



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Ref: 06141580

Donnie Denbow
Interim Superintendent
Kerens Independent School District
200 Bobcat Lane
Kerens, Texas 75144

Via first class mail and email (denbowd@kerensisd.org)

Dear Mr. Denbow:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint, which was received on August 23, 2014 and filed against the Kerens Independent School District (KISD), in Kerens, Texas. The complainant alleged that the KISD discriminated against her son on the basis of disability (XXXXXXXX XXXXXXXXXXX, XXXXXXXXXXX, XXXXXXX) and race (XXXXXXXX). Specifically, the complainant alleged that from the xxxx-xxxx through the xxxx-xxxx school years, the Student was harassed by other students due to his disability and race, and the KISD failed to investigate and address the harassment. The complainant further alleged that, because of the harassment (and the KISD's failure to address it), xxx xxx xxxxxxxxxxx xxxxxxx on Xxx xx xxxx.

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 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 on the basis of disability that are filed against public entities. OCR is also responsible for ensuring that organizations that receive or benefit from federal financial assistance from the Department are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance.

The KISD 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, Title II and Title VI.

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

1. Whether the KISD discriminated against the Student based on disability (XXXXXXXXX XXXXXXXXXXXX, XXXXXXXXXXXX, XXXXXXXX) from the xxxx-xxxx through the xxxx-xxxx school years, by failing to take prompt and effective action to address disability-based harassment by other students, which was sufficient to create a hostile environment, of which the KISD had or should have had notice, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130; and
2. Whether the KISD discriminated against the Student based on race (XXXXXXX) from the xxxx-xxxx through the xxxx-xxxx school years, by failing to take prompt and effective action to address racial harassment by other students, which was sufficient to create a hostile environment, of which the KISD had or should have had notice, in violation of Title VI, at 34 C.F.R. § 100.3.

In the initial interviews with OCR, the complainant stated that the Student was diagnosed with x xxxxxxxx xxxxxxxxxxxx, xxxxxxxxxxxx, and xxxxxxx. During the xxxxxxxx school year the Student was xx years old and in the xxx grade. The complainant stated that the Student was constantly made fun of because of his xxxxxx, that students would push him down, knock his books out of his hands, and laugh at him and call him names (i.e. xxxxxx, xxxxxx, xxxxxxxxxxxx, xxxxxx, xxxxxxxx) at school and xx xxx xxx. The complainant reported that although the Student was very smart, his xxxxxxxx was xxxx and other students made fun of him. The complainant also reported that the Student was xxxxxxxx (XXXXXXXXX and XXXXX) and he was picked on because he did not fit in because he was part XXXXXXXX. In addition, students would call his sister and the complainant racially derogatory names because his sister is xxxxxxxx (XXXXX and XXXXX). The complainant reported that the bullying had occurred since xxxx, that she, the Student's xxxxxxxx, the Student's xxxxxx, and the Student complained about the bullying to KISD staff, but the KISD failed to investigate the incidents or take effective action to stop the bullying. The Student xxxxxxxxxxxx xxxxxxxx on Xxx xx xxxx. On the xxx of the Student's xxxxxx, he had been suspended for xxxxx xxxx (xxxxxxx a XXXX xxxxxxxx) for xxxxxxxx the following on a xxxxxxxx xxxx: "XXXXX xxxx xx x xxxxxxxx xx x xxxx. XXXXXXX xxx xxxx xxxxxxx." The complainant reports that the Student had been bullied the xxx xxxxxxx.

OCR opened the complaint for investigation and issued notification letters to the recipient and the complainant, as well as a data request to the recipient. The KISD responded to OCR's data request. In its data response, the KISD stated that it did not discriminate against the Student on the bases of disability or race. Specifically, the KISD reported that the Student's parent had always identified the Student as XXXXX; the Student was not identified as a student with a disability and was not receiving special education or Section 504 services; the KISD had no knowledge of a condition of xxxxxxxxxxxx; and the KISD had consistently and effectively addressed allegations of harassment, bullying or mistreatment by others for all students, including the Student. However, the KISD denied receiving any complaints prior to the Student's death that the Student was harassed or bullied.

Subsequently, the complainant reported to OCR that she may have identified the Student as XXXXX to the KISD; that she believed that the Student had been identified as a Section 504

student; that the KISD was aware of the Student's xxxxxxxxxxxx and that the Student had xxxxxx xxxxxxxxxxxx at school; and that several members of the family as well as the Student had complained for years to the KISD about the harassment and bullying. The complainant also identified several adult and student witnesses. OCR reviewed the Student's registration forms for various school years, which reflect that the complainant identified the Student as Xxxxx to the KISD. The district produced no records reflecting any knowledge on behalf of the KISD of the Student's disability. The district produced no records of any complaints of harassment or bullying regarding the Student filed prior to the Xxxxxxxxx xxxxx.

OCR reviewed documents produced by the KISD in response to OCR's request for complaints/incidents of disability and racial harassment related to students enrolled at Xxxxxx Xxxxxx School, other than the Student, in xxxxxxxxxxx, xxxxxxxxxxx, and xxxxxxxxxxx. The minimal records provided by the District prevented OCR from determining without further investigation whether a hostile environment, on the basis of race or disability, exists for students, and if so, whether the district takes appropriate responsive action reasonably calculated to eliminate the hostile environment, prevent further recurrence of harassment, and, as appropriate, remedy the effects. OCR also noted that the KISD records did not appear to follow the procedures outlined in the KISD's policies or utilize forms the KISD identified as part of their procedures for responding to such complaints/incidents. The KISD reported that they produced what documents were available, but two of the principals for the relevant years were no longer with the district. OCR's review additionally found that the KISD's initial data response did not include documentation reflecting its investigation/determination regarding the complainant's allegations of harassment and bullying made following the Xxxxxxxxx xxxxx. The complainant sent an email to the District approximately one month after the Xxxxxxxxx xxxxx, which alleged that the Student had been bullied, was called names, was pushed down and was unable to get up because of his xxxxx, and that the family and the Student reported the bullying, but the District did not provide OCR with any records related to the alleged bullying of the Student. The KISD denies receiving any complaints prior to the Xxxxxxxxx xxxxx. However, in a telephone call with OCR, the KISD reported that it investigated the allegations in the complainant's email, including interviewing teachers and other students, but found no witnesses to the alleged harassment and bullying. However, at the request of the complainant, the KISD instituted a CyberBully Hotline in the xxxxxxxxxxx xxxxx xxxx and added directions on its homepage online to access the hotline and bullying information.

Prior to OCR making an investigative determination, the KISD 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 September 25, 2015, the KISD voluntarily entered into the enclosed agreement, which, when fully implemented, resolves this complaint. 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 respond promptly to all complaints of harassment of students on the bases of race or disability; to issue an anti-harassment statement; to review and revise, as necessary, its harassment policies

and grievance procedures; to develop an annual climate check survey process; to develop a task force for improving school climate; to provide staff and student training regarding harassment; and to implement a system for effectively documenting, investigating, and tracking complaints and incidents of harassment. 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 implementation of the Agreement to ensure compliance with Section 504/Title II and Title VI 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 Adriane Martin, Team Leader, at (214) 661-9678 or adriane.martin@ed.gov.

Sincerely,

Taylor D. August
Director
Office for Civil Rights
Dallas Office

Enclosure

cc: Xxxxx XXXXXXX, XXXX XXXXXX XXXXXX XXXXXXXXXX (w/ encl., via email XXXXXXXX@kerensisd.org)