



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

March 25, 2016

Ref: 06151746 and 06161154

Dr. Clint McLain, Superintendent
Dilley Independent School District
245 Highway 117
Dilley, TX 78017

Via first class mail and email (clint.mclain@dilleyisd.net)

Dear Dr. McLain:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaints, which were received on September 26, 2015 (06151746) and December 8, 2015 (06161154) and filed against the Dilley Independent School District (DISD), in Dilley, Texas. The complainants alleged that the DISD discriminated and retaliated against their children (XXXXXXXX xx XXXXXXXX x xxxx XXXXXXXX x) on the basis of disability (XXXXXX XXXXXXXX). Specifically, the complainants alleged that the DISD:

1. Failed to implement Student x's Section 504 plan from August through November 2015, when she was not provided xxxxxxxxxxxx that were xxxxxx xxxx;
2. Failed to implement Student x's Section 504 plan on XXXXXXXX xx, 2015, when she was xxx x xxxxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxx;
3. Failed to implement Student x's and Student x's Section 504 plans from April xx, 2015 through May xx, 2015, when they failed to xxxxx the xxxxx and xxxxxxx the xxxxxxxxxxxx after xxxxxxxxxxxx; and
4. Retaliated against the Students when staff engaged in open negative comments/conversations about the family and the Students' disability in XXXXXXXX 2015, because the parents complained in Fall 2015 and the prior school years about the implementation of the Students' Section 504 plans.

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 the 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 prohibits discrimination and retaliation 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 and retaliation on the basis of disability that are filed against public entities.

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

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

OCR opened the allegations for investigation, and investigated the following issues:

1. Whether the DISD discriminated against Student x 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 (e.g., failing to provide xxxxxx xxxx xxxxxxxxxxxx and xxxxxx xxxx xxxxxxxxxxxx xxxxx), and thereby denied Student x a free appropriate public education during the Fall 2015 semester, in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.
2. Whether the DISD discriminated against Students x and x on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Students' individual educational needs (e.g., failing to xxxxx xxxxx and xxxxxxxx xxxxxxxxxxxx after xxxxxxxxxxxx), and thereby denied the Students a free appropriate public education from April through May 2015, 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.
3. Whether the DISD retaliated against Students when staff engaged in open negative comments/conversations about the family and the Students' disability in Xxxxxxxxxx 2015, because the complainants complained in Fall 2015 and the prior school years about the implementation of the Students' Section 504 plans, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively.

The complainants alleged incidents in which the Students were xxxxxxxx to xxxxxx. The complainants are satisfied with the Section 504 plans in place at this time, but are concerned with continued problems with implementation since the Students had Section 504 plans in place at the times of the alleged xxxxxxxx xxxxxxxxxxxx. The District responded that any concerns raised by the parents have been resolved and produced documentation confirming that Section 504 plans are in place for the Students. Although Section 504 plans are in place, the district did not provide any evidence that staff were trained or that it considered the Students' potential need for compensatory services. The complainants also alleged incidents in which staff engaged in open negative comments/conversations about the family and the Students' because the complainants complained about the implementation of the Students' Section 504 plans. The District denied any retaliation.

Prior to OCR making an investigative determination, the DISD requested to resolve the complaint by voluntarily entering into a Resolution Agreement (Agreement). Under OCR's procedures, a complaint may be resolved at any time when, prior to the conclusion of the investigation, a recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to do so.

On March 24, 2016, the DISD voluntarily entered into the enclosed agreement, which, when

fully implemented, resolves the complaints. The resolution agreement is aligned with the complaint allegations or the information obtained during the investigation, and is consistent with applicable law and regulations. Specifically, the resolution agreement requires the District to emphasize the importance of implementation of all provisions contained in the Students' Section 504 plans to all of the individuals responsible for implementing the Students' Section 504 plans; to train all staff on the subject of Section 504 and Title II compliance and the anti-discrimination and anti-retaliation requirements of those laws, including emphasis on implementation of all provisions contained in any Section 504 plans/Individualized Education Programs (IEPs); to identify a staff member who will act as a communication liaison between the District and the parents/Students to address concerns related to the Students' xxxxxx xxxxxxxx; and to hold Section 504 meetings for each Student to determine any need for compensatory services. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the DISD's implementation of the Agreement to ensure compliance with Section 504/Title II with regard to the issues investigated.

This concludes OCR's investigation of the complaint and should not be interpreted to address the recipient'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 complainant 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, 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, 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, you may contact the attorney investigator assigned to this case, Natasha Gonzalez Rojas, at (214) 661-9680 or natasha.rojas@ed.gov, or me at (214) 661-9678 or adriane.martin@ed.gov.

Sincerely,

/s/

Adriane P. Martin
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure

cc: Eric Rodriguez, Esquire, counsel for DISD (via email at erodriguez@wabsa.com)