



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 18, 2017

Via U.S. Mail and Email

Dr. Fred Brent, Superintendent
Georgetown Independent School District
603 Lakeway Drive
Georgetown, TX 78628
BrentF@georgetownisd.org

CC: [XXXX] [XXXX]
[XX – line redacted – XX]
[XX – line redacted – XX]

OCR Complaint #06171048
Georgetown Independent School District

Dear Dr. Brent:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has reached a resolution of the above-referenced complaint, received on October 19, 2016. The Complainant alleged that Georgetown Independent School District, Georgetown, Texas (GISD or District), discriminated against her [XXXX] (Student A) and her [XXXX] (Student B) on the basis of disability by failing to evaluate them for special education services.

OCR is responsible for determining whether organizations 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 Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation 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 regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints against public entities alleging discrimination on the basis of disability. As a recipient of Federal financial assistance and a public education entity, the GISD is subject to OCR's jurisdiction under Section 504 and Title II.

OCR opened the following issues for investigation:

- (1) Whether the GISD discriminated against Student A on the basis of disability by failing to evaluate Student A's need for regular or special education and related aids and services despite having notice that, because of Student A's alleged disabilities, Student A needed or was believed to need such aids and services, and thereby denied Student A a free appropriate public education during the [XXXX],

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[XXXX], and [XXXX] school years, in violation of 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 the GISD discriminated against Student B on the basis of disability by failing to evaluate Student B’s need for regular or special education and related aids and services despite having notice that, because of Student B’s alleged disabilities, Student B needed or was believed to need such aids and services, and thereby denied Student B a free appropriate public education during the [XXXX], [XXXX], and [XXXX] school years, in violation of 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.

Legal Standard

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district’s jurisdiction. The Section 504 regulations’ evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student’s initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special education or related services. As a result, OCR applies a “reasonableness” standard to determinations regarding the timeliness of evaluations. Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options

OCR interprets the general prohibition against discrimination in the Title II implementing regulations to require the provision of a FAPE to the same extent that the Section 504 implementing regulations specifically require the provision of a FAPE.

Investigative Summary

The Complainant alleged that the GISD failed to evaluate Student A and Student B (respectively) for [XXXX] and [XXXX] over the course of the previous [XXXX] school years despite their well-documented academic difficulties [XX – to end of sentence redacted – XX]. In response to OCR’s data request, the District submitted documentation indicating that it has implemented its “Response to Intervention” (RtI) system to provide academic support for both Student A and Student B within the general education environment to address the Complainant’s concerns. The GISD indicated that Student A or Student B would only be referred for special education testing if its “Tier III” RtI interventions were unsuccessful, unless the Complainant specifically requested testing. The District indicated the Complainant never requested such testing.

OCR reviewed a document in Student A’s file indicating that Student A’s first RtI meeting [XXXX] [XXXX] occurred on [XXXX]. Similarly, OCR reviewed a document in Student B’s file indicating that Student B’s first RtI meeting [XXXX] [XXXX] [XXXX] [XXXX] [XXXX] occurred on [XXXX]. OCR reviewed other documents in the students’ files indicating that both students were retained [XX – to end of phrase redacted – XX], consistently lagged behind grade level in reading and math, and failed to make progress despite general education intervention strategies. Notes from several RtI meetings also indicate that the Complainant discussed her concerns about [XXXX] with the District on multiple occasions. As of the filing of this complaint with OCR, Students A and B had not been evaluated by the District for eligibility to receive services under Section 504 or Title II.

Prior to OCR conducting interviews of the District’s employees and prior to obtaining additional data from the District, the District expressed interest in voluntarily resolving the complaint. OCR’s Case Processing Manual (CPM) Section 302 provides that issues under investigation may be resolved at any time when, prior to the conclusion of OCR’s investigation, the recipient expresses an interest in resolving the issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. On March 8, 2017, OCR approved the District’s request to resolve the issues prior to the conclusion of OCR’s investigation. The District submitted the attached Resolution Agreement (Agreement) on April 17, 2017, which OCR has determined addresses the allegations in this complaint and which, when fully implemented, will resolve the complaint. Specifically, the Agreement requires the GISD to evaluate both Student A and Student B for special education services. The Agreement also requires the GISD to provide training to its employees regarding its obligation to timely evaluate students under Section 504 and Title II.

As of the date of this letter, OCR is closing the investigative stage of this complaint; however, OCR will actively monitor the implementation of the Agreement by the District. If the District fails to implement the Agreement, OCR will resume its investigation of the above issues. This letter is not intended nor should it be construed to cover any matters not specifically addressed herein.

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.

Under OCR procedures we are obligated to advise the institution against which the complaint is filed that intimidation or retaliation against a complainant is prohibited by regulations enforced by this agency. Specifically, the regulations enforced by OCR, directly or by reference, state that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with a complaint.

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 regarding this letter, please contact Tyler Clemons, the attorney assigned to this matter, at (214)661-9690 or Tyler.Clemons@ed.gov, or me at (214)661-9648 or Timothy.Caum@ed.gov.

Sincerely,

/s/

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