



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 20, 2017

Ref: 06161407

Joel Rogers, Superintendent
Amherst Independent School District
PO Box 248
Amherst, TX 79312

Via first class mail and e-mail (jorodgers@esc17.net)

Dear Superintendent Rogers:

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 March 30, 2016, and filed against the Amherst Independent School District (District or AISD), in Amherst, Texas. The Complainant alleged that the AISD discriminated against XXXX XXXX (Student) on the basis of race (XXXX), disability (XXXX), and sex and that the AISD retaliated against the Student. Specifically, OCR determined that the Complainant made the following allegations:

1. During the 2015-2016 school year, other students harassed the Student on account of his disability (XXXX), including:
 - a. Between August 2015 and December 2015, on several occasions, other students called the Student crazy, including making statements such as “you have XXXX; you are crazy; you need to shut up; you are annoying;”
 - b. Between September 2015 and November 2015, on several occasions, another student told the Student that he was talking too much because of his XXXX, told the Student to shut up, and told the Student that XXXX XXXX was the Superintendent and XXXX XXXX would suspend the Student or kick the Student out of school;
 - c. In October 2015, another student, slapped the Student in the face and the Student hit his head on a locker in the hallway;
 - d. Between XXXX 2015 and XXXX 2016, after the Student’s athletics class, on several occasions, other Students pushed the Student down to the ground;
 - e. On or around October 22, 2015, another student held scissors on the Student and did not allow him to leave the Student’s English classroom;
 - f. On or around November 23, 2015, another student told the Student he was going to jump on him and beat him up after school;
 - g. On or around January 4, 2016, in the foyer of the gym, other students pushed the Student;

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

- b. On or around XXX XXXX, 2016, during the Student’s athletics class, another student chased the Student, knocked the Student down, and used LGBTQI-based epithets and racial epithets towards the Student;
4. In December 2015, 8th grade students kicked the Student’s backpack in the hall;
5. On or around February 29, 2016, another student lied and told a coach that the Student had cursed so that the Student would get in trouble;
6. As a result of bullying and/or harassment faced by the Student during the 2015-2016 school year, the Student was not able to focus, the Student was stressed and upset, and the Student received failing grades;
7. As retaliation for the Student’s XXXX XXXX contacting the AISD Superintendent in XXXX on behalf of the Complainant and telling the AISD Superintendent that the school was discriminating against the Student on the basis of disability the Student was given out-of-school suspension for three days during XXXX, and on several occasions during XXXX and thereafter, coaches, assistant coaches, administrators, and other staff members told the Student that he was a liar, and refused to believe or assist the Student when the Student reported bullying and/or harassment he was facing; and
8. The Complainant and the Student’s private counselor expressed disagreements with determinations made at admission, review, and dismissal (ARD) meetings held for the Student in XXXX and XXXX, during and after the ARD meetings took place, and the Complainant and/or the Student’s parents were not provided with procedural safeguards, any information concerning an impartial hearing, or any information concerning how to appeal the school’s determination.

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 this Department, are in compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation, at 34 C.F.R. Part 100; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulation, at 34 C.F.R. Part 106; and 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. Title VI prohibits discrimination on the bases of race, color, and national origin. Title IX prohibits discrimination on the basis of sex. Section 504 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 AISD is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Title VI, Title IX, Section 504, and Title II.

