

August 5, 2014

Ref: 06141200

Dr. Linda Henrie, Superintendent
Mesquite Independent School District
405 East Davis Street
Mesquite, Texas 75149

Dear Dr. Henrie:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office has completed its consideration of the above-referenced complaint that was received by OCR on February 6, 2014. In the complaint, the complainant alleged that the Mesquite Independent School District (MISD), Mesquite, Texas, discriminated against her son (“the Student”) on the basis of disability (XXXX and XXXXX).

This agency 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 regulation at 34 C.F.R. Part 104 (2013), 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. §§ 12131, *et.seq.*, and its implementing regulation, at 28 C.F.R. Part 35 (2013), which prohibit discrimination on the basis of disability by public entities. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities

As a recipient of Federal financial assistance from the Department, MISD is subject to OCR’s jurisdiction under Section 504. As a public elementary and secondary education system, MISD is subject to OCR’s jurisdiction under Title II. Therefore, OCR has jurisdiction to investigate this complaint.

Based on the complainant’s allegation, OCR opened the following legal issue for investigation:

Whether MISD discriminated against the Student on the basis of disability by failing to properly evaluate his need for regular or special education and related aids and services despite having notice that, because of his alleged disabilities, he needed or was believed to need such aids and services, and thereby denied the Student a free

appropriate public education during the 2013-14 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

The complainant alleged that the MISD discriminated against the Student on the basis of disability when MISD failed to evaluate him and provide him with an individualized education plan (IEP) when he was enrolled at XXXXX School (XXXX) in XXXXXX.

Based on the information that OCR has obtained to date, when the Student enrolled at XXXX, school personnel obtained the Student's record from the school the Student previously attended. Among those documents was a copy of minutes from an ARD meeting that took place at the previous school, near the end of the XXXXX school year. The minutes indicated that the ADR committee had released the Student from special education but recommended that he be evaluated under Section 504. During the XXXXX screening of the Student's records, she noticed that the Student had been exited from special education. However, she overlooked the ARD committee's recommendation for a Section 504 evaluation, and the student was not provided special education and related aids and services. In XXXXX, the complainant informed school officials that XXXX had failed to evaluate the Student under Section 504. At that time, XXXX offered to evaluate the Student, under Section 504, but he had transferred out of the district.

After the investigation began, but before OCR reached an investigative compliance determination, MISD expressed a desire to voluntarily resolve the complaint. MISD submitted the enclosed Resolution Agreement (Agreement) dated July 31, 2014, to memorialize the steps that it will take to resolve the compliance issues raised by the complaint allegation. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance issues raised by the complaint allegation. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor MISD's efforts to implement the Agreement. Please be advised that if MISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

This concludes OCR's consideration of the complaint and should not be interpreted to address MISD'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 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 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 Jose Ortiz, Civil Rights Attorney, at 214-661-9643 or me at 214-661-9678.

Sincerely,

/S/
Taylor D. August
Regional Director
Dallas Office

Enclosure