



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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TEXAS

Mr. Richard A. Carranza, Superintendent of Schools
Houston Independent School District
440 West 18th Street
Houston, Texas 77092

Reference: OCR #06161034

Dear Mr. Carranza:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office has completed the investigation of the above-referenced complaint, filed against Houston Independent School District (HISD or District), Houston, Texas, and received in this office on October 20, 2015. The complainant alleged that the District discriminated against a Student (Student) who attends Bellaire High School (BHS) based on his disability. OCR investigated the following legal issues:

1. Whether the HISD discriminated against the Student on the basis of disability by failing to provide him with an aid, benefit, or service that is not as effective as that provided to others in violation of 34 C.F.R. § 104.4(b)(1)(iii); and by failing to: (1) furnish appropriate auxiliary aids and services where necessary to afford the Student with an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity and (2) give primary consideration to the Student's request for services (i.e., XX—to end of parenthetical redacted—XX) without a requirement for a special education referral, in violation of 28 C.F.R. § 35.160(b);
2. Whether the HISD 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., XX—to end of parenthetical redacted—XX) and thereby denied the Student a free appropriate public education (FAPE), in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively; and
3. Whether the HISD treated the Student differently (e.g., XX—to end of parenthetical redacted—XX) on the basis of disability in the context of an educational program or activity 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 the HISD, in violation of 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination by recipients of Federal financial assistance from the Department based on

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disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by certain public entities. The District is a recipient of Federal financial assistance from the Department and a covered public entity. Thus, OCR has jurisdiction to resolve this complaint pursuant to Section 504 and Title II.

Under OCR proceedings, a finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict (e.g., due to the lack of corroborating witness statements or additional evidence), OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

During its investigation, OCR reviewed information that the District and the complainant provided, the Student’s educational records, email documentation between both parties, and other pertinent documentation. OCR also visited the District and conducted interviews with relevant witnesses, including District personnel and students, the Student’s parents, and the Student.

Based on a careful review of the entirety of the information obtained and analyzed during the investigation, OCR has determined that there is sufficient evidence to support a finding of a violation of the applicable laws and regulations, with regard to Issue #1. OCR has determined that there is insufficient evidence to establish that the District violated Section 504 and Title II as alleged with respect to Issues #2 and #3. The bases for these determinations are outlined below.

Legal Standard: Issue #1

Effective Communication Requirements

Title II and its implementing regulations require public school districts to ensure that communication with students with hearing, vision, or speech disabilities is as effective as communication with students without disabilities.¹ To do this, public schools must provide appropriate “auxiliary aids and services” where necessary to provide effective communication²; that is, schools must provide appropriate auxiliary aids and services so that students with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the public school district.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public

¹ OCR does not separately discuss Section 504 here. In determining whether a recipient’s communication with an individual with a disability complies with Section 504’s general nondiscrimination provisions, OCR generally would not find a violation if a recipient complied with the requirements embodied in Title II’s effective communication regulations. 34 C.F.R. § 104.4.

² 28 C.F.R. § 35.160(b)(1).

entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.³

Title II at § 35.164 states that,

[It] does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

Findings of Fact: Issue #1

The complainant alleged that the HISD failed to give primary consideration to the Student’s request for XXXX XXXX during the 2015-2016 school year.

OCR’s investigation revealed that the Student was initially evaluated and determined eligible to receive Section 504 services during the 2013-2014 school year for a XXXX XXXX, and a Section 504 plan was developed for the Student during a Section 504 committee meeting on XXXX XXXX, XXXX. Section 504 documents reviewed by OCR indicated that during the 2014-2015 and 2015-2016 school years, the HISD approved accommodations for the Student as required under Section 504 regulations intended to ensure that the Student received a FAPE. The approved accommodations were developed by a group of persons knowledgeable about the student, delineated in a “Section 504 Student Service Plan,” and served as an individualized education program designed to meet the Student’s needs as a student with a XXXX XXXX.

The approved accommodations during the 2014-2015 school year provided related aids and services that addressed the Student’s physical environment (i.e., XX—to end of parenthetical redacted—XX), his instructional materials (i.e., XX—to end of parenthetical redacted—XX), his instructional methods (i.e., XX—to end of parenthetical redacted—XX), and testing (i.e., XX—

³ 28 C.F.R. § 35.160(b)(2).

to end of parenthetical redacted—XX). These services were in place at the time of the Student’s request for XXXX XXXX in Fall 2015.

