UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Ref: 06141449

XXXXXXXX, Superintendent
Manor Independent School District
10335 US Highway 290 E
Manor, Texas 78653

Dear XXXXX:

This letter is to notify you of the determination of the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, with regard to the above-referenced complaint, which was received in our office on June 19, 2014. In the complaint, the complainant alleged that the Manor Independent School District (MISD), Manor, Texas, discriminated against a Student on the basis of disability (Diabetes) in violation of 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 (2014); and Title II of the Americans with Disabilities Act of 1990 (Title II), 29 U.S.C. § 12132, and its implementing regulation found at 28 C.F.R. Part 35 (2014). The complainant also alleged that the MISD retaliated against her because she sought to secure rights for the Student in violation of Title II and Section 504 as it incorporates by reference Title VI of the Civil Rights of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. § 100.7(e) (2014), which specifically prohibits retaliation. Specifically, the complainant alleged the following:

1. The MISD discriminated against the Student on the basis of her disability (Diabetes) by failing to provide the Student with an appropriate public education designed to meet the Student's individual educational needs during the 2013-2014 school year;

2. The MISD discriminated against the Student on the basis of her disability (Diabetes) by failing to provide the Student with opportunities to participate in nonacademic services, including extracurricular activities (i.e., school sponsored field trips and University Interscholastic League competitions) during the 2013-2014 school year; and,

3. The MISD subjected the complainant to retaliation because she sought to secure rights for the Student during the 2013-2014 school year when the complainant was removed from the Manor Elementary School (MES) campus and issued a criminal trespass warning on or about February 11, 2014.

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 the Department, are in compliance with Section 504. Under Title II, OCR has jurisdiction over complaints alleging discrimination and retaliation on the basis of disability that are filed against public entities. OCR has determined that the MISD is a recipient of Federal financial assistance from the Department and is a public elementary and secondary educational system. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

Because OCR determined that the complaint allegations were complete and timely and that OCR had jurisdiction over the complaint allegations, OCR opened for investigation the following issues to determine:

1. Whether the MISD discriminated against the Student on the basis of her disability (Diabetes) by failing to provide the Student an appropriate public education designed to meet the Student's individual educational during the 2013-2014 school year in violation of Section 504 and its implementing regulation at 34 C.F.R § 104.33(a) and (b)(1), 34 C.F.R § 104.37(a)(1) and (2), and Title II and its implementing regulation at 28 C.F.R. § 35.130(a);

2. Whether the MISD discriminated against the Student on the basis of her disability (Diabetes) by failing to provide the Student with opportunities to participate in nonacademic services, including extracurricular activities (i.e., school sponsored field trips and University Interscholastic League (UIL) competitions), during the 2013-2014 school year in violation of Section 504 and its implementing regulation at 34 C.F.R § 104.37(a)(1) and (2) and Title II and its implementing regulation at 28 C.F.R. § 35.130(a); and,

3. Whether the MISD subjected the complainant to retaliation when she was removed from the MES campus and issued a criminal trespass warning on or about February 11, 2014, because the complainant sought to secure rights for the Student during the 2013-2014 school year in violation of Section 504 and its implementing regulation at 34 C.F.R § 104.61 as it incorporates by reference Title VI and its implementing regulation at 34 C.F.R. § 100.7(e); and Title II and its implementing regulation at 28 C.F.R. § 35.134.

During the investigation of the complaint, and in processing the above complaint issues, OCR reviewed information provided by the complainant and the MISD, including the Student's educational records, the MISD's policies and procedures for the provision of services to disabled students and the MISD's policies and procedures that prohibit discrimination and retaliation on the basis of disability. OCR also conducted interviews with the complainant, the complainant's legal representative and an official of the MISD.

Issue Number One

Under Section 504 and its implementing regulation at 34 C.F.R. § 104.33(a), a recipient of Federal financial assistance that operates a public elementary and secondary education program or activity shall provide a free, appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless or the nature or severity of the

person's disability. Under 34 C.F.R. § 104.33(b), the provision of an appropriate public education is the provision of regular or special education and related services that are designed to meet the individual educational needs of disabled persons as adequately as the needs of non-disabled person are met. Title II and it implementing regulation at 28 C.F.R. § 35.130(b) requires public elementary and secondary education systems to provide a FAPE to the same extent as required under the Section 504 regulation.

