



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VI  
LOUISIANA  
MISSISSIPPI  
TEXAS

April 25, 2022

Ms. Robin Bullock, Superintendent  
Allen Independent School District  
P.O. Box 13  
Allen, TX 75013

*Sent via email to [\*\*\*redacted\*\*\*] Counsel for AISD, at [\*\*\*redacted\*\*\*]*

OCR Ref. 06211429

Dear Superintendent Bullock,

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has concluded its investigation of a complaint filed against the Allen Independent School District (AISD or District), in Allen, Texas. The Complainant alleged that the District discriminated against the Student on the basis of disability.

OCR 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 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. Section 504 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. AISD is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504, and Title II.

Pursuant to the Complainant's allegations, OCR opened the following issue for investigation:

Whether AISD discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services (i.e., [\*\*\*redacted\*\*\*] did not provide him with trade notes or sign his Planner; in [\*\*\*redacted\*\*\*], the Student's [\*\*\*redacted\*\*\*] teacher did not notify him about [\*\*\*redacted\*\*\*] on the Planner; and [\*\*\*redacted\*\*\*] substitutes were unaware of Student's educational program) deemed necessary to meet the Student's individual educational needs, and thereby denied the Student a free appropriate public education during the Spring semester of 2021, 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.

During the course of the investigation, OCR reviewed documentary evidence from the District, and conducted interviews with relevant District staff. OCR also reviewed information and

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documentation provided the Complainant, and conducted rebuttal interviews with the Complainant and a witness identified by the Complainant.

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 or retaliation 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. Based on OCR's careful review and analysis of the information obtained, we have determined that there is insufficient evidence to establish that the AISD violated Title II or Section 504 as regards Allegations 1-3.

Regarding Allegation 4, and pursuant to CPM's Section 302, OCR approved the District's request to resolve these issues prior to the conclusion of the investigation. The resolution of this complaint is discussed below.

### ***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.

### ***Facts***

The Complainant asserted that for [\*\*\*redacted\*\*\*], and that the substitute teachers did not provide the Student with any accommodations throughout this period. The Complainant asserts that as a result, the Student acted out in class and his anxiety levels increased [\*\*\*redacted\*\*\*]. The Complainant also asserted that the [\*\*\*redacted\*\*\*] similarly contributed to his anxiety and stress.

*The Student's 504 Plan*

During the 2020-2021 school year, the Student was [\*\*\*redacted\*\*\*]. In the [\*\*\*redacted\*\*\*], a 504 Committee convened and confirmed that the Student was a qualified student with a disability ([\*\*\*redacted\*\*\*]) and agreed upon various academic accommodations for the Student, consistent with the procedural requirements of Section 504 and Title II. Pursuant to the [\*\*\*redacted\*\*\*]

Concerning the planner, an audio recording of the 504 meeting indicated that all students were utilizing planners, which different teachers asked students to fill out at different intervals (daily or weekly), and that the teachers' check of the Student's planner was intended to help him with his focus and organization. In the notes from [\*\*\*redacted\*\*\*], the 504 record states that teachers: "will work with [the Student] on this becoming a habit and will check in with him for the next few weeks gaining consistency with that skill." [\*\*\*redacted\*\*\*] However, the audio recording of this meeting confirmed that the Student's agenda check accommodation was agreed to by the committee members "for the next couple of weeks until we can maybe develop that habit with [the Student] himself" and that the Student was expected to write down homework, assessments, and pre-assessment reviews into the planner himself.

*Allegation 1: Trade Notes for [\*\*\*redacted\*\*\*]*

In a written statement, [\*\*\*redacted\*\*\*] informed OCR that, in general, she provided hard copies of journal pages, notes, and study guides to the Student. The [\*\*\*redacted\*\*\*] teacher asserted that a [\*\*\*redacted\*\*\*] Quiz occurred on [\*\*\*redacted\*\*\*], that the Student was notified about the quiz on February 25, 2021." The Student was absent on [\*\*\*redacted\*\*\*]. On [\*\*\*redacted\*\*\*], the Student's parent emailed the [\*\*\*redacted\*\*\*] Teacher stating that a hard copy of the [\*\*\*redacted\*\*\*] for the [\*\*\*redacted\*\*\*] quiz was not in the Student's folder. The [\*\*\*redacted\*\*\*] Teacher responded on [\*\*\*redacted\*\*\*], stating that the Student "has everything (sic) he needs for the [\*\*\*redacted\*\*\*] quiz tomorrow ([\*\*\*redacted\*\*\*])." In an interview with OCR, the [\*\*\*redacted\*\*\*] Teacher stated that she provided both a digital and hard copy of the [\*\*\*redacted\*\*\*] to the Student. The Complainant confirmed that the Student did receive a hard copy of the [\*\*\*redacted\*\*\*] the day before the quiz, which she asserted constituted the 'teacher trade notes' for this quiz, but that it came too late and as a result the Student missed two (2) days of studying with the map.