OCR reviewed documentation showing that the Student’s Section 504 committee met on XXXX XXXX, XXXX. In the XXXX XXXX, XXXX Section 504 committee meeting deliberation minutes, the recorder notes, “[The Student’s mother] then said that [the Student] should be using XXXX XXXX but does not have a working one but they are trying to get one. [The Student] also said that he has XXXX XXXX XXXX XXXX. Next, the consent for evaluation for [the Student] was discussed. ... [The Student] came to the meeting for a short period of time and said that the XXXX program would help. He said that he would still need the XXXX even if he got the XXXX XXXX.” XXXX, also called “XXXX XXXX” or “XXXX XXXX,” or simply “XXXX XXXX XXXX,” is the general name of the system that XX—to end of sentence redacted—XX. The HISD’s narrative provided with its data response states that the Section 504 committee requested parental consent to complete a Full and Individual Evaluation (FIE), a comprehensive evaluation administered for the determination of special education eligibility, for the Student on XXXX XXXX, XXXX.

OCR’s review of the Student’s Section 504 accommodations from the XXXX XXXX, XXXX meeting showed that three changes were made to the Student’s education program (Section 504 plan) in place from the 2014-2015 school year by the Section 504 committee in response to the Student request for XXXX at that meeting. The first was that “XX—to end of parenthetical redacted—XX” was added after the requirement to XXXX XXXX XXXX. Second, “XX—to end of parenthetical redacted—XX)” was added as an accommodation in the Student’s Section 504 plan. Third, the reference to the “XXXX” XXXX XXXX was removed.

Although the complainant alleged that the Student’s family first requested XXXX in XXXX XXXX, XXXX, the HISD admitted in the position statement that it submitted to OCR that the XXXX XXXX, XXXX 504 committee meeting was the Student’s or Student’s mother’s third request for XXXX XXXX for the Student. Nevertheless, none of the documentation reviewed indicated that primary consideration was given to the Student’s mother and the Student’s request for XXXX XXXX at the XXXX XXXX, XXXX meeting or at any point prior to that meeting. During OCR’s on-site interview with the Student’s mother, she advised OCR that the factors discussed during the XXXX XXXX, XXXX Section 504 committee meeting, when the Student requested XXXX XXXX, were the costs of the service and privacy of other students.

The documentation that OCR reviewed indicates that the Student’s Section 504 committee met again on XXXX XXXX, XXXX. According to the Student’s Section 504 committee meeting documentation from that meeting, the committee reviewed the Student’s accommodations and changed the accommodation “XX—to end of parenthetical redacted—XX” to “XX—to end of parenthetical redacted—XX” Also, the accommodation “XX—to end of parenthetical redacted—XX” was changed to “XX—to end of parenthetical redacted—XX” The accommodation regarding XXXX XXXX was revised to define the “XXXX XXXX” that the Student would receive as “XXXX XXXX” Finally, the reference to the student having XXXX XXXX XXXX XXXX XXXX was changed to “XX—to end of parenthetical redacted—XX”

The recorder of the XXXX XXXX, XXXX deliberation minutes also noted, “The committee then discussed the need for [the Student] to use his XXXX XXXX in class. The committee recommends that he uses his XXXX XXXX consistently in conjunction with the XXXX XXXX to be provided by the district to address his XX—to end of sentence redacted—XX. That accommodation will provide his access to receptive communications. The committee feels that the means we are providing to address the XXXX XXXX XXXX XXXX XXXX XXXX provides an alternative means of communication based upon the assessment of the student’s XXXX XXXX and that the provision of XXXX XXXX constitutes an undue financial and administrative burden. The 504 committee continues to recommend a complete individual evaluation [FIE].” OCR did not review any evidence that indicated that the District actually provided the Student with an XXXX XXXX.

Despite the notation in the deliberation minutes of the XXXX XXXX, XXXX Section 504 committee meeting, the HISD’s 2015-2016 school year Section 504 Coordinator and the Educational Diagnostician both advised OCR during interviews that “undue financial or administrative burden” were never taken into account with respect to providing XXXX XXXX for the Student. The HISD attorney present during OCR’s interviews also informed OCR that the HISD was not claiming undue financial or administrative burden in its denial of XXXX XXXX to the Student.

The XXXX XXXX, XXXX, deliberation minutes indicated that the committee felt that the accommodations approved for the Student provided an alternative means of communication for the Student based on an assessment of his XXXX XXXX. However, the notes did not indicate that any factors beyond the XXXX assessment—such as the nature, length, and complexity of the communication involved—were discussed or considered at the XXXX XXXX, XXXX Section 504 committee meeting in reaching the committee’s determination. The XXXX XXXX, XXXX deliberation minutes did not reveal how the Student’s 504 committee gave primary consideration to the Student’s mother and the Student’s request for XXXX XXXX. Moreover, the documentation from the XXXX XXXX, XXXX meeting, notwithstanding the decision made by the group of knowledgeable people, does not indicate that the head of the school district or his designee with appropriate budgetary authority made the determination that XXXX constituted an undue financial and administrative burden or provided a written statement with the reasons for that conclusion.

