



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

July 2, 2019

Dr. Tom Leonard, Superintendent
Eanes Independent School District
601 Camp Craft Road
Austin, Texas 78746

RE: OCR Ref. No. 06181573
Eanes Independent School District

Dear Dr. Leonard:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, received the above-referenced complaint on April 27, 2018 against the Eanes Independent School District (EISD), in Austin, Texas. The complainant alleged that the EISD discriminated against her daughter (the “Student”) on the basis of disability (Anxiety/panic attacks and ADHD), sex and retaliation. Specifically, the complainant alleged that the EISD:

1. Failed to provide the Student a free appropriate public education (FAPE) by failing to implement provisions (related aids and services) of her Intervention Plan (e.g. a safe, quiet place to accommodate her panic attacks);
2. Failed to take appropriate steps (to separate the harassed Student and the harasser, and directing the harasser to have no further contact with the harassed Student), during the District’s investigation, after a complaint of sexual harassment was filed against a male student, on March 2018.
3. Retaliated against the Student from March 2018, because the complainant pursue student support services for the Student, when the EISD:
 - a. Denied access to the Student’s support services as a temporary aid for her panic attacks;
 - b. “Pulled” Student out of various class periods immediately prior to her end of year course final exam for one of the schools administered evaluations;
 - c. School psychologist prevented the Student from completing her end of year course final exams for various classes when the Student was “pulled” out of the classes in order to take psychological evaluations, during the last 6 days of school;
 - d. School administration ignored the Complainant’s request to allow Student to retake the final exams that were missed when Student was “pulled” out of class by the school psychologist;
 - e. Caused the Complainant to receive two truancy notification letters, due to the Student’s medically supported absences being misidentified in the school’s attendance system;

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

- f. Assistant principal ignored email requests for investigations into bullying, harassment, and items stolen from the Student.

This agency is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any education program or activity receiving Federal financial assistance. OCR also enforces 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. Further, OCR has jurisdictional authority to pursue allegations of retaliation under Section 504 and Title II. The Section 504 implementing regulations, at 34 C.F.R. § 104.61, incorporate by reference the non-retaliation provision of the implementing regulations of Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.7(e), which states 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 this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Title II implementing regulations, at 28 C.F.R. § 35.134, incorporate a prohibition against retaliation that is comparable to the provision incorporated by reference in the Section 504 implementing regulations.

In addition, OCR is responsible for determining whether organizations that receive or benefit from Federal financial assistance from the Department are in compliance with the applicable portion of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. The EISD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to process this complaint for resolution under both Section 504 and Title II and Title IX.

OCR opened an investigation of the following legal issues:

1. Whether the EISD discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (*i.e.*, providing the Student a safe and quiet place to accommodate her panic attacks) and thereby denied the Student a FAPE, during the Spring 2018, in violation of Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130.
2. Whether the EISD failed to respond promptly and equitably to a sexual harassment complaint (e.g., failed to take appropriate steps to separate the harassed Student and the harasser, and directing the harasser to have no further contact with the harassed Student, who shared the same sign language class) filed against a male student, in March 2018, which was sufficient to constitute a hostile environment, of which it had notice, in violation of Title IX, at 34 C.F.R. §§ 106.8 and 106.31.
3. Whether, during the Spring 2018 school year, the EISD retaliated against the Student when the EISD:
 - a. Denied access to the Student's support services as a temporary aid for her panic attacks;
 - b. "Pulled" Student out of various class periods immediately prior to her end of year course final exam for one of the schools administered evaluations;
 - c. School psychologist prevented the Student from completing her end of year course

- final exams for various classes when the Student was “pulled” out of the classes in order to take psychological evaluations, during the last 6 days of school;
- d. School administration ignored the Complainant’s request to allow Student to retake the final exams that were missed when Student was “pulled” out of class by the school psychologist;
- e. Caused the Complainant to receive two truancy notification letters, due to the Student’s medically supported absences being misidentified in the school’s attendance system; and
- f. Assistant principal ignored email requests for investigations into bullying, harassment, and items stolen from the Student, because the complainant pursued student support services for the Student, in violation of Section 504, at 34 C.F.R. § 104.61, and Title II, at 28 C.F.R. § 35.134.

During the course of OCR’s investigation, and before OCR had obtained sufficient evidence to support a finding of either compliance or noncompliance with regard to issues #1 and #3 above, the EISD expressed an interest in resolving the allegations and issues raised in the complaint. However, with regard to Issue #1, a review of the data response indicated that the EISD provided accommodations to the Student under an agreed Short Term Intervention Plan (STIP), after the Student visited the nurse on March 6, 2018 due to a panic attack. The data also indicated that the EISD began an evaluation process for Special Education, and according to the EISD, the complainants refused to sign the consent for services. Further, the EISD indicated that although the complainant refused to sign for services, the EISD “still provided support services and accommodations in a STIP for the Student.” As such, OCR has concerns relating to Issue #1, because the evidence did not reflect that the Special Education (SPED)/504 evaluation was completed, and a determination was met.

