



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Dr. Paul Cruz, Superintendent
Austin Independent School District
1111 West 6th Street
Austin, TX 78703

RE: OCR Ref. No. 06141390
Austin Independent School District

Dear Dr. Cruz:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received on April 30, 2014. The complainant alleged that the Austin Independent School District (AISD) in Austin, Texas, discriminated against her daughter (the Student) on the grounds of disability and national origin and retaliated against her and the Student.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin; and 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. 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 public entities from discriminating on the basis of disability. The implementing regulations for Title VI, at 34 C.F.R. § 100.7(e); Section 504, at 34 C.F.R. § 104.61; and Title II, at 28 C.F.R. § 35.134, also prohibit retaliation. The AISD is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction to investigate this complaint pursuant to Title VI, Section 504, and Title II.

Based on the complainant's allegations, OCR opened for investigation the following legal issues:

1. Whether, during the 2013-2014 school year, the AISD discriminated against the Student on the basis of disability and/or national origin by failing to investigate and respond to incidents in which the Student was injured at school, in violation of Title VI, at 34 C.F.R. § 100.3; Section 504, at 34 C.F.R. § 104.4; and Title II, at 28 C.F.R. § 35.130.

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

2. Whether, during the 2013-2014 school year, the AISD discriminated against the Student on the basis of national origin by: (a) predetermining her placement decision; and (b) failing to implement the Student's Individualized Education Program (IEP) (*i.e.*, X---phrase redacted---X), in violation of Title VI, at 34 C.F.R. § 100.3.
3. Whether the AISD discriminated against the Student on the basis of disability by denying her a free appropriate public education (FAPE) during the 2013-2014 school year by failing to provide her the related aids and services determined necessary to meet her individual educational needs (*i.e.*, X---phrase redacted---X), in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130.
4. Whether, during the 2013-2014 school year, the AISD discriminated against the Student on the basis of disability with regard to a placement decision (*i.e.*, the AISD failed to draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and ensure that the placement decisions are made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options), in violation of Section 504, at 34 C.F.R. § 104.35(c), and Title II, at 28 C.F.R. § 35.130.
5. Whether, during the 2013-2014 school year, the AISD retaliated against the Student because the complainant and her husband advocated for the Student's disability-related rights by recommending placement of the Student XXXX XXXX XXXX during the 2013-2014 school year, in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.134.
6. Whether, during the 2013-2014 school year, the AISD retaliated against the complainant because she advocated for the Student's disability-related rights by: (a) reporting her to CPS X---phrase redacted---X; (b) not allowing her to meet with teachers or other staff members without X---phrase redacted---X; and (c) refusing to respond to routine inquiries regarding the Student's education (*i.e.*, X---phrase redacted---X), in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.134.

On October 30, 2014, the AISD informed OCR that it was interested in resolving the allegations giving rise to issues 1 and 6(a) of the complaint. The OCR Case Processing Manual (CPM), at Section 302, states that allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues, and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. The CPM also requires that the provisions of the resolution agreement be aligned with the allegations and issues investigated and consistent with applicable law and regulations.

OCR has determined that issues 1 and 6(a) are appropriate for resolution prior to the conclusion of this investigation. The AISD voluntarily submitted to OCR a Resolution Agreement, which was signed by the AISD on May 19, 2015. A copy of the Resolution Agreement is enclosed. OCR determined that the provisions of the Resolution Agreement are aligned with the allegations giving rise to issues 1 and 6(a) and appropriately address the

concerns identified therein. Further, OCR accepts the Resolution Agreement as an assurance that the AISD will fulfill its obligations under Section 504 and Title II with respect to the allegations giving rise to issues 1 and 6(a). The dates for implementation and specific actions are detailed in the Resolution Agreement. OCR will monitor the implementation of the Resolution Agreement.

OCR has completed its investigation or is administratively closing the remaining issues in this complaint, as discussed in detail below. In order to reach a compliance determination regarding these issues, OCR gathered and analyzed information and documentation provided by the complainant and the AISD. This information included the Student's educational files, notes and recordings taken during Admission Review and Dismissal (ARD) meetings for the Student, correspondence between the complainant and the AISD, Texas Education Agency (TEA) complaints and findings, and internal AISD correspondence. Additionally, OCR obtained information during interviews with the complainant and AISD officials and staff.

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 discrimination or retaliation is more likely to have occurred than not). 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. With respect to the issues for which OCR completed its investigation, OCR has determined that there is insufficient evidence to support a conclusion of noncompliance with Title VI, Section 504, and/or Title II. Provided below is an explanation of how OCR reached this determination.