OCR’s investigation determined that on XXXX XXXX, XXXX, the Student’s Section 504 committee convened once again for the purpose of a review of the Student’s program. The committee meeting deliberation notes indicated, “Discussion regarding instructional materials was determined that [the Student] would be allow [sic] to use XX—to end of sentence redacted—XX. [The Student] will began [sic] using XXXX XXXX XXXX XXXX XXXX XXXX, XXXX XXXX, in the classroom as part of physical environment to assist him in the classroom. He will start using this XXXX as soon as available. He can use the XXXX XXXX XXXX XXXX XXXX [sic] the district determines as appropriate.” OCR’s investigation determined that at the deliberation minutes for the XXXX XXXX, XXXX Section 504 committee meeting did not demonstrate that the Student’s Section 504 committee considered, discussed, or determined whether the auxiliary aid or service offered, as an alternative to the

XXXX XXXX requested by the Student’s mother and the Student, would be as effective as XXXX XXXX or how primary consideration was given to the request for XXXX XXXX.

Analysis

1. How did the HISD provide the Student (or the Student’s parent) an opportunity to request the auxiliary aid or service of their choice?

Consistent with the complainant’s allegation, the first documented instance of the Student or his family requesting XXXX XXXX appears in the minutes from the Student’s XXXX XXXX, XXXX Section 504 meeting. The Manager of Special Education Programs for Students with Auditory and Visual Impairments (MAV) advised OCR during her interview that the results of the Student’s XXXX XXXX indicated that the Student had XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX at the time of the XXXX XXXX, XXXX Section 504 committee meeting, based on the XXXX XXXX XXXX (XXXX) XXXX conducted on XXXX XXXX, XXXX. According to the MAV, an XX—to end of sentence redacted—XX. The Student’s mother believed that the Student suffered XX—to end of sentence redacted—XX. However, the XXXX XXXX XXXX from XXXX XXXX, XXXX did not support her contention but indicated that the Student suffered XX—to end of sentence redacted—XX. OCR’s investigation could not determine whether the Student suffered XXXX XXXX XXXX XXXX XXXX or the severity of the XXXX XXXX due to conflicting information from the Student’s mother and the HISD. The Student attended the Section 504 committee meeting on XXXX XXXX, XXXX, and stated that he needed XXXX XXXX.

In short, OCR’s investigation revealed that the Student and his parent were able to request XXXX XXXX through the Section 504 committee process.

2. How did the HISD give primary consideration to the Student’s (or Student’s parent’s) request for XXXX?

OCR found no evidence to demonstrate that the HISD gave primary consideration to the Student’s and his mother’s requests for XXXX XXXX. Instead, the HISD imposed a requirement that the Student’s mother provide the HISD consent to conduct an FIE of the Student before the HISD would consider whether the Student should receive XXXX XXXX. The HISD’s pursuance of the Student’s mother’s consent for a FIE to be conducted of the Student prior to considering her and the Student’s requests for XXXX XXXX was evident in email documentation reviewed by OCR, including emails from various staff and administrators of the HISD. In addition, OCR’s on-site interviews with members of the Student’s Section 504 committee during the 2015-2016 school year did not indicate that the committee gave primary consideration to the requests for XXXX.

The evidence indicates that the HISD does not have a process in place for considering whether to provide the auxiliary aids and services that Title II requires outside of the processes for providing special education or Section 504 services, including the evaluation processes associated with special education and Section 504—such as the FIE. OCR’s review of the HISD’s website, prior to OCR’s XXXX XXXX, XXXX on-site, revealed that the HISD’s Section 504 website

page identified only an “XXXX XXXX” as the auxiliary aid or service available for Section 504 students with XXXX XXXX. In contrast, the HISD’s special education website page identified XXXX as an available auxiliary aid or service for special education students with XXXX XXXX. The website included no information about auxiliary aids and services offered outside of Section 504 and special education.

The Educational Diagnostician at BHS advised OCR during her interview that an FIE would have shown whether XXXX XXXX would be provided for the Student under special education, but if the Student’s mother did not want the Student to receive special education services the HISD may have provided XXXX XXXX under Section 504.

Additionally, during his interview, the District’s Section 504 Coordinator (HSC) stated the Student’s XXXX XXXX showed XXXX XXXX XXXX, and there was no need for XXXX. The HSC indicated that he was aware that, unlike Section 504, Title II is more loosely tied to an assessment need, and requests under Title II would not have to go through a Section 504 committee or an assessment process. However, he further stated that the HISD’s current processes are all based on evaluations.

Finally, during her interview, the MAV stated that, when deciding whether to provide XXXX XXXX, the HISD’s process would be to look at a XXXX evaluation—which is part of an FIE but conducted only for students with XXXX XXXX—to clarify the type of XXXX XXXX and determine the best mode of communication for the student based on the student’s reading and cognitive functioning levels.

3. What consideration and factors were considered by the HISD in determining to not provide the Student the XXXX XXXX requested?