*Allegations 2 and 3: Planner Checks ([\*\*\*redacted\*\*\*])*

In a written response to OCR's data request, the [\*\*\*redacted\*\*\*] Teacher asserted that her practice was to have the Student fill in his planner with all relevant information for her class on Monday of each week, and the [\*\*\*redacted\*\*\*] Teacher would initial it when it was complete. The Student was absent on Monday, [\*\*\*redacted\*\*\*]. On Tuesday, [\*\*\*redacted\*\*\*], the Complainant emailed the [\*\*\*redacted\*\*\*] Teacher stating that there was nothing written in the Student's planner for that week and asking if there was a quiz that week. On Wednesday,

[\*\*\*redacted\*\*\*] teacher responded: “we will not be having a quiz this week. We do fill in our planners on Monday of each week, I will have him update his today. He does not have homework this week for [\*\*\*redacted\*\*\*].” In an interview with OCR, the [\*\*\*redacted\*\*\*] teacher confirmed that the Student did not need to complete any assignments in the class that week other than those described in the email, and that she did sign the Student’s planner the day after she received the email from the Complainant. The response provided on rebuttal by the Complainant did not contradict this information.

The Science/Social Studies Teacher asserted to OCR that her general practice was to initial the Student’s planner/agenda after it was written in each date, and that she wrote “none” if there was no homework. On [\*\*\*redacted\*\*\*], there was a review test in the Student’s [\*\*\*redacted\*\*\*]class. The [\*\*\*redacted to end of paragraph\*\*\*].

#### *Allegation 4: Substitute Teachers in English Class*

OCR’s investigation confirmed that the Student’s [\*\*\*redacted\*\*\*] teacher asserted that during this period, she continued to work [\*\*\*redacted\*\*\*], which included posting lessons online and grading assignments every day. She stated that the substitute teachers acted as “facilitators” that kept students on track, but that students had access to her online on a daily basis. The [\*\*\*redacted\*\*\*] stated that during the 2020-2021 school year, students remained in their homeroom classes throughout the day and teachers rotated into the classroom to provide lessons on different subject matter. Additionally, they asserted that class had assigned seating, and the Student was always seated toward the front of the room, which was near the teacher’s desk.

The [\*\*\*redacted\*\*\*] asserted that she had heard from other students that the Student had been disrespectful to [\*\*\*redacted\*\*\*], but that he apologized later [\*\*\*redacted\*\*\*]. She stated that as a general matter, she believed the Student felt that [\*\*\*redacted\*\*\*] the change in routine created by her absence was difficult for him. The [\*\*\*redacted\*\*\*] stated that after her return, she did not notice any subsequent behavioral issues or problems with the Student, nor any changes in his anxiety levels. She also stated that during the time she was absent, there was no change in the Student’s academic performance, and that during that time “he turned in everything promptly.”

[\*\*\*redacted\*\*\*] asserted to OCR that she was only presiding over the [\*\*\*redacted\*\*\*] teacher’s class for part of a class period, and entered the classroom after all the students were already settled down to work. [\*\*\*redacted\*\*\*] confirmed that she provided no accommodations to any students on the day [\*\*\*redacted\*\*\*]; she stated that she answered questions for students as needed, but otherwise took no active role in the classroom. She stated that the Student’s behavior in the class was good, and that the class as a whole remained focused on their work throughout the period. OCR interviewed [\*\*\*redacted\*\*\*], who stated she did not recall whether the Student had a 504 plan or whether she provided any accommodations to the Student. She stated that she did not make any PowerPoint presentations or lecture the students, that the students worked on

assignments provided by the [\*\*\*redacted\*\*\*] Teacher on Google classroom on their computers, and that [\*\*\*redacted\*\*\*]. She confirmed that on one occasion she verbally reprimanded the Student and [\*\*\*redacted\*\*\*] that the next day the Student didn't come to school, which she attributed to him being embarrassed. The Student did come to school after that and behaved normally in class.