Issues 2(a), 4, and 5: Placement Decision

The complainant alleged that the AISD's decision to recommend XXXX XXXX placement for the Student during the 2013-2014 school year was pre-determined, was not based on proper procedures, and was an act of discrimination on the basis of national origin and/or retaliation, primarily by the XXXX XXXX, because the complainant and her husband advocated for the Student's disability-related rights.

After this complaint was opened for investigation, OCR became aware that the complainant also filed an allegation regarding the Student's placement decision with the TEA. Specifically, in a TEA complaint filed on XXXX, the complainant alleged that, "[d]uring the 2013-2014 school year, the district determined that a change of placement would occur prior to an ARDC and without parent consent." The complainant specified that the campus XXXX "made it very clear that she wanted to put [the Student] in XXXX XXXX classroom," and that "she made that decision not based on data that any ARDC reviewed . . . [and] made the decision prior to ARDC discussions, excluding the parents and other persons knowledgeable about [the Student], without understanding meaning of evaluation data or placement options." The TEA issued an "Amended Investigative Report" on XXXX, concluding that the AISD "ensured that the student's educational placement was made in accordance with required procedures . . . [and] [t]he record reflects that, prior to the change of placement, evaluations,

data, and the student’s behavior and IEPs were revised by the Student’s ARDCs, including the Student’s parent.”

OCR’s case processing procedures provide that OCR will close an allegation if it determines that the same allegation has been filed by the complainant against the same recipient with another Federal, state, or local civil rights enforcement agency, and, for resolved allegations, all allegations were investigated and there was a comparable resolution process under comparable legal standards. OCR determined that the complainant’s TEA allegation was the same allegation on which OCR’s issue 4 is based. OCR further determined that the TEA investigated the allegation and provided a comparable resolution process using comparable legal standards. Therefore, OCR is administratively closing issue 4 as of the date of this letter.

Additionally, OCR determined that the TEA’s investigative finding regarding the placement decision precluded the need for further investigation regarding the alleged predetermination, either under Title VI (national origin discrimination) or pursuant to a retaliation analysis. Further, OCR determined that the complainant’s Title VI and retaliation allegations regarding the placement decision did not raise any systemic issues or involve potential relief beyond that solely for the Student. Therefore, consistent with OCR’s case processing procedures, OCR determined that allegations 2(a) and 5 are moot, and OCR is administratively closing these allegations as of the date of this letter.

Issues 2(b) and 3: Failure to Implement the Student’s IEP

The complainant alleged that the AISD discriminated against the Student on the basis of disability and/or national origin during the 2013-2014 school year by failing to implement the Student’s IEP. Specifically, she stated that the AISD (1) X---phrase redacted---X, and (2) X-- -phrase redacted---X.

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 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 regulation to require the provision of a FAPE to the same extent that the Section 504 implementing regulation specifically requires the provision of a FAPE.

With respect to claims of national origin discrimination, the Title VI implementing regulation, at 34 C.F.R. § 100.3(b)(1), prohibits 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 national origin. In considering allegations that a recipient has discriminated on the basis of national origin, 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 national origin, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of national origin 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 national origin. 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 racial discrimination. Ultimately, however, the weight of the evidence must support a finding that actual discrimination occurred.

(a) XXXX XXXX

OCR reviewed the Student’s IEPs and ARD committee documents dated XXXX, XXXX, XXXX, XXXX, and XXXX and XXXX, XXXX, XXXX, XXXX, XXXX, and XXXX, which documented services identified by a group of persons knowledgeable about the Student, the meaning of evaluation data, and placement options, as necessary to meet the Student’s educational needs during the 2013-2014 school year. The documents reflected that the Student’s needs were determined on an individualized basis and that the evaluation and placement procedures conformed to those specified in the Section 504 regulation.

OCR noted that the Student’s 2013-2014 IEPs did not reference any XXXX XXXX. However, the complainant forwarded to OCR an IEP for the student for the 2011-2012 school year, which states that the Student is X---phrase redacted---X. The complainant stated that she was told that the statement would appear in subsequent IEPs, so she did not need to bring it up at each meeting. She also said that XXXX XXXX officials were aware of the Student’s XXXX XXXX. The complainant stated that she became aware that the AISD X---phrase redacted---X. She also stated that the teacher reported that the Student X---phrase redacted---X.