OCR’s investigation determined that the single factor considered by the HISD in determining to not provide the Student the XXXX requested during the 2015-2016 school was the lack of an FIE of the Student due to the Student’s mother’s refusal to provide consent. OCR’s interviews established that in the absence of an FIE of the Student, no other action was taken by the HISD during the 2015-2016 school year to consider the Student’s mother and Student’s choice of XXXX XXXX.

The evidence shows that the Student’s Section 504 committee revisited the subject of XXXX during the 2016-2017 school year but decided that XXXX “constitute[d] an undue financial and administrative burden” during the Section 504 meeting on XXXX XXXX, XXXX. However, the evidence does not demonstrate that the HISD followed the applicable regulatory requirements in reaching that determination, as the Section 504 committee—rather than the head of the school district or his appropriate designee—made the determination, and the HISD did not produce any written statement outlining the reasons underlying the committee’s conclusion that XXXX constituted an undue financial and administrative burden. Since this investigation began, the District has abandoned the position that XXXX constitutes an undue financial and administrative burden.

4. *Did the HISD demonstrate that another effective means of communication existed? If so, was the alternative effective means of communication provided, and was the alternative effective means of communication provided demonstrated to be as effective as the XXXX XXXX requested?*

OCR's investigation also determined that the HISD failed to demonstrate that another effective means of communication was available when it decided not to entertain the Student's mother and Student's request for XXXX XXXX during the 2015-2016 school year. As explained above, the Student's Section 504 committee required a variety of accommodations related to the Student's hearing impairment, beginning during the 2014-2015 school year, including XX—to end of phrase redacted—XX added during the XXXX XXXX, XXXX Section 504 meeting when the Student requested XXXX XXXX.

The Student's Section 504 plans either explicitly required or allowed an XX—to end of phrase redacted—XX at various periods between 2014 and 2016. In addition, OCR's interviews with numerous teachers and the Student's counselor, who is identified as the consultant regarding the Student's XXXX XXXX accommodation and a member of the Student's Section 504 committee, revealed that the HISD's practice was to provide the Student an alternate assignment when XXXX XXXX or a XXXX XXXX XXXX XXXX was not possible for required curricula.

OCR's interviews confirmed that the accommodations developed during the XXXX XXXX, XXXX Section 504 meeting were intended to provide the Student effective communication in the classroom. Documentation evidenced that XXXX XXXX or a XXXX XXXX was the only accommodation included at the XXXX XXXX, XXXX Section 504 meeting that not already in place at the time of the meeting. In addition, OCR's interviews also confirmed that XXXX XXXX was not always available for the Student during the 2015-2016 school year and that an XXXX XXXX was utilized in those instances. The HISD's practice of providing the Student with an XXXX XXXX when XXXX XXXX or a XXXX XXXX was unavailable in the classroom supported a conclusion that the Student was not provided an equal opportunity to participate or benefit from the same classroom interaction or activities as non-disabled students.

Therefore, OCR's investigation determined that the HISD failed to demonstrate that the accommodations in place for the Student during the 2015-2016 school year provided him communication as effective as the communication provided to non-disabled students. Moreover, the HISD's provision of an XXXX XXXX and XXXX XXXX did not allow the Student an opportunity for similar participation or an equal benefit from the classroom interaction as the XXXX XXXX requested by the Student.

OCR's investigation determined that in XXXX XXXX the HISD provided the Student with a XXXX - XXXX - XXXX XXXX, which was an XX—to end of sentence redacted—XX. However, the minutes from the XXXX XXXX, XXXX Section 504 meeting, where the committee decided to provide the XXXX - XXXX - XXXX XXXX, does not elucidate why the committee believed that the XXXX - XXXX - XXXX XXXX would provide communication that was as effective as the communication that XXXX XXXX would provide. OCR's on-site interviews revealed that in at least one of the Student's classes the XXXX did not work effectively because it could not understand XXXX XXXX, the XXXX was broken and required

the teachers to XX—to end of phrase redacted—XX, and the XXXX - XXXX - XXXX XXXX provided XX—to end of phrase redacted—XX but not XX—to end of phrase redacted—XX, unless the teacher XX—to end of sentence redacted—XX. None of the teachers whom OCR interviewed indicated that they XXXX XXXX XXXX XXXX during class.

5. Did the HISD comply with the requirements of Title II?

For the reasons outlined above, OCR’s investigation determined that the accommodations and auxiliary aids and services that the HISD provided the Student during the 2015-2016 school year did not afford the Student the same opportunity to participate in class as his non-disabled peers.

Moreover, evidence obtained during the OCR’s investigation demonstrated that the HISD’s current procedures require an FIE be conducted of any student with a XXXX XXXX, before the student can even be considered for XXXX XXXX, which is in direct violation of the regulatory requirements of Title II. OCR cannot conclude that the HISD gave primary consideration to the Student’s articulated choice of XXXX or that factors such as the communication used by the Student, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place were properly considered in the HISD’s decisions to deny the Student the auxiliary aid or service of his choice during Section 504 committee meetings.

