

December 11, 2014

Reference No. 06141500

Mr. Gary Dugger, Superintendent  
Kennedale Independent School District  
120 W. Kennedale Pkwy  
Kennedale, Texas 76060

Dear Mr. Dugger:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, regarding the above-referenced complaint filed against the Kennedale Independent School District (KISD), Kennedale, Texas. OCR received the complaint on June 20, 2014. In the complaint, the complainant alleged that the KISD discriminated against XXXXX (the Student) on the basis of disability. Based on the written complaint, as well as telephone interviews with the complainant, OCR determined that the complainant alleged that during the 2013-2014 school year, the KISD:

1. Failed to provide the Student with a XXXXX to test her reading abilities and progress; and
2. Failed to provide the Student with the appropriate level of XXXXX, as required by her individualized education plan.

OCR 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 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, which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 ("Title II"), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The KISD is a recipient of Federal financial assistance from the Department and is also a public entity. Therefore, OCR has jurisdiction to investigate this complaint pursuant to Section 504 and Title II.

OCR opened the following legal issue for investigation:

Whether during the 2013-2014 school year, the KISD discriminated against the Student by denying her an appropriate public education by failing to provide her with the related aids and services (i.e.: XXXXX to test her reading abilities and

progress, and appropriate XXXXX) determined necessary by a group of knowledgeable people, to meet the Student's individual needs, in violation of 34 C.F.R. § 104.33(b) and 28 C.F.R. §35.130(a).

During the investigation stage of this complaint, the complainant informed OCR that she had removed XXXXX from the KISD and did not intend to re-enroll her in that district because, among other reasons not at issue in this investigation, the KISD was not complying with the requirement to provide XXXXX with the related aids and services listed in XXXXX Section 504 Plan. Documentation provided by the KISD also demonstrated to OCR that on October 10, 2013, the XXXXX at the student's school had made an independent decision to delete certain related aids/services from the student's Plan. (The related aids/services deleted by the XXXXX were not the specific aids/services listed in the legal issue which OCR opened for investigation.) The documentation further demonstrated to OCR that after the complainant filed an internal grievance with the KISD, the student's original 504 Plan was reinstated. However, by the time the KISD reinstated the original 504 Plan, on July 21, 2014, the 2013-2014 school year had ended. OCR confirmed with the KISD that the student is not currently enrolled in the district for the 2014-2015 school year.

After the investigation began, but before OCR reached an investigative compliance determination, the KISD expressed a desire to voluntarily resolve the complaint. The KISD submitted the enclosed Resolution Agreement (Agreement) dated December 10, 2014, to memorialize the steps that it will take to resolve the identified compliance issue raised by the complaint investigation. OCR has determined the Agreement, when fully implemented, will satisfactorily resolve the compliance issues. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the KISD's efforts to implement the Agreement. Please be advised that if KISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

The complainant has been notified of this action. This letter is not intended, nor should it be construed, to cover any matters that are not specifically discussed herein.

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.

Under OCR procedures, we are obligated to advise the complainant and the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by 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 regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

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.

Thank you for the cooperation you and your staff extended to OCR in our efforts to resolve this complaint. If you have any questions regarding this letter, please contact Paul E. Coxe, Supervisory Attorney/Team Leader, at (214) 661-9608.

Sincerely,

Taylor D. August  
Director  
U.S. Department of Education  
Office for Civil Rights, Dallas Office

Enclosure