The AISD reported that the Student X---phrase redacted---X. On that day (XXXX), X---phrase redacted---X, who mistakenly X---phrase redacted---X. The XXXX XXXX gave the Student X---phrase redacted---X. The complainant became aware of the incident after XXXX XXXX reported to her in an email that the Student was doing well XXXX XXXX. After the complainant brought the incident to the AISD's attention, the matter was investigated, and the AISD took corrective actions to ensure that it did not happen again. Specifically, the AISD agreed that the Student X---phrase redacted---X. The results of the investigation and corrective measures were communicated by the AISD in an email message to the complainant dated XXXX.

The complainant believed that the AISD likely gave the Student X---phrase redacted---X. However, AISD staff members reported in OCR interviews that they did not give the Student X---phrase redacted---X. Staff reported that the Student X---phrase redacted---X, but after its investigation of the incident in XXXX, the Student was only X---phrase redacted---X.

Under OCR's case processing procedures, OCR may administratively close an allegation if it obtains credible information indicating that the allegation has been resolved and there are no systemic allegations. Based on information received from the complainant and the AISD establishing that the AISD investigated the allegation that the Student X---phrase redacted---X, and that the AISD took corrective action in response to its investigative findings, OCR determined that the allegation was resolved. OCR also determined that the allegation did not raise any systemic concerns. Therefore, OCR is administratively closing the portions of issues 2(b) and 3 alleging that the AISD failed to implement the Student's IEP as related to her dietary restrictions.

(b) XXXX XXXX

The IEPs applicable during the 2013-2014 school year provided for X---phrase redacted---X, as alleged by the complainant. The complainant stated that she believed that the Student was X---phrase redacted---X. The complainant specifically stated that the campus could never explain to her how the Student X---phrase redacted---X.

OCR interviewed AISD staff including the Student's XXXX XXXX XXXX (XX) and the Student's XXXX XXXX XXXX for most of the 2013-2014 school year. XXXX XXXX personnel informed OCR that the Student received X---phrase redacted---X at all times. Additionally, the XXXX explained to OCR that the Student was X---phrase redacted---X. She stated that she was with the Student at the time, and she thought the complainant had been notified about X---phrase redacted---X.

Although the evidence indicated that the XXXX staff did not clearly articulate to the complainant the cause of the Student's X---phrase redacted---X, OCR discovered no evidence indicating that the Student was not supervised at the time of the incident; the complainant, when given the opportunity, was unable to provide any specific information to support her allegation. Therefore, OCR determined that there was insufficient evidence to establish that

the AISD discriminated or retaliated against the Student in violation of Title VI or Section 504/Title II as related to issues 2(b) and 3.

Issue 6(b) and (c): Retaliation

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) The complainant or other alleged injured party engaged in a protected activity;
- (2) The recipient had notice of the protected activity;
- (3) The recipient took an adverse action against the complainant or other alleged injured party contemporaneously with or subsequent to the protected activity; and
- (4) There was a causal connection between the protected activity and the adverse action.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

OCR first considers whether the complainant engaged in a protected activity. A “protected activity” is one in which a person either opposes an act or policy that is unlawful under any of the laws that OCR enforces; files a complaint, testifies, assists or participates in an investigation, proceeding or hearing conducted under the laws that OCR enforces; or otherwise asserts rights protected by the laws enforced by OCR. OCR determined that the complainant engaged in protected activity throughout the 2013-2014 school year by advocating for the Student’s disability-related rights in ARD meetings, email correspondence to AISD staff, and TEA due process and complaint filings.

OCR next considers whether the AISD had notice of the complainant’s protected activity. A recipient must have notice of any protected activity for OCR to conclude that it retaliated because of the protected activity. Based on a review of the ARD meeting minutes and recordings, email correspondence, and TEA responses, OCR determined that the AISD had knowledge of the complainant’s protected activity.

The third step in OCR’s analysis involves determining whether the complainant was subjected to an adverse action. To be an “adverse action,” the recipient’s action must significantly disadvantage the complainant or other alleged injured party as a student or employee, or his or her ability to gain the benefits of the program. In the alternative, even if the challenged action did not meet this standard because it did not objectively or substantially restrict an individual’s employment or educational opportunities, the action could be considered retaliatory if the challenged action reasonably acted as a deterrent to further protected activity, or if the individual was, because of the challenged action, precluded from pursuing his or her discrimination claim(s). To make this determination, OCR considers (on a case-by-case basis, in light of all the facts and circumstances) whether the alleged adverse action caused lasting

and tangible harm, or had a deterrent effect. Merely unpleasant or transient incidents usually are not considered adverse.