OCR’s investigation also determined that the HISD failed to demonstrate that another effective means of communication existed during the 2015-2016 school year. Although, during the 2016-2017 school year, the HISD did provide a XXXX - XXXX - XXXX XXXX for the Student to receive communications from the teacher, OCR determined that the XXXX was not effective in meeting the Title II requirement when compared to other students since it did not allow the Student a comparable opportunity to participate in classroom interactions in that it did not allow him to XXXX XXXX of other students in the classroom. Furthermore, the XXXX was not provided until the last semester of the 2016-2017 school year; consequently, prior to XXXX XXXX the Student was being provided only the limited accommodations discussed above.

Therefore, OCR determined that sufficient evidence was found during OCR’s investigation to conclude that the HISD discriminated against the Student on the basis of disability by failing to provide him with an aid, benefit, or service that was as effective as that provided to others, failing to furnish appropriate auxiliary aids and services where necessary to afford the Student an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity, and by failing to give primary consideration to the Student’s request for XXXX XXXX as required by the regulations implementing Title II.

Legal Standard: Issue #2

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, at 34 C.F.R. § 104.33(b), define an “appropriate education” as the provision of regular or special education and related aids and

services that (i) are designed to meet the individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met, and (ii) are based upon adherence to procedures that satisfy Section 504 requirements. Compliance with this provision is generally determined by assessing whether a district has implemented a student’s Section 504 plan, also known as an “individualized education program,” or “IEP.” When evaluating whether a district has failed to provide the related aids and services deemed necessary to provide the student a FAPE, OCR determines: (1) whether the district evaluated the student in accordance with Section 504 requirements and determined that the student was a qualified individual with a disability as defined by Section 504; (2) whether the student’s needs were determined on an individualized basis by a group of persons knowledgeable about the student and the information considered; and (3) whether the placements, aids, and services identified by the district through this process as necessary to meet the student’s individual needs were or are being provided. If they have not been provided, OCR will determine the district’s reason for failing to do so and the impact of the failure.

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.

Issue #2 – Complainant’s Assertions

The complainant alleged that the accommodations in the Student’s Section 504 plan, specifically XXXX XXXX, XXXX XXXX, and XXXX XXXX, were not consistently provided by the Student’s teachers during the 2015-2016 school year. During OCR’s on-site interview, the Student’s mother and the Student advised OCR that none of the Student’s teachers were providing the Student XXXX XXXX and XXXX XXXX as delineated in his plan.

In a supplemental statement, dated March 2, 2016, the complainant provided six examples to demonstrate that the Student’s teachers were not providing him XXXX XXXX and XXXX XXXX. Specifically, the examples provided were:

Example #1

Example #1 is a copy of the Student’s mother’s email, dated XXXX XXXX, XXXX, with subject line “XXXX XXXX,” to Teacher M about a XXXX XXXX sheet that the Student was looking up answers for on the internet, without access to the XXXX. In the email the Student’s mother informed the teacher of the counselor’s name to assist the teacher finding XXXX XXXX XXXX. The teacher replied that the Student could look the answers up on Google.

Example #2

Example #2 is a copy of an email Teacher N sent the Student’s mother dated, XXXX XXXX, XXXX, with subject “[XXXX] XX—to end of parenthetical redacted—XX,” which included a snapshot of the school’s computerized grading system with notes of each assignment missing. The email advised the Student’s mother that the Student was having a hard time coping with the assignments in the teacher’s class. Teacher N further advised that the Student’s Section 504 plan

provided XXXX XXXX XXXX XXXX for accomplishing assignments and that the Student had been allowed XXXX XXXX XXXX XXXX XXXX to prepare and submit his assignments.

Example #3

Example #3 is a copy of an email the Student sent Teacher O, dated XXXX XXXX, XXXX, with the subject line “XXXX,” in which the Student advised Teacher O that he did not receive XXXX XXXX that week. Teacher O sent the Student and the Student’s mother an email dated XXXX XXXX, XXXX, indicating that she did not give out XXXX that week. Teacher O informed the Student and the Student’s mother that she had provided multiple websites for the Student to access XXXX XXXX XXXX XXXX to complete a worksheet. Additionally, Teacher O advised that due to the Student’s accommodation, although the assignment XXXX XXXX XXXX, his assignment would not be XXXX XXXX XXXX XXXX XXXX and indicated the XXXX XXXX XXXX for another assignment for the Student based on his accommodations.