With regard to Issue Number One, the complainant alleged that during the 2013-2014 school year, the MISD failed to provide the Student with an appropriate public education by failing to convene a meeting to make a placement decision for the Student in a timely manner; by failing to provide the Student with staff trained to inject the Student with insulin in accordance with the provisions of the Student's plan; and by failing to provide the Student with snacks at pertinent times during the school day in order to maintain the Student's blood sugar levels. A review of the information provided by the complainant and the MISD revealed that there was a significant delay in convening a Section 504 meeting to make a placement decision for the Student from approximately September 2013 to December 2013. The information obtained during the investigation also revealed that during the 2013-2014 school year, the XXXX who was the only employee at MES trained to administer insulin in accordance with the Student's plan, was absent from school on several days. In addition, the information revealed that the Presidential Meadows Elementary School (PMES) XXXX, where the Student transferred to during the Spring 2014 semester, was also absent on several school days and therefore unavailable to provide the Student with insulin in accordance with the Student's plan. The information revealed that when the school nurses were unavailable, the complainant came to both of the schools to inject the Student with insulin. Additionally, OCR also determined that certain snacks required to stabilize the Student blood sugar levels during school hours were not available to the Student on several occasions during the 2013-2014 school year. However, prior to making a determination of noncompliance based on a preponderance of the evidence collected during the investigation for Issue Number One, the MISD offered to enter into a voluntary Resolution Agreement (RA), consistent with Section 302 of OCR's Case Processing Manual (CPM).

Issue Number Two

In accordance with Section 504, the implementing regulation at 34 C.F.R. § 104.37(a)(1) requires that a recipient shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford a student with a disability an equal opportunity for participation in such services and activities. Title II and its implementing regulation at 28 C.F.R. § 35.130(a) states that public elementary and secondary education systems may not exclude a qualified individual with a disability from participation in or deny the benefits of the services, programs, or activities of a public entity, or subject them to discrimination on the basis of disability.

With regard to Issue Number Two, the complainant alleged that the Student was denied the opportunity to participate in extracurricular activities, including a school sponsored field trip during 2013-2014, because the complainant alleged that she would have to accompany the Student to the field trip in order to monitor the Student's blood sugar levels. The complainant also alleged that the MISD failed to allow the Student an opportunity to participate in a UIL

competition held at MES in February 2014 when the MISD did not provide staff who were trained to monitor the Student's blood sugar levels or provide the Student an opportunity to eat snacks immediately prior to her participation, which resulted in the Student leaving the UIL competition prior to her participation due to her medical needs. The information obtained from the MISD during the investigation of the complaint resulted in a dispute with regard to the Student's actual attendance at an MISD-sponsored field trip and whether the Student left the UIL competition before or after she was scheduled to participate in the competition. However, prior to making a compliance determination as to whether the actions by MISD officials served to deny the Student an appropriate public education, the MISD offered to resolve this issue by submitting a voluntary RA in accordance with Section 302 of OCR's CPM.

Issue Number Three

Under Section 504 and its implementing regulation at 34 C.F.R. § 104.61, and as it incorporates by reference Title VI and its implementing regulation at 34 C.F.R. § 100.7(e), 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. Title II and its implementing regulation at 28 C.F.R § 35.134 provides a similar prohibition against retaliation as the Title VI regulation.

Under OCR procedures, in order to establish whether retaliation has occurred, it is necessary for OCR to establish a *prima facie*[1] case of retaliation by determining:

1. Whether you engaged in a protected activity;
2. Whether the recipient had notice of your protected activity;
3. Whether the recipient took adverse action contemporaneously with or subsequent to the protected activity; and
4. Whether there is a causal connection between your protected activity and the adverse action.

