers, check often for comprehension and understanding), and thereby denied the Student a free appropriate public education during (FAPE) the XXXX 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; and
3. Whether the FISD retaliated against the Student when on or around XXXX XXXX XXXX, FISD staff required the Student to clean a table using a chemical which caused

XXX XXXX XXXX XXXX and would not provide the Complainant with information about the chemical used, because XXX filed a complaint with OCR in or around XXXX XXXX and a complaint with the TEA in or around XXXX XXXX, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

OCR reviewed information provided by the FISS and the Complainant, and conducted an interview with the Complainant. The Complainant indicated the Student has been diagnosed with XXXX XXXX XXXX XXXX XXXX XXXX. OCR's review indicates the District evaluated the Student in XXXX, and determined the Student was a qualified individual with a disability requiring services under XXXX XXXX. The Complainant explained that the Student also has XXXX XXXX which resulted in the Student frequently having XXXX and required treatment by a XXXX XXXX XXX. Medical documentation from the Student's XXXX indicates that the Student has XXXX XXXX XXXX XXXX.

Regarding issue 1, the Complainant explained that the Student attended school through a virtual placement during XXXX XXXX XXXX XXXX. The Complainant indicated that, due to the Student's disabilities, XXXX was not comfortable participating through use of a camera and microphone. The Complainant explained that teachers repeatedly told the Student to turn on XXXX camera, or otherwise be marked absent. The Complainant indicated this exasperated the Student's difficulty in participating, XXXX developed an aversion to school, and received failing grades. The Complainant indicated that due to the difficulties experienced by the Student during virtual education, and based on a recommendation by the Student's XXXX, in XXXX XXXX, the Complainant requested that the Student's placement be changed to homebound education. Medical documentation from the Student's XXXX XXXX XXXX indicate that the Student is not able to attend school in-person and requires homebound instruction. The Complainant indicated that an admission review and dismissal (ARD) meeting was held in XXXX XXXX and the Student was approved to begin homebound education starting in XXXX XXXX.

With respect to issue 2, the Complainant explained that between XXXX XXXX and XXXX XXX, the Student was provided some assignments but did not receive any class instruction. The Complainant further explained that throughout the XXXX school year, the Student was not provided with accommodations and services within XXXX XXXX, including: a task list, a visual schedule, class notes, positive/concrete reinforcement, supplemental aids-all subjects, graphic organizers, and teachers checking often for comprehension and understanding. The Complainant provided OCR with a copy of XXXX XXXX XXXX email correspondence with District staff members in which the Complainant indicated that the Student had not been provided a copy of XXXX visual schedule and a District staff member responded, in part, that the accommodation could be removed from the Student's IEP by amendment if the Complainant preferred.

OCR’s preliminary review of the FISD’s data indicates that, although the District attempted to schedule an ARD meeting beginning on XXXX XXXX XXXX, an ARD meeting was not convened until XXXX XXXX XXXX, and not completed until XXXX XXXX XXXX. During the XXXX XXXX XXXX meeting, the ARD committee discussed that the Student was not accessing instruction face-to-face or virtually, and that assignments the Student completed were difficult for teachers to assess due to faxing or scanning issues. The FISD’s data indicates that the FISD has concerns about limits on its ability to provide educational services to the Student during the XXXX school year and that the FISD believes that compensatory educational services would be appropriate for the Student.

Regarding issue 3, the Complainant indicated that on or around XXXX XXXX XXXX, when the Student was undergoing testing with respect to a special education evaluation, a chemical was applied to XXXX table using a rag which was left on the table. The Complainant indicated the Student fidgeted with the rag and that the Student’s XXXX XXXX XXXX XXXX XXXX as a result. The Complainant indicated that XXXX is a registered nurse and that XXXX treated the Student in coordination with the Student’s pediatrician. The Complainant provided OCR with XXXX email correspondence with the Student’s pediatrician’s office on XXXX XXXX XXXX which provides a description of the incident and resulting XXXX XXXX XXXX.

OCR’s preliminary review of the FISD’s data indicates that during the Student’s special education evaluation, the Student may have come into contact with a cleaning chemical, XXXX XXXX, which may have been used with a rag to disinfect the Student’s table, though the FISD cannot confirm with certainty that XXXX XXXX was the chemical used. OCR’s review indicates that the Student picked up the rag and used it as a “fidget” during evaluation testing. FISD’s data further indicates that the FISD is concerned about the Student’s possible exposure to the chemical and will provide protocols for staff regarding the use and storage of such chemicals. A material safety data sheet for XXX XXX, available online, indicates that contact causes severe skin irritation and possible burns, protective gloves should be worn when it is used, and it should be kept out of reach of children.

OCR’s preliminary review of the evidence reflects concerns as to: (1) whether the FISD failed to reevaluate the Student before a significant change in placement to virtual school during part of the XXXX school year; (2) whether the Student was provided with XXXX approved accommodations during the XXXX school year; and (3) whether the District’s leaving a rag containing the chemical referenced above on the Student’s table, resulting in the Student’s injuries, was based on retaliatory motive.

Prior to the conclusion of OCR’s investigation, the Fisd requested to resolve the complaint by voluntarily entering into a Resolution Agreement (Agreement). Under Section 302 of OCR’s Case Processing Manual (CPM),¹ a complaint may be resolved at any time when, prior to the point that the OCR Regional Office issues a final determination under Section 303 of the CPM, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them with an agreement. OCR approved the Fisd’s request to resolve the complaint pursuant to Section 302 of the CPM.

On July 19, 2021, the Fisd voluntarily entered into the enclosed Agreement which, when fully implemented, will address all of the allegations investigated and resolves the complaint. The Agreement is aligned with the complaint allegations and the information obtained during the investigation, and is consistent with applicable law and regulations. Accordingly, as of the date of this letter, OCR will cease all investigative action regarding this complaint. OCR will actively monitor the Fisd’s implementation of the Agreement.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the Fisd’s compliance with any other regulatory provision or to address any issues other than those addressed in 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 also note that the Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that a recipient 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, complainants 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, it 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.

¹ OCR’s Case Processing Manual is available at: <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

If you have any questions, you may contact Michael J. Pillera, the Civil Rights Attorney assigned to the complaint, at 214-661-9614 or by email at Michael.Pillera@ed.gov. You may also contact me at 214-661-9648 or by email at Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
Office for Civil Rights, Dallas Office

Enclosure

Cc: XXXX XXXX, XXXX XXXX XXXX FISD, via email (XXXX)