Example #4

Example #4 is a copy of an email from the Student to the Teacher M, dated XXXX XXXX, XXXX, with the subject line “XXXX XXXX XXXX” requesting that the teacher provide the topic for the Student to write about due to XX—to end of sentence redacted—XX. On the same day, in an email, the Student’s mother also asked the teacher why he was still requiring the Student to do assignments with XX—to end of sentence redacted—XX. Teacher M responded that day by advising the Student’s mother that he was not requiring the Student to do assignments with XXXX XXXX XXXX but instead required the Student to XX—to end of phrase redacted—XX, an XXXX XXXX in lieu of the XXXX. Teacher M also explained that he could not put XXXX on a department XXXX that had already been created. In addition, the teacher explained that the Student’s 504 plan required an XXXX XXXX in such case.

Example #5

Example #5 is a copy of an email from the Student to the Teacher M, dated XXXX XXXX, XXXX, with the subject line “XXXX” in which the Student requested that the teacher put the XXXX that he missed on Tuesday on the HUB—the school’s computerized system—and email him the XXXX XXXX that he missed. On the morning of XXXX XXXX, XXXX, the teacher responded to the Student’s email and provided XXXX to the Student.

Example #6

Example #6 is a copy of an email from the Student’s mother to the complainant, dated XXXX XXXX, XXXX, with the subject line “XXXX,” in which the Student’s mother advised that Teacher M XXXX XXXX XXXX without XXXX and told the Student to XX—to end of sentence redacted—XX. The email further read that the Student stated to the teacher, “I cannot XXXX XXXX XXXX but you’re going to grade me on my ability to XX—to end of sentence redacted—XX. The teacher told him yes.”

Finding of Fact: Issue #2

As established in the discussion regarding Issue #1, the HISD has identified the Student as one with the disability of a XXXX XXXX. OCR reviewed the steps taken by the HISD to comply with its obligations under Section 504. A review of the Student’s educational records revealed that a program was designed to meet his individual educational needs during the 2015-2016 school year. OCR determined that the program, contained in two documents entitled “Section 504 Student Service Plan,” reflected evaluation and placement decision documents made on XXXX XXXX, XXXX, and XXXX XXXX, XXXX. Each plan was developed by a group of persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options. OCR’s review of the placement decision documents revealed that a group of knowledgeable persons including, but not limited to, the Student’s mother, teachers, and administrators, met, considered information from a variety of sources, and determined that the Student was a person with a disability, qualified to receive services pursuant to Section 504.

The Student’s plan dated XXXX XXXX, XXXX, required “XX—to end of parenthetical redacted—XX” and specified that the Student should be allowed “XX—to end of parenthetical redacted—XX” but did not require XXXX XXXX or a XXXX XXXX. Instead, the XXXX XXXX, XXXX plan stated, “XX—to end of parenthetical redacted—XX.” The XXXX XXXX, XXXX plan, which was in effect for the remainder of the 2015-2016 school year, required teachers to provide XXXX XXXX or a XXXX XXXX and maintained the previous accommodations regarding XXXX XXXX.

All of the Student’s teachers interviewed by OCR were familiar with the Student’s accommodations. Teacher A, the Student’s teacher during the spring 2016 semester, said she always provided XXXX XXXX XXXX XXXX in class and XX—to end of sentence redacted—XX.

Teacher N was the teacher implicated by the complainant in Example #2 above. The information in Example #2 did not support the complainant’s contention that the HISD did not provide the Student’s accommodations of XXXX XXXX and XXXX XXXX, as alleged.

In addition, Teacher M was the teacher implicated by the complainant in Examples #1, #4, #5, and #6 delineated above. However, Examples #1 and #4 confirmed that when there was no way for the Teacher M to provide XX—to end of phrase redacted—XX, the teacher provided the Student XXXX XXXX XXXX XXXX XXXX XXXX for the same class lesson in lieu of the XXXX.

OCR also determined that Example #5 demonstrated that the teacher provided the Student with XXXX.

OCR’s investigation determined that Example #6 was the Student’s account of a confrontational exchange between him and the teacher. Contrary to the Student’s assertion in the email, OCR did not find any evidence to support that the teacher graded the Student on XXXX that the Student could not XXXX but, instead, provided him an XXXX XXXX.

Teacher O was the teacher implicated by the complainant in Example #3 above. The email from

the Teacher O indicated that she did not provide XXXX that week to any students. However, OCR also determined that Example #3 indicated that Teacher O provided the Student multiple resources to access XXXX XXXX XXXX XXXX for a class assignment required as well as XXXX XXXX XXXX XXXX the assignment and a second assignment mentioned by Teacher O in the email.

Analysis: Issue #2

When evaluating whether the District has failed to provide the related aids and services deemed necessary to provide the Student a FAPE, OCR determines: (1) whether the District evaluated the Student in accordance with Section 504 requirements and determined that the Student was a qualified individual with a disability as defined by Section 504; (2) whether the Student's needs were determined on an individualized basis by a group of persons knowledgeable about the Student and the information considered; and (3) whether the placements, aids, and services identified by the District through this process as necessary to meet the Student's individual needs were or are being provided. If they have not been provided, OCR will determine the District's reason for failing to do so and the impact of the failure.