Under the retaliation analysis, if any one of the elements cannot be established, then OCR must find insufficient evidence of a violation. However, if all of the elements can be established, and as such, a *prima facie* case of retaliation is established, OCR must next consider whether the recipient has a legitimate, nondiscriminatory, non-pretextual reason for taking the adverse action. If the recipient proffers a reason it considers to be legitimate, then OCR must consider whether the stated reasons are legitimate, and not a pretext for discrimination. In investigating allegations of retaliation, while OCR would be required to address all of the elements in order to find a violation of Title VI; however, OCR need not address all of the elements in order to find insufficient evidence of a violation, where the evidence otherwise demonstrates that retaliation cannot be established.

With regard to Issue Number Three, the complainant alleged that she was retaliated against by MISD officials when a criminal trespass warning was issued to her in February 2014 and she was escorted from MES by police. During the investigation, OCR established that the complainant

[1] *Prima facie* means "on its face."

engaged in a protected activity when she advocated for services for the Student during the 2013-2014 school year. OCR also established that officials at MISD were aware of the complainant's protected activity during the 2013-2014 school year because MISD officials acknowledged that the complainant requested services for the Student, and held a placement meeting. OCR was able to establish that the complainant was subjected to an adverse action subsequent to the complainant's protected activity when MISD officials confirmed that they called the police to issue a criminal trespass warning to the complainant on February 11, 2014, and to escort her from the MES campus. OCR also established that there was a causal connection (close proximity in time) between the complainant's protected activity and the adverse action. Therefore, OCR established a *prima facie* case of retaliation. While the MISD provided some information to OCR as to its reasons for requesting the criminal trespass warning, the information was not sufficient to determine whether the reasons were legitimate, and not a pretext to retaliate against the complainant. Based on this information obtained during the investigation regarding retaliation, but prior to making a determination regarding whether the MISD had a legitimate, nondiscriminatory reason for the adverse action OCR taken against the complainant, or whether the adverse action was a pretext to retaliate against the complainant, the MISD voluntarily agreed to enter into a RA in accordance with Section 302 of OCR's CPM.

In summary, with regard to the issues investigated during the complaint, and prior to the completion of OCR's investigation and compliance determinations, in letters to OCR dated July 30, 2014, and August 12, 2014, respectively, the MISD informed OCR of its interest in resolving the complaint issues. Section 302 of OCR's CPM, as cited above, provides that an OCR complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Based on the action items outlined in the voluntary RA submitted to OCR by the MISD on March 9, 2015, OCR has determined that said action items are aligned with the issues investigated and are consistent with OCR policy and the applicable laws and regulations referenced in this complaint, specifically Section 504 and Title II. In addition, when fully implemented, the voluntary RA will resolve concerns and disputes in information identified during this investigation and the MISD will be in compliance with Section 504 and Title II. OCR will actively monitor the implementation of the RA submitted to OCR by the MISD on March 9, 2015, to ensure that the action items outlined in the RA have been implemented under the specific terms of the voluntary RA. Although verification of the remedial actions taken by the MISD may be accomplished by interviews with pertinent MISD officials, a review of reports and other written documentation provided to OCR by the MISD, as required by the reporting requirements, in some instances, a future monitoring site visit may be required to verify actions taken by the MISD.

If the MISD fails to implement the action items outlined in the RA, as specified, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the RA. If the MISD determines a need to modify any portion of the terms and conditions of the RA, the MISD may submit to OCR, for consideration, the specific proposed modifications. A copy of the RA is enclosed.

In light of the foregoing, and because OCR will monitor the implementation of the voluntary RA, OCR is closing the investigative phase of the complaint, in accordance with OCR's case processing procedures and effective the date of this letter. The complainant has been notified of this action. The determinations outlined in this letter and in the voluntary RA should not be interpreted to address the 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 the 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, 5 U.S.C. § 552, it may be necessary to release this document 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 or concerns regarding this letter, please contact Lisa Y. Thierry, Senior Equal Opportunity Specialist, by telephone at (214) 661-9654 or by electronic message at lisa.thierry@ed.gov, or XXXX, Compliance Team Leader, by telephone at XXXXX or by electronic message at XXXXX.

Sincerely,

/s/

Taylor D. August
Director
Dallas Office

Enclosure