



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

April 14, 2014

Reference: 06121382

Mr. Robert Jaklich, Ed.D, Superintendent
Victoria Independent School District
102 Profit Dr.
Victoria, TX 77901

Dear Mr. Jaklich:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of a complaint against Victoria Independent School District (VISD), Victoria, Texas, which was received in our office on May 7, 2012. The complainant alleged discrimination against XXX XXXXXXXXX (Student) on the grounds of disability and sex. Specifically, the complainant alleged the following:

1. The Student was subjected to disability-based bullying by students and teachers, and despite several complaints to school and district officials, VISD failed to address the complaints in a timely and effective manner;
2. VISD failed to fully implement the Student's Individualized Education Program (IEP) (XXX, XXXXXX XX XXXXXXXXXXX XXX XXX XXXXXXXXXXX, XXXXXXXXXXXX XXXXXXXXXXXX XXXX XX XXXXXXXXXXX XXXXXXX, XXX XXXXX XXXXXXXXXXXX); and
3. The Student was subjected to name-calling of a sexual nature by VISD students, and despite complaints to school officials, VISD failed to address the complaints in a timely and effective manner.

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 (recipients), are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), 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 disability discrimination by public entities. Also, this agency is responsible for determining whether recipients are in compliance with Title IX of the Education Amendments of 1972

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

(Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulations, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex.

VISD 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, Title II, and Title IX.

Allegation #1

The complainant alleged that the Student was subjected to verbal and physical bullying by XXX peers and by teachers from August 30, 2010, until the complainant withdrew XXX from the school in May 2012. The complainant further alleged that XXX and the Student made several reports of the alleged harassment to VISD officials, but that the harassment was not remedied. In light of the complainant’s allegation, OCR investigated the following legal issue:

Whether VISD discriminated against the Student on the basis of her disability by failing to take prompt and effective action to address the disability-based harassment aimed at XXX by peers and by teachers, which was sufficient to constitute a hostile environment, of which VISD had or should have had notice during the 2010-2011 and 2011-2012 school years, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

Prior to the completion of OCR’s investigation, VISD informed OCR that it was interested in resolving Allegation #1. 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. The provisions of the resulting voluntary resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation, and will be consistent with applicable regulations. OCR approved VISD’s request to resolve Allegation #1 prior to the conclusion of the investigation.

Allegation #2

The complainant also alleged that the Student’s IEP called for XXX to XXXX XXXXXX XX X XXXXXXXXXXX XXX XXX XX XXX XXXXXXXXXXX, XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXX XX XXXXXXXXXXX XXXXXXX, and XXXXXXX XXXXXXXXXXXXXXX, but that XXX did not receive these accommodations. In light of this complaint allegation, OCR investigated the following legal issue:

Whether VISD discriminated against the Student on the basis of disability when it failed to fully implement her IEP during the 2011-2012 school year (XXX, XXXXXX XX XXXXXXXXXXX XXX XXX XXXXXXXXXXX, XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXX XX XXXXXXXXXXX XXXXXXX, XXX XXXXX XXXXXXXXXXX), thereby denying XXX a free appropriate public education (FAPE) designed to meet XXX individual educational needs as adequately as the needs of students without disabilities, in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130.

Prior to the completion of OCR's investigation, VISD informed OCR that it was interested in resolving Allegation #2. OCR approved VISD's request to resolve Allegation #2 prior to the conclusion of the investigation.

VISD voluntarily submitted the enclosed Resolution Agreement (Agreement) to resolve Allegations #1 and #2; the Agreement was signed by VISD on April 1, 2014. OCR has determined that the provisions of the Agreement are aligned with Allegations #1 and #2 and appropriately resolve them. Further, OCR accepts the Agreement as an assurance that VISD will fulfill its obligations under Section 504 and Title II with respect to Allegations #1 and #2. The dates for implementation and specific actions are detailed in the Agreement. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding Allegations #1 and #2. However, OCR will actively monitor VISD's implementation of the Agreement. Please be advised that if VISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

Allegation #3

Finally, the complainant alleged that the Student was subjected to sexual harassment. The complainant stated that XXX informed VISD officials of this issue, and that no action was taken.

Based upon this complaint allegation, OCR opened the following legal issue for investigation:

Whether VISD discriminated against the Student on the basis of XXX sex by failing to take prompt and effective action to address the sexual harassment aimed at XXX by XXX peers, which was sufficient to constitute a hostile environment, of which VISD had or should have had notice during the 2010-2011 and 2011-2012 school years, in violation of Title IX, at 34 C.F.R. § 106.31.

Sexual harassment is unwelcome conduct of a sexual nature and can include sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct. After opening this allegation for investigation, OCR determined that the factual information underlying the allegation, even if true, would fail to establish a violation of Title IX. Accordingly, OCR is administratively closing this allegation effective the date of this letter, in accordance with OCR's case processing procedures.

There are no further complaint allegations appropriate for resolution; therefore, OCR is closing the above-referenced complaint as of the date of this letter. This concludes OCR's investigation of the complaint and should not be interpreted to address VISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Please be advised that VISD 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.

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.

If you have questions about OCR's determination in this complaint, or wish to discuss it further, you may contact Eve Shatteen Bell, the attorney assigned to investigate this complaint, at (214) 661-9682, or at Eve.Bell@ed.gov.

Sincerely,
/s/

Taylor D. August
Director
Office for Civil Rights
Dallas Office