



CUI//INV//LEI//PRVCY
UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

1201 Elm STREET, SUITE 1000
DALLAS, TEXAS 75201-6831

March 11, 2022

Ref: 06211526

Dr. Robin Ryan, Superintendent
Grapevine-Colleyville ISD
3051 Ira E. Woods Avenue
Grapevine, TX 76051

Via email (info@gcisd.net)

Dear Dr. Ryan:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint, received in our office on July 29, 2021, filed against the Grapevine-Colleyville ISD (the District), in Grapevine, Texas. The Complainant alleged that the District discriminated against her son (the Student) on the basis of disability and systemically discriminates against disabled students.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 *et seq.*, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination by recipients of Federal financial assistance from the Department (recipients) based on disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination based on disability by certain public entities. The District is a recipient and public entity. Therefore, OCR has jurisdiction to process this complaint 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 OCR's investigation to date, OCR reviewed information provided by the Complainant and the District and conducted preliminary interviews with the Complainant and District staff. OCR found insufficient evidence of a violation of Section 504 and Title II with respect to Issue 1. OCR resolved Issue 2 prior to the conclusion of OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). The bases for OCR's determination are found 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.

www.ed.gov

Controlled by: Department of Education, Office for Civil Rights, Brian Aurelio

Issue 1

Whether the District treated the Student differently on the basis of disability in the context of an educational program or activity without a legitimate, nondiscriminatory reason, and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities or privileges provided by the District for admission to iUniversity Prep for the 2021 - 2022 school year, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), prohibit recipients from excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination with respect to the services, activities, or privileges provided by the recipient because of the individual's disability. In considering allegations that a recipient has discriminated on the basis of disability, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent), or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of disability, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of disability discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another disability. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, non-discriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, non-discriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient's asserted reasons for its actions are pretext for disability discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

Findings of Fact

The Complainant indicated the District operates a virtual school (the School) which can be attended by any student residing within Texas. The Complainant reported that she applied for the Student to attend the School as a resident of Texas outside the District's boundaries. The Complainant alleges the School contacted her upon receipt of her application because the Student has an IEP with modified instruction. In a telephone call with OCR, the Complainant stated the School informed her that the Student was ineligible for admission because he had modified instruction in his IEP. The Complainant also alleged the School informed her teachers do not have time to modify instruction if a student needed it. The Complainant alleged the restriction on students with disabilities is stated on the School's website.

The Complainant provided OCR with an email chain from July 28, 2021 to August 3, 2021, regarding a telephone call she received about the Student's IEP. In another email from the Executive Director of Virtual Learning (the Director), the Complainant was informed the Student

would need to take the School's replacement test because he did not take the STAAR test, provided a list of accommodations he would have based on his IEP, and provided times when the Student could take the test. The Complainant replied that the School could not require a prospective student take the STAAR test because it was not mandated by TEA and requested an ARD meeting to create the Student's IEP for the 2021-22 school year. The Complainant also provided OCR with an email she sent the District on August 5, 2021, stating that the District's website excludes students requiring special education instruction.

The Complainant sent the District another email on August 3, 2021 stating that the School's admission criteria discriminates against students with disabilities by denying special education instruction. The Complainant also provided emails from the same date regarding a records request for three years of data about denial of admission to students with special education programming.

OCR reviewed the School's admissions requirements. In addition to providing proof of residency, age, and immunizations, the School has academic requirements as a magnet school open to anyone within the state. For academics, the School requires students demonstrate academic success through a final report card or transcript, be on grade level, and pass the prior year's STAAR exams or School alternate assessment. Regarding students in ninth through twelfth grade, there is also a requirement to pass the end of course (EOC) exams and be on track to graduate. The School requires students be in good standing with attendance and discipline, and possess a computer and required software to actively engage in online learning.

OCR reviewed the emails provided by the District of its communication with the Complainant. The emails include those provided by the Complainant and additional emails from the Complainant asking questions about how the School can exclude special education instruction. An additional email shows the Director sent an email to the Complainant on August 3, 2021 and noted the application is not completed due to a lack of STAAR replacement tests in math and reading/writing. The Director lists the accommodations the Student would receive and provides five times the Student can take the test from August 4, 2021 through August 9, 2021. The Complainant responded by stating the Student does not need to take the test for admission to a publicly funded school.

