



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

July , 2015

Re: OCR Complaint # 06-14-1531

Mr. Alton L. Frailey, Superintendent
Katy Independent School District
6301 S. Stadium Lane
Katy, TX 77494
AltonFrailey@KATYISD.ORG

Dear Mr. Frailey:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office has resolved the above-referenced complaint, which was filed against the Katy Independent School District (KISD or District). The complaint was received by this office on July 15, 2014, and filed on behalf of the complainant's xxxxxxxxxxxx (Student), alleging discrimination on the basis of disability (xxxxxx xxxxxxxxx). The complainant specifically alleged that during the 2013-14 and 2014-15 school years, the KISD:

1. failed to identify or evaluate the Student for Section 504 services, despite notice of the Student's disability, resulting in the Student receiving unexcused absences that were related to her disability; and
2. failed to provide the complainant information about his rights and protections, including the right to due process.

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, and its implementing regulations at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability. OCR is further responsible for enforcing 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. Title II prohibits disability discrimination by public entities. OCR determined that KISD is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR had jurisdictional authority to process this complaint to resolution pursuant to Section 504 and Title II.

Based on OCR's jurisdictional authority and the complaint allegations, OCR opened the following legal issues for investigation:

1. Whether the KISD failed to provide the Student a free appropriate public education for the 2013-14 and 2014-15 school years, by failing to conduct an evaluation of the Student who,

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because of disability, needs or is believed to need special education or related aid and services, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.33, 104.35 and the Title II implementing regulation at 28 C.F.R. § 35.130.

2. Whether the KISD failed to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of the Student, a system of procedural safeguards that includes notice of right to due process to the parents of the Student, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.36 and Title II implementing regulation at 28 C.F.R. § 35.130.

On October 28, 2014, OCR opened the complaint for investigation and issued notification letters to the complainant and recipient, as well as a data request to the recipient. OCR's preliminary analysis of the District's data response revealed attendance records and notes reflective of numerous absences related to the Student's xxxxxxxxxxxxxxxxxx in 2013-2014 and the fall of 2014. The KISD also produced email correspondence from the complainant, dated September 11, 2014, inquiring why the District had never evaluated the Student for Section 504 services for her xxxxxxxxx. The KISD reported that this was the first request for evaluation it had received from the complainant, and provided correspondence reflecting its subsequent attempts to evaluate the Student in response to the complainant's email.

Prior to completing further investigative activities and concluding the investigation, OCR discussed with the KISD the status of OCR's investigation, including the concerns identified above. Subsequently, the KISD contacted OCR and requested to voluntarily resolve the complaint through OCR's Case Processing Manual (CPM) Section 302 resolution process. The CPM Section 302 provides that a complaint may be resolved at any time when, before the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

OCR determined that the complaint was appropriate to resolve during the course of the investigation and initiated negotiations with the KISD to develop a Resolution Agreement (Agreement). During the course of the resolution process, the KISD notified OCR that on June 8, 2015, the Student graduated from Xxxxx Xxxxx Xxxx School, and is no longer a Student in the District. Any individual remedies would relate only to the Student and would require the Student's presence in the school district. Therefore, the Agreement does not contain individual remedies. However, OCR determined it was appropriate to secure an Agreement for procedural remedies to resolve the complaint and to ensure KISD's compliance with Section 504 and Title II, relevant to the allegations and legal issues opened for investigation. Specifically, OCR determined that the Agreement could address systemic concerns, and provide relief beyond that solely for the Student, including the KISD changing and/or revising its policies, or procedures or practices in order to prevent possible future discrimination.

OCR submitted the enclosed Agreement to KISD, which the superintendent signed on July 27, 2015. OCR determined that the Agreement is aligned with the complaint allegations and consistent with the legal issues and applicable regulations, and accepts the enclosed Agreement as an assurance that the KISD will fulfill its obligations under Section 504 and Title II. The dates

for implementation and specific actions required are detailed in the Agreement and OCR will monitor the implementation of the Agreement to completion. Please be advised that if the KISD fails to adhere to the actions outlined in this Agreement, OCR will immediately resume its compliance efforts.

Please be advised that intimidation or retaliation against a complainant is prohibited by the regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this document and other related correspondence and records upon request. In the event 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 privacy.

We appreciate the cooperation extended to OCR by you and your staff to successfully resolve the complaint. If you have any questions about this matter, please contact Dana K. McKenna, Senior Equal Opportunity Specialist, at 214-661-9639 or via email at dana.mckenna@ed.gov, or Adriane P. Martin, Supervisory Attorney/Team Leader, at 214-661-9678 or via email at adriane.martin@ed.gov. We look forward to working with the KISD in implementing the Agreement to completion.

Sincerely,

/s/

Taylor D. August, Regional Director
OCR Dallas Office

Enclosure

cc: Mr. Xxxx XXXXXXXX, Attorney for KISD, via email only: xxxxxxx@thompsonhorton.com