Further, with regard to Issue #3, the complainant alleged that the Student was “pulled” from several class periods and missed final exams because of “psychological evaluations.” The complainant also alleged that she received 2 truancy notification letters due to the Student’s medically-supported absences, and that the principal allegedly ignored email requests for investigation into harassment, bullying, and items stolen from the Student. A review of the data indicated that although the EISD denies that the Student was “pulled” from her classes, there were some concerns (conflicting information) as to whether the Student missed classes/final exams because of testing/evaluations. With regard to the truancy notices, the EISD acknowledged that there was an error because there was a substitute teacher covering that class period. However, the EISD indicated that it was corrected the same day. Further, the data response indicated that the complainant received one letter sent to the complainant regarding absences. However, the EISD explained that these letters are “form letters” automatically generated and mailed to parents. Further, the EISD indicated that these form letters mention consequences for truancy, but they are not “truancy notifications.” With regard to the ignored email requests, the EISD indicated that they investigated the complainant’s concerns and the concerns were not ignored. According to the EISD, an investigative summary was given to the complainant on May 23, 2018. As such, there are concerns relating to the student’s “missed classes and exams,” and the automatically generated truancy letters to the parent.

Under Section 302 of OCR’s Case Processing Manual, issues under investigation may be resolved at any time when, prior to the conclusion of the investigation the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement, during the course of an investigation.

OCR determined that it is appropriate to resolve the allegations and issues pursuant to OCR's case processing procedures referenced above. OCR negotiated with the UTSA and obtained the enclosed Resolution Agreement (Agreement), dated June 17, 2019, to resolve Issues #1 and 3. OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance issues raised by the complaint allegations. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint; however, OCR will actively monitor the EISD's implementation of the Agreement. Please be advised that if the EISD fails to adhere to the actions required under the Agreement, OCR will immediately resume its compliance efforts.

With regard to Issue #2, a review of the data response (including a declaration of Assistant principal) from the EISD indicated that, on March 5, 2018, the Student was suspended for 3 days after she admitted to filming another student "snort" a white powdery substance in the restroom. According to the Assistant principal (AP), when the complainant came to pick up the student for her suspension, the complainant asked the AP the reason he was investigating the student, and not investigating "all of the things that had happened to her" (i.e., a male student "touched" the Student's leg during a sign language class earlier in the school year.) The AP stated in his declaration, that at no time did the complainant allege to him that the Student was being sexually harassed or that the "touch" was sexual in nature. Further, the AP stated that he then spoke with the sign language teacher (the AP was not sure of the exact date, but was sometime in March 2018), and the sign language teacher and the aide stated that they did not witness any incidents of sexual harassment between the students, nor were they notified about "anything like that taking place." According to the AP, soon thereafter, he informed the sign language teacher to change the student's seats, so that the Student was far apart the identified male student, during class.

In addition, the AP stated that, on May 16, 2018, the complainant filed a formal complaint regarding the same incident, and the AP indicated that he conducted another investigation that same day, which was completed on May 23, 2018. During this investigation, the AP had the male student provide a written statement for the investigation. In that statement, the male student denied touching the Student, and indicated that if there was any physical contact (i.e., touch on the Student's leg), it was accidental. The AP stated that he provided the complainant with a copy of his investigative summary. Further, the AP indicated that although he did not "find any evidence to support the complainant's allegation," he informed the sign language teacher to "move the male student's seat far away from the Student, and to keep a close watch on the interaction between the two students." The AP also instructed the male student to "refrain from interacting with the Student and to report any inappropriate behavior in class."

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program. Based on the above information, even if proven true, the single and isolated act (touch on the leg) did not fall under the definition of sexual harassment. Therefore, per OCR's Case Processing Manual (CPM), Section 108 (a), OCR has determined that the allegation, on its face or as clarified, fails to state a violation of one of the laws and regulations OCR enforces. As such, OCR is dismissing Issue #2, in its entirety, as of the date of this letter.

Regarding the dismissal of Issue #2, the complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

This concludes OCR's investigation of the complaint and should not be interpreted to address the EISD's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant has been notified of this action.

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 the EISD 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.

If you have any questions regarding this letter, you may contact Ms. Patricia I. Sinanan at (214) 661-9649 or by email at Patricia.Sinanan@ed.gov. You may also contact Ms. Adriane Martin, Supervisory Attorney/Team Leader, at (214) 661-9678, or by email at Adriane.Martin@ed.gov.

Sincerely,

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