Regarding the first element of the analysis, as noted above, OCR's investigation determined that the Student was evaluated and determined to be a student with a disability, specifically a student with a XXXX XXXX, during the 2014-2015 school year. OCR's investigation determined that, during the same school year, the HISD evaluated the Student and determined that the Student was a qualified individual as defined by Section 504 regulations. Accordingly, the HISD satisfied the first element of OCR's FAPE analysis.

Regarding the second element of the analysis, on XXXX XXXX, XXXX, the HISD convened a group of persons knowledgeable about the Student's needs, which included the Student's parents, the Student, an educational diagnostician, and the MAV, among others, who considered various XXXX evaluations of the Student and other information, including input from the Student and the Student's parents. During the meeting, the group of knowledgeable persons developed a Section 504 plan for the Student, which delineated the special education or related aids and services required to meet the individualized needs of the Student based on the Student's identified disability. The Section 504 plan developed at the meeting was adopted unanimously by the group and all of the committee members signed the document developed at the meeting indicating their agreement. OCR determined the HISD satisfied the second element of OCR's FAPE analysis by the actions taken as delineated on XXXX XXXX, XXXX.

Next, OCR considers whether the placements, aids, and services identified by the Student's 504 committee through this process as necessary to meet the Student's individual needs were provided by the Student's teachers, to satisfy the third element of the OCR's analysis. If they were not provided, OCR will determine the District's reason for failing to do so and the impact of the failure.

To do so, OCR conducted on-site interviews with the Student's teachers during the 2015-2016, all the members of the Student's Section 504 committee during the 2015-2016 school year, and numerous administrators and staff at BHS to determine whether the Student was provided XXXX

XXXX / XXXX XXXX XXXX XXXX and XXXX XXXX as required in his Section 504 plan. Teachers interviewed by OCR included the Student’s XXXX, XXXX, XXXX, XXXX, XXXX XXXX, XXXX, XXXX, and XXXX XXXX teachers.

OCR’s investigation revealed that the Student had eight classes during the 2015-2016 school year. Of the eight classes, taken by the Student, four of the classes did not require or utilize XXXX during class and therefore the Student’s accommodation of XXXX XXXX was not relevant at least 50% of the Student’s class time during the 2015-2016 school year. Specifically, the Student’s XXXX,⁴ XXXX, XXXX, and XXXX teachers did not use XXXX instruction in the classrooms.

With regard to the remaining four classes, for two of those— XXXX and XXXX —OCR’s investigation indicated that the Student was provided XXXX XXXX for XXXX in both classes. OCR reviewed email documentation, dated XXXX XXXX, XXXX, provided by the complainant, between the XXXX teacher and the Student’s mother, which illustrated that the XXXX teacher, Teacher N, made personal sacrifices to ensure that the Student was provided XXXX XXXX XXXX XXXX in her class. Furthermore, Example #3 above, also provided by the complainant, additionally confirmed that the XXXX teacher, Teacher O, provided the Student multiple online resources to ensure he had access to XXXX XXXX XXXX XXXX in her class.

The Student had two XXXX XXXX teachers during the 2015-2016 school year—a different teacher each semester. OCR’s investigation determined that the Student’s teacher during the first semester, Teacher M, did not always have access to videos with XXXX XXXX and provided the Student with an XXXX XXXX on those occasions. This conclusion was evident in the email documentation provided above by the complainant, as described above in Examples #1 and #4. However, based on some of the Student’s Section 504 plans reviewed, information from the Student’s teacher interviews, and instructions provided from the Student’s guidance counselor, whom teachers consulted about the appropriateness of XXXX XXXX and who was a member of the Student’s Section 504 committee, OCR concluded that the HISD’s practice regarding the XXXX XXXX accommodation was to provide the Student an XXXX XXXX when required curricula, that contained XXXX, was not available with XXXX XXXX.

Teacher M stated during his interview with OCR that he received guidance from the Student’s counselor regarding the appropriateness of XXXX XXXX given to the Student on the two occasions when an XXXX XXXX was provided. In addition Teacher M explained during his interview that the XXXX XXXX given were on the same subject matter as assigned to the class, and, if he showed a XXXX XXXX XXXX XXXX, he allowed the Student to access the information at his desk from his school-issued laptop online through XXXX.

Furthermore, on those two occasions, email documentation reviewed by OCR that indicated the Student requested that Teacher M provide an XXXX XXXX. OCR’s investigation conclusively

⁴ The XXXX teacher explained during an interview with OCR that, once early in XXXX XXXX, she XX—to end of phrase redacted—XX that was a supplement and repetitive to class instruction, was XX—to end of phrase redacted—XX, was accessed from XXXX, and included XX—to end of phrase redacted—XX, which made the XXXX understandable without XXXX.

found only two occasions when the Student was provided an XXXX XXXX in lieu of a XXXX during the first semester, and OCR could not determine whether there were other such occasions during the Student’s first semester of the 2015-2016 school year.

