



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

January 13, 2016

Ref: OCR Docket # 06-15-1556

Mr. Eldefonso Garcia, Superintendent  
Fabens Independent School District  
P.O. Box 697  
Fabens, TX 79838

Dear Mr. Garcia:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its consideration of a complaint against the Fabens Independent School District (FISD), Fabens, Texas, which was received on June 15, 2015. The Complainant alleged that the FISD discriminated against XXXX XXXX on the basis of disability. Specifically, the complainant alleged that the FISD failed to respond to disability-based harassment aimed at both XXXX XXXX (Student 1 and Student 2) by FISD students, faculty and staff, until she withdrew the Students from FISD in February 2015.

This agency is responsible for determining whether organizations or 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 (amended 1992), and its implementing regulation, 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 regulation, at 28 C.F.R. Part 35, which prohibit disability discrimination by public entities.

FISD is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction to investigate this complaint under Section 504 and Title II.

Based on the complainant's allegation, OCR opened an investigation as to the legal issue of whether the FISD discriminated against Student 1 and Student 2 based on disability by failing to take prompt and effective action to address disability-based harassment (*e.g.*, X---phrase redacted---X), sufficient to constitute a hostile environment, of which it had or should have had notice during the 2014-15 school year, and whether this failure resulted in the denial of a free, appropriate public education, in violation of Section 504 and Title II at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively.

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

OCR reviewed information provided by both the complainant and the recipient. OCR reviewed FISD's Board Policy FFH, which prohibits harassment on the basis of disability, among other grounds. The Policy incorporates appropriate due process standards and provides for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability, including harassment. The Student Code of Conduct prohibits and provides disciplinary measures for harassment, which is defined as conduct that meets the definition set forth in Board Policy FFH, and includes harassment on the basis of disability.

After OCR opened the investigation, FISD informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that such a resolution is appropriate. The provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

On January 7, 2016, FISD voluntarily signed and submitted to OCR a Resolution Agreement to resolve the complaint allegation. A copy of the Resolution Agreement is enclosed. OCR determined that the provisions of the Resolution Agreement are aligned with the complaint allegation and appropriately resolve it. Further, OCR accepts the Resolution Agreement as an assurance that FISD will fulfill its obligations under Section 504 and Title II with respect to the complaint allegation. The dates for implementation and specific actions are detailed in the Resolution Agreement. OCR will monitor FISD's implementation of the Resolution Agreement.

Effective the date of this letter, OCR is closing this complaint. This concludes OCR's investigation of the complaint and should not be interpreted to address FISD'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 FISD 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.

Thank you for the courtesy provided to OCR by your counsel's office. If you have any questions about this letter, please contact Eve Shatteen Bell, the attorney assigned to investigate this complaint, at (214) 661-9682 or Eve.Bell@ed.gov. You may also contact her supervisor, Timothy Caum, at (214) 661-9648 or Timothy.Caum@ed.gov.

Sincerely,

Taylor D. August  
Regional Director  
OCR Dallas

Enclosure

cc: XXXX,  
Counsel for recipient