



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

July 6, 2016

Ref: 06161161

Dr. Marc Smith, Superintendent
Duncanville Independent School District
802 South Main Street
Duncanville, Texas 75137

Via first class mail

Dear Dr. Smith:

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 in our office on December 14, 2015, and filed against the Duncanville Independent School District (District or DISD), in Duncanville, Texas. The complainants alleged that the DISD discriminated against XXXXX XXX (Student) on the basis of disability (ADHD, Emotional Disturbance, and Dyslexia). Specifically, the complainants made the following allegation:

1. From August 2015 until December 9, 2015, the DISD did not provide or implement the following interventions indicated in the Student's Behavior Intervention Plan (BIP), which was included in the Student's Section 504 plan:
 - a. The Student was not permitted to request a break in a quiet area/ calm down;
 - b. The Student was not allowed extra time to comply;
 - c. The Student was not prompted to cool down/refocus place; and
 - d. Demands/requests to the Student were not reframed/rephrased

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. The DISD 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 and Title II.

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 allegation for investigation, and investigated the following issue:

1. Whether the DISD discriminated against the Student, on the basis of his disabilities (ADHD, Emotional Disturbance, and Dyslexia), by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (e.g. between August 2015 and December 9, 2015, the Student was not permitted to request a break in a quiet area/ calm down, allowed extra time to comply, and prompted to cool down/refocus place, and demands/requests to the Student were not reframed/rephrased) and thereby denied the Student a free appropriate public education during the 2015-2016 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively.

Prior to OCR making an investigative determination, the DISD 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 June 27, 2016, the DISD voluntarily entered into the enclosed Agreement, which, when fully implemented, resolves the complaint. The Agreement is aligned with the complaint allegations and the information obtained during the investigation, and is consistent with applicable law and regulations. Specifically, the Agreement requires the District to provide the Student the opportunity for reevaluation concerning the Student's identified impairments of Dyslexia and Dysgraphia; provide the Student the opportunity for a determination by a group of knowledgeable persons concerning the Student's needs on an individualized basis in relation to the Student's identified impairments of Dyslexia and Dysgraphia; evaluate the Student's needs for compensatory and/or remedial services; and provide training to relevant staff at the Student's school concerning evaluations, Section 504 determinations, and implementation of Section 504 plans. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the DISD's implementation of the Agreement to ensure compliance with Section 504/Title II with regard to the issues investigated.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District'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, complainants 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, Michael J. Pillera, at (214) 661-9614 or michael.pillera@ed.gov, or you may contact Adriane P. Martin, Supervisory Attorney/Team Leader, at (214) 661-9678 or adriane.martin@ed.gov.

Sincerely,

Taylor D. August
Regional Director
Office for Civil Rights
Region VI, Dallas Office

Enclosure

cc: Dean Micknal, Esquire, counsel for DISD (via email at dean@leasorcrass.com);
Dr. Sandra McCoy-Jackson, DISD Assistant Superintendent of Curriculum and Instruction
(via email at smccoyjackson@duncanvilleisd.org)