[\*\*\*redacted\*\*\*] confirmed that neither substituted for [\*\*\*redacted\*\*\*]. The District subsequently asserted that on these three days, “[\*\*\*redacted\*\*\*] we will pull paraprofessional staff, specials staff, office staff, administrators, or teachers on conference to ‘piece meal’ coverage for the day” and that such coverage would not have been documented; for this reason, OCR could not identify or interview the substitutes who served on these three days.

The Student met with the [\*\*\*redacted\*\*\*] times during the 2020-2021 school year, between November 2020 and April 2021. OCR interviewee [\*\*\*redacted\*\*\*], who stated that the Student did not report any anxiety relating to [\*\*\*redacted to end of paragraph\*\*\*].

On rebuttal, the Complainant confirmed that [\*\*\*redacted\*\*\*]. The Complainant also asserted that because of the Student's [\*\*\*redacted\*\*\*], the Complainant had attempted to obtain sessions with the Student's [\*\*\*redacted\*\*\*].

Records provided on rebuttal showed that the [\*\*\*redacted\*\*\*] teacher posted various assignments for the class during her period away, including one quiz. Records also confirmed that the Complainant attempted to schedule a February meeting, that [\*\*\*redacted\*\*\*].

Prior to the conclusion of OCR's investigation into this issue, the District requested a voluntary resolution of this matter.

### ***Analysis***

The Complainant asserted that due to the District's failure to ensure that the Student received the teacher notes for the [\*\*\*redacted\*\*\*], and any accommodations at all in [\*\*\*redacted\*\*\*] class between [\*\*\*redacted\*\*\*], he suffered harm through an increase in his anxiety levels and thus denying the Student a free appropriate public education.

[\*\*\*redacted\*\*\*]

Regarding the [\*\*\*redacted\*\*\*] teacher had provided the student with a hard copy of the relevant materials necessary to study for [\*\*\*redacted\*\*\*] assessment. Although this may have come later than was typical in this class on other assessments, the Student's 504 plan does not specify any particular timeframe prior to assessments when such materials must be provided. Therefore, OCR cannot find that the District failed to provide accommodations to the Student in this instance. OCR therefore has insufficient evidence to find a violation of Title II and Section 504 on this basis.

*Planner Checks* ([\*\*\*redacted\*\*\*])

Regarding the planner check accommodation, evidence confirmed that the planner was not completed on [\*\*\*redacted\*\*\*] class, and that the [\*\*\*redacted\*\*\*] teacher did not ensure that the [\*\*\*redacted\*\*\*] was noted in the Student's planner. However, the investigation showed that the 504 Committee had expected the Student to complete his own planner, and had agreed that teachers would check his planner only for a few weeks after the [\*\*\*redacted\*\*\*] ARD meeting. Given that these incidents didn't happen until [\*\*\*redacted\*\*\*], respectively, evidence therefore does not demonstrate that the District failed to provide the required accommodations in these instances. OCR therefore has insufficient evidence to find a violation of Title II and Section 504 on these bases.

*Accommodations in [\*\*\*redacted\*\*\*] Class between [\*\*\*redacted\*\*\*]*

As discussed above, evidence collected to date raises concerns that during a nearly two-week period, the Student may not have [\*\*\*redacted\*\*\*] required to complete assignments or study for assessments as required under his 504 Plan. Evidence regarding the Student's anxiety levels during [\*\*\*redacted\*\*\*] also raises concerns that the Student may have suffered some adverse effects which may have contributed to symptoms of elevated anxiety.

Prior to the conclusion of OCR's investigation, AISD expressed an interest in voluntary resolution of these issues, pursuant to OCR's Case Processing Manual (CPM) Section 302. On April 18, 2022 AISD entered into the attached Agreement, which adequately addresses these concerns. OCR has determined the provisions of the Agreement are aligned with this complaint allegation and appropriately resolves it. Further, OCR accepts the Agreement as an assurance that the Recipient will fulfill its obligations under the laws and regulations enforced by OCR with respect to these issues. The dates for implementation and specific actions are detailed in the enclosed Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this issue. However, OCR will actively monitor the Recipient's implementation of the Agreement. Please be advised that if the Recipient fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

***Conclusion***

This letter concludes OCR's investigation of this 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.

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.

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 Complainant or other affected party 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, please feel free to contact the attorney-investigator, Kulsoom Naqvi, by telephone at (214) 661-9640 or by e-mail at: [Kulsoom.Naqvi@ed.gov](mailto:Kulsoom.Naqvi@ed.gov). You may also contact me by telephone at (214) 661-9600.

Sincerely,



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

Attachment: Resolution Agreement