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

1. Whether the AISD discriminated against the Student on the basis of disability by failing to take prompt and effective responsive action to address disability-based harassment by other students, (including but not limited to: Other students saying that the Student has XXXX and is crazy, saying that the Student is annoying, telling the Student that he needs to shut up, telling the Student that he is talking to much because he has XXXX, slapping the Student in the face and causing the Student to hit his head on a locker, pushing the Student down to the ground, holding scissors on the Student and not allowing him to leave the Student’s English classroom, telling the Student that they would jump on him and beat him up after school, pushing the Student, teasing the Student to distract him because the Student has trouble focusing, trying to stab the Student with scissors, and jumping on and knocking the Student down outside of school; and another student telling the Student that XXXX XXXX is the Superintendent and that the Student will be suspended or kicked out of school) which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2015-2016 school year, in violation of Section 504 and Title II, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively;
2. Whether the AISD discriminated against the Student on the basis of race by failing to adequately respond to racially harassing conduct by other students and/or AISD staff members, (including but not limited to: other students telling the Student they are going to kill him and would not go to jail for doing it; telling the Student that he should go back to XXXX; calling the student a “fucker” and a “mother fucker;” telling the Student “Fuck you;” using racial epithets towards the Student; saying “with your XXXX ass” to the Student; slapping the Student in the back of the head; telling the Student “you better get in the car with your XXXX ass” and “you better get your XXXX ass in the car;” dragging the Student on the sidewalk and causing an injury to the Student’s back; trying to stab the Student with scissors and jabbing at the Student with scissors; jumping on the Student and knocking him down; and chasing and knocking down the Student, while using LGBTQI-based epithets) which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2015-2016 school year, in violation of Title VI, at 34 C.F.R. § 100.3;
3. Whether the AISD discriminated against the Student on the basis of sex by failing to take prompt and effective responsive action to address sexual and/or gender-based harassment by other students, including harassment based on nonconformance with gender stereotypes, (including but not limited to: other students calling the Student gay; using LGBTQI-based epithets towards the Student; chasing and knocking down the Student; and jabbing at the Student with scissors) which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2015-2016 school year, in violation of Title IX, at 34 C.F.R. § 106.31;
4. Whether the AISD discriminated against the Student on the basis of disability by failing to provide the Student with a free appropriate public education (FAPE) when the AISD failed to reevaluate the Student’s educational placement after the AISD knew, or should have known, that the effects of bullying/harassment may have affected the Student’s

receipt of Section 504 services, in violation of Section 504 and Title II, at 34 C.F.R. § 104.35, and 28 C.F.R. § 35.130, respectively;

5. Whether the AISD retaliated against the Student by giving the Student out-of-school suspension in XXXX XXXX, and on several occasions during XXX XXX and thereafter, AISD staff members telling the Student he was a liar and refusing to believe or assist the Student when the Student reported bullying and/or harassment he was facing, during the 2015-2016 school year, because the Student's XXXX XXXX contacted the AISD Superintendent in XXXX XXXX on behalf of the Complainant and told the AISD Superintendent that the school was discriminating against the Student on the basis of disability, in violation of Section 504 and Title II, at 34 C.F.R. § 104.61, and 28 C.F.R. § 35.134, respectively; and
6. Whether the AISD discriminated on the basis of disability during the 2015-2016 school year when it failed to provide the Complainant and/or the Student's parents notice of procedural safeguards following admission, review, and dismissal meetings in XXXX 2015 and XXX 2015, in violation of Section 504 and Title II, at 34 C.F.R. § 104.36, and 28 C.F.R. § 35.130, respectively.

Prior to OCR making an investigative determination, the AISD 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 April 19, 2017, the AISD 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 AISD to provide training to relevant staff members concerning processing, investigating, and resolving complaints of harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms; provide training to all students and instructional staff addressing harassment; provide training to relevant staff members concerning Section 504 determinations and provision of a FAPE; provide training to relevant staff members concerning prohibitions against retaliation; formally reaffirm in writing to students, staff, and parents the AISD's obligation to address incidence of harassing conduct; review, and if necessary, revise relevant policies and procedures concerning discrimination based on sex, gender, and nonconformance with gender norms; complete an investigation into the allegations of harassment, reach findings, share those findings with the Student's parents/guardians, and appropriately correct and redress all substantiated harassment; provide the Complainant notice of procedural safeguards; convene a group of knowledgeable persons to evaluate whether the Student's needs have changed and whether compensatory or remedial services are necessary if the Student remains in the District, or provide the a written offer to convene a group of know knowledgeable persons if the Student reenrolls in the District; and review the basis for the Student's assignment of three days of out-of-school suspension to, assess inconsistencies, assess compliance with AISD Student Code of Conduct, and expunge the Student's record if appropriate. Accordingly, as of the date of this letter, OCR will cease all

investigative actions regarding this complaint. However, OCR will actively monitor the AISD implementation of the Agreement to ensure compliance with Title VI, Title IX, Section 504, and 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 Paul Coxe, Supervisory Attorney/Team Leader, at (214) 661-9608 or Paul.Coxe@ed.gov.

Sincerely,

Paul Coxe
Supervisory Attorney
Office for Civil Rights
Region VI, Dallas Office

Enclosure

cc: XXXX, Esquire, counsel for the AISD (via email at [XXXX](#)); and
XXXX, Esquire, counsel for the AISD (via email at [XXXX](#))