The District also provided OCR with emails between a District staff member and Texas Education Agency (TEA) staff member regarding justification for the statement that students with disabilities may be able to enroll if they only need accommodations or limited speech therapy that can be effectively delivered via Adobe Connect. The emails refer to a telephone call taking place to discuss the issue without providing the details of the conversation.

OCR also reviewed tables provided by the District with information about prospective students with special education needs and current students receiving special education services. There are nine names of prospective students for the 2020-2021 school year who were not enrolled. For one student, the parents did not provide missing information, three did not pass the STAAR exam, one did not provide a STAAR exam result, and three indicated they chose not to attend or preferred their local district's remote option. There were nine students with special education needs who were admitted to the School for the 2020-2021 school year. These students passed the STAAR or School's alternate test. For the 2021-2022 school year, there were twenty-one prospective students

who did not enroll. The comments indicated parents changed their minds, requested to cancel the application, did not respond, or the student did not pass a class. Some had not completed their STAAR exams or an equivalent was still pending. For the 2021-2022 school year, there were thirty-three students requiring special education services who were admitted to the School. These students passed the STAAR or School's alternate test. Additionally, all non-disabled students who were admitted to the School also passed either the STAAR or the School's alternate test.

OCR interviewed the Director. The Director stated she was not aware of a conversation where she was told the Student would not be able to receive modified instruction. The Director stated that in communication with parents, District staff reiterate academic requirements and the difference in the School's curriculum with all coursework being a comprehensive package that is aligned with Texas Essential Knowledge and Skills (TEKS) and approved by a review committee. The Director stated that the School is different from online learning within local school districts, and those conversations were held with anyone applying for admission to the School. With respect to the need for instructional or classroom accommodations affecting admissions, the Director stated that the first requirement is for students to meet all academic eligibility requirements in the application and accommodations are not part of the application criteria. With respect to accommodations that would result in denial of admission, the Director was unaware of any accommodations that would prevent admission. For The Complainant being told the statement that teachers do not have time to modify curriculum, the Director stated it did not sound like anything the School's staff would say. When given examples of classroom accommodations, the Director stated they would not affect enrollment.

OCR also interviewed the Operations Manager for the iUniversity Prep (the Manager). The Manager stated that she contacted the Complainant via telephone to discuss ensuring all documents were submitted with the application. With respect to the Complainant's statements that she was told the Student could not receive modified instruction, the Manager stated that she did not recall any discussion of modified instruction. The Manager stated that her role was to get a copy of the IEP documents as part of the application for special education and submit those documents to the School's Special Education Department. The Manager indicated it was not her role to discuss details of students' accommodations. The Manager denied telling the Complainant that teachers do not have time to modify curriculum. As for anyone else who could have told the Complainant that teachers do not have time to modify curriculum, the Manager identified the Director as the only other person who could have had telephone contact with the Complainant. Regarding the reason the Student was not admitted to the School, the Manager stated that he did not complete his application because he did not take the STAAR replacement exam.

On December 3, 2021, OCR contacted the Complainant to provide an opportunity to respond to the information above. With respect to the use of special education documents during admissions being limited to gathering documents, the Complainant stated that she was called by District staff who stated the Student could not receive "language modification." The Complainant stated that the IEP was from a different school with a different learning model, and to use it to state the Student could not be admitted was discriminatory. When asked about "language modifications," the Complainant stated she was not sure because she could not find the word "modification" in the Student's IEP but thinks the District staff she spoke with was referring to an inability to adapt or tailor curriculum to the Student. The Complainant stated the District established another barrier by

requiring the STAAR test completion. The Complainant stated that she requested an ARD to determine whether or not the STAAR test was appropriate for determining admissions, and she was denied access to an ARD meeting. With respect to the District telling the Complainant that the Student could not receive modified instruction and that teachers do not have time to make modifications, she stated that she would find out who it was because the two District staff members denied making those statements. As for the Student not having a complete application, the Complainant affirmed that the application was incomplete and stated it was due to the District denying access to an ARD to determine whether or not the testing requirement could be used for admissions. The Complainant provided an email to OCR identifying the person you spoke with on the phone as the Manager.

