



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Dr. George Kazanas, Superintendent
Midway Independent School District
13885 Woodway Drive
Woodway, TX 76712

RE: OCR Case No. 06-16-1661
Midway ISD

Dear Superintendent Kazanas,

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 the above-captioned complaint against the Midway Independent School District (MISD or the District), [XXXX XXXX XXXX] School ([XXXX] or School) in Hewitt, Texas, which was filed on May 16, 2016 with the U.S. Department of Justice, and transferred to OCR on June 20, 2016. The Complainant alleged that MISD discriminated against [XXXX XXXX] (the Student) on the basis of disability.

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 enforces 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 public entities from discriminating on the basis of disability.

MISD is a recipient of Federal financial assistance from the Department and is a public educational institution. Therefore, OCR has jurisdictional authority to process complaints of retaliation filed against MISD under Section 504 and Title II.

OCR opened the following issues for investigation:

1. Whether MISD discriminated against the Student on the basis of disability by failing to evaluate the Student's need for regular or special education and related aids and services despite having notice that, because of the Student's alleged [XXXX XXXX XXXX] disability, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education during the 2015-2016 school year, in violation of

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

Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

2. Whether MISD treated the Student differently on the basis of disability in the context of an educational program or activity by disciplining the Student with detentions for absences or tardiness to school related to [X---phrase redacted--X] disability, without a legitimate, nondiscriminatory reason, and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities or privileges provided by MISD during the 2015-2016 school year, in violation Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130.

OCR received data from the MISD regarding the above-referenced issues and conducted interviews with relevant [XXXX] staff in the MISD. Regarding issue 1, MISD produced a copy of a document from a Medical Doctor at the [XXXX XXXX XXXX] that the Complainant provided to [XXXX] in September 2015. This document prescribed a specific medicine for the Student to receive in the event of the Student suffering a [X---phrase redacted--X-]. Interviews with [XXXX] staff revealed that the Principal and Nurse were aware of this document and the specific medical reason for the medication, and that [XXXX] staff requested the Complainant provide additional information from a [XXXX] in order to retain and administer the medication if needed. In addition, MISD admitted that the Student was not evaluated during the 2015-2016 school year for disabilities under Section 504 and Title II despite having received this form indicating potential disability owing to [XXXX XXXX XXXX] disorder, regardless of requests for additional information from [XXXX].

Regarding issue 2, the documentation indicated that the MISD did not maintain the records of students who received disciplinary action from [XXXX] as a method of attendance intervention beyond the conclusion of the 2015-2016 school year. Interviews with [XXXX] staff at the MISD showed awareness that the Student received a number of disciplinary actions as an attendance intervention but revealed no information pertaining to the school having awareness of the alleged reason for the Student's tardiness: administering medicine for [XXXX XXXX XXXX]. Because the District did not maintain the disciplinary records pertaining to attendance referenced above, OCR could not determine whether similarly-situated nondisabled students were treated differently than the Student.

Prior to the conclusion of OCR's investigation, on November 15, 2016, MISD informed OCR that it was interested in resolving the complaint. Section 302 of OCR's Case Processing Manual (CPM) 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 November 17, 2016, OCR determined that a resolution under Section 302 of the CPM was appropriate.

On April 13, 2017, MISD voluntarily signed and submitted to OCR a Resolution Agreement (Agreement) to resolve the complaint allegation. A copy of the Resolution Agreement is enclosed. The Agreement includes the following:

1. Training district-wide for staff on properly identifying students who may need evaluation for disabilities;
2. Offering the Complainant the opportunity to have the Student evaluated for special education or related aids and services;
3. If a disability is found, convening an Admission, Review, and Dismissal meeting to determine if compensatory and/or remedial services are necessary for the Student for time that passed between receiving notice of the Student's potential disability and the Student's evaluation;
4. Revising MISD's record keeping policies for attendance-related disciplinary measures for students; and
5. Removal from the Student's record of all 2015-2016 disciplinary actions (e.g., detention, Saturday school) resulting from attendance issues.

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 MISD 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 MISD's implementation of the Resolution Agreement and will not conclude monitoring of the MISD until all terms of the Agreement have been satisfied.

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

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If you have any questions regarding this letter, please contact Kyle Gruber, the attorney assigned to evaluate your complaint, at (214) 661-9613 or Kyle.Gruber@ed.gov, or me at (214) 661-9648 or Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
Dallas Office

Enclosure