The complainant alleged that she was subjected to adverse acts when (1) she was not allowed to meet with teachers or other staff members X---phrase redacted---X and (2) AISD staff refused to respond to routine inquiries regarding the Student's education (*i.e.*, requests for meetings and questions regarding X---phrase redacted---X). OCR will discuss the alleged adverse acts below.

(b) Meetings with Teachers and Staff

The complainant alleged that she was subjected to an adverse act when she was not allowed to meet with teachers and staff X---phrase redacted---X, which limited her ability to meet with campus staff based on XXXX availability. She also stated that XXXX expressed disagreement with the complainant during meetings, which caused other staff members to “shut down.”

Based on information received from the complainant and the AISD, OCR determined that the TA was not allowed to meet with the complainant X---phrase redacted---X based on a policy applying to all teaching assistants and all parents. Further, the XXXX XXXX teacher was not allowed to meet with the complainant XXXX XXXX being present after she met with the complainant and her husband alone on or about XXXX. Thus, OCR was able to substantiate the complainant's allegation that she was not allowed to meet with some teachers and staff without XXXX being present.¹

However, OCR found that this requirement did not constitute an adverse act as defined by OCR. When asked for specific information about delayed meetings, the complainant referred to instances in which she stated her requests for meetings were ignored, but she did not describe to OCR instances in which the meetings were delayed because of XXXX schedule. Additionally, the AISD denied that any meetings were delayed by a requirement that XXXX be present. Further, the XXXX XXXX teacher informed OCR during an interview that she wanted XXXX present for meetings, which suggests that she did not “shut down” at meetings when XXXX was present.

Based on this information, OCR determined that coordinating with XXXX and having her present at meetings may have been unpleasant for the complainant, but it did not significantly disadvantage the complainant or Student and did not deter or preclude the complainant from pursuing her discrimination claims. Therefore, OCR determined that this requirement did not constitute an adverse act as that term is defined by OCR. Because OCR could not establish that the complainant had been subjected to an adverse action with regard to this issue, OCR determined that there was insufficient evidence of a violation of Section 504 or Title II with regard to issue 6(b).

¹ Notably, other AISD staff members informed OCR that they were not precluded from meeting with the complainant without XXXX being present. Additionally, while a due process hearing was pending, the XXXX and XXXX XXXX, both of whom are employees of XXXX, requested that AISD administration be present during meetings, but no meetings were scheduled during this time.

(c) Responding to Routine Inquiries

The complainant also alleged that she was subjected to retaliation when the AISD refused to respond to routine inquiries regarding the Student's education (*i.e.*, requests for meetings and questions regarding X---phrase redacted---X).

OCR reviewed voluminous correspondence between the complainant and the AISD, which indicated that the AISD did respond to inquiries made by the complainant. For example, although the complainant stated that the AISD would not make XXXX XXXX available for a meeting, email correspondence demonstrates that XXXX offered to have XXXX and her supervisor meet with the complainant on XXXX, in response to the request made by the complainant on XXXX. The XXXX supervisor then sent another email to the complainant on XXXX, which was again followed up by XXXX on XXXX.

Additionally, the complainant stated that she did not receive responses to requests for meetings with a particular staff member to X---phrase redacted---X. However, documentation from the complainant and the AISD reflects that the XXXX XXXX was discussed at multiple ARD meetings attended by that staff member around the time of the complainant's requests. Other email correspondence (including some consolidated responses addressing multiple emails from the complainant) reflected that the AISD responded to concerns about XXXX, XXXX, and the Student's XXXX at school. Although the complainant may not have been satisfied with the substance and timing of the responses, OCR determined that there was insufficient evidence to establish that the AISD refused to respond to the complainant's routine inquiries. Because the adverse action element could not be established with regard to this issue, OCR determined that there was insufficient evidence of a violation of Section 504 or Title II with regard to issue 6(c).

This concludes OCR's investigation of this complaint and should not be interpreted to address the AISD'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.

Please be advised that the AISD 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 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, you may contact the attorney investigator assigned to this case, Lori Bringas, at (214) 661-9638 or lori.bringas@ed.gov, or Justin Evans, Team Leader, at (214) 661-9676 or justin.evans@ed.gov.

Sincerely,

Taylor D. August
Director
Office for Civil Rights
Dallas Office

cc (via email): XXXX XXXX, Esq.