Analysis

With respect to direct evidence of discrimination, OCR found a significant conflict in the evidence. While the Complainant alleges she was told the Student could not be admitted due to having an IEP and requiring “modified instruction,” the Manager denied making the alleged comments. OCR was unable to resolve this conflict. Thus, OCR applied a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of disability discrimination.

OCR’s review indicates the Student was denied admission to the School, whereas students without disabilities and with different disabilities were admitted to the School. Thus, a preponderance of the evidence established a *prima facie* case of different treatment. OCR must then determine whether the District had a legitimate, non-discriminatory reason for the different treatment identified. District staff stated the reason the Student was not admitted was due to an incomplete application because the Student had no STAAR or STAAR replacement test results. OCR found this reason to be legitimate and non-discriminatory.

OCR must then determine if the District’s reason for the different treatment is pretext for disability discrimination. As noted above, OCR’s review of the application requirements for the School indicates passage of the prior year’s STAAR exams or School alternate assessment is required. The Complainant confirmed the Student’s application was incomplete regarding this component. OCR’s review indicates the District did not deviate from its established policy or procedure with respect to requiring this component for admission. Nor did the investigation yield evidence that the Student was treated differently than nondisabled students with respect to requiring this component. While the Complainant reported the District refused to hold an ARD meeting to determine whether or not the exam was appropriate for the Student’s admission and what accommodations should be in place for the exam, the Student had not been admitted to the School and did not reside within the District’s boundaries. Further, the District offered multiple times to administer the STAAR replacement exam to the Student using the Student’s testing accommodations in his effective IEP created by the district where the Student was attending school. Thus, a preponderance of the evidence does not establish that the District’s reason for denying the Student admission was pretext for discrimination based on his disability.

Issue 2

Whether the District treated students with disabilities differently on the basis of disability in the context of an educational program or activity without a legitimate, nondiscriminatory reason, and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities or privileges provided by the District for admission to iUniversity Prep for the 2021 - 2022 school year, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

As noted above, the Complainant reported the District's admissions policy discriminates against students with disabilities. OCR's preliminary review indicates the admissions webpage on the School's website maintained by the District includes the following language:

Students with disabilities (504 or IEP) may be able to enroll if they only need accommodations or limited speech therapy that can be effectively delivered via Adobe Connect. Students in iUniversity Prep will not be able to receive services for ESL, dyslexia, gifted and talented and special education instruction.

The above statement reflects a concern that the District may be discriminating against students with certain disabilities¹ in its admissions process. While in interviews, the District indicated IEPs and 504 plans are not a factor in determining admissions and there has never been an issue of being unable to provide accommodations to students with disabilities via the Adobe Connect platform, the website language states that there are services regarding certain disabilities that cannot be delivered by the School. Its placement on the Admissions webpage specifically infers the nature of disability accommodations will be taken into consideration during the admissions process. The statement also has a chilling effect on potential applicants with disabilities who will believe they cannot be admitted due to the accommodations they require.

Additionally, part of the District's admissions process in the Skyward application requests that applicants identify whether a student is in a program requiring a 504 Plan or Special Education. OCR's interview with the Manager confirmed the District makes pre-admission inquiries into a student's disability status when she stated that her role with respect to 504 plans and IEPs was to gather documents and pass them to the District's Special Education department in order for prospective students to have a complete application. OCR found a concern that the District is conducting a pre-admission inquiry into the disability status of prospective students which may discriminate against students with disabilities.

Prior to the conclusion of OCR's investigation, the District informed OCR that it was interested in resolving Issue 2. Section 302 of OCR's *Case Processing Manual* provides that a complaint 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 District's request to resolve Issue 2 prior to conclusion of the investigation.

¹ The policy language also reflects a concern that the School may be discriminating based on national origin (ESL) in its admissions process.

Conclusion

Regarding Issue 1, OCR found insufficient evidence of a violation of Section 504 or Title II with respect to the issue investigated. Regarding Issue 2, the District voluntarily signed the enclosed resolution agreement (Agreement) on March 10, 2022. OCR determined the Agreement addresses and, when fully implemented, resolves the issues under investigation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. However, OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR will resume investigative activities.

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 1, 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 1, 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, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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.

If you have any questions about this letter, please contact Brian Aurelio, the attorney assigned to investigate your complaint, at (214) 661-9661, or by e-mail at Brian.Aurelio@ed.gov. You may also contact me at 214-661-9648 or by e-mail at Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
OCR, Dallas Office