The Student’s XXXX XXXX teacher during the second semester, Teacher A, advised OCR that she always provided XX—to end of sentence redacted—XX. The complainant did not provide OCR any documentation to demonstrate that during the second semester the Student was not provided XXXX XXXX in XXXX XXXX.

During his interview, Teacher P—the Student’s XXXX XXXX teacher—advised OCR that students XXXX XXXX in his class without XXXX XXXX. However, he further indicated that the XXXX XXXX were motivational-type XXXX on performance and mental skills and mental toughness. Additionally, he stated that he was not sure whether the Student was present when the XXXX XXXX XXXX, but when the Student was present he sat in the front of the room and informed the teacher that the XX—to end of phrase redacted—XX when the teacher asked him if he needed XXXX XXXX.

Of the eight classes taken by the Student during the 2015-2016 school year, three of the classes did not require or utilize XXXX XXXX; therefore, the Student’s accommodation of XXXX XXXX was not relevant in at least 38% of the Student’s class time during the 2015-2016 school year. Specifically, the Student’s XXXX, XXXX, and XXXX XXXX teachers did not use XXXX XXXX for instruction.

During interviews, the Student’s XXXX and XXXX teachers—Teacher O and Teacher C—advised that XXXX XXXX XXXX XXXX XXXX o the Student in class. Teacher O also sent the Student’s XXXX electronically until the Student experienced technical difficulties.

The Student’s remaining four teachers for XXXX XXXX, XXXX, and XXXX —Teacher A, Teacher M, Teacher N, and Teacher B—all advised OCR that they provided the Student XXXX XXXX that provided XXXX. OCR’s investigation revealed that the Student had a school-provided laptop that teachers utilized to provide the Student XXXX XXXX individually by email or posting on the HUB.

OCR’s investigation determined evidence obtained from email documentation reviewed, interviews conducted, and the Student’s educational records supported that the Student was provided his accommodation of XXXX XXXX XXXX XXXX in two of the four classes that utilized XXXX during the 2015-2016 school year. On two occasions in XXXX XXXX during the fall 2015 semester, the Student was provided an XXXX XXXX because XXXX XXXX was not available, at the Student’s request and in consultation with the Student’s counselor, who was a member of the Student’s Section 504 committee. The XXXX XXXX teacher during that semester, Teacher M, also indicated that he gave the Student extra time to XXXX XXXX XXXX at his own pace. Although OCR’s investigation determined that the Student was not provided XXXX XXXX in his XXXX XXXX class, which according to the teacher was the Student’s choice, XXXX XXXX is not an instructional class. Under these circumstances, OCR cannot conclude that the lapses in providing XXXX XXXX denied the Student a FAPE.

With regard to the Student’s accommodation of XXXX XXXX, OCR’s investigation revealed that, of the Student’s five classes that utilized XXXX XXXX, the Student was either provided XXXX XXXX electronically via XXXX XXXX posted on the school computerized system or XXXX XXXX XXXX XXXX in class. Therefore, OCR has no reason to conclude that the Student’s teachers failed to provide him with XXXX XXXX, as the complainant alleged.

In sum, there is insufficient evidence to support that the HISD failed to provide the Student the regular or special education and related aids and services deemed necessary to meet the Student’s individual educational needs such that the District denied the Student a FAPE during the 2015-2016 school year.

Legal Standard: Issue #3

Both Section 504 and Title II prohibit measures that have the effect of subjecting qualified persons with disabilities to discrimination on the basis of disability. 34 C.F.R. § 104.4; 28 C.F.R. § 35.130. A school district discriminates on the basis of disability in the context of an educational program or activity by unnecessarily treating students with disabilities differently from students without disabilities. In considering allegations that a recipient has discriminated on the basis of disability, OCR looks for evidence of discriminatory intent. Discriminatory intent can be established either through direct evidence (i.e., statements, documents, or actions that clearly evidence a discriminatory intent) or through indirect (also known as circumstantial) evidence (i.e., a set of facts from which one may infer a discriminatory intent). Absent direct evidence that a recipient discriminated on the basis of disability, OCR applies a disparate treatment analysis under which OCR must determine whether the facts support a *prima facie* case of disability discrimination. A *prima facie* case exists if a preponderance of the evidence indicates that a recipient treated one person differently than one or more similarly situated persons of another disability. If a *prima facie* case of different treatment is established, OCR must then determine whether the recipient had a legitimate, nondiscriminatory reason for its action(s) that would rebut the *prima facie* case against it. If one or more legitimate, nondiscriminatory reasons for the different treatment are identified, OCR must then determine whether the recipient’s asserted reasons for its actions are pretext for disability discrimination. Ultimately, the weight of the evidence must support a finding that discrimination occurred.

Issue #3 – Complainant’s Assertions

In a supplemental statement, dated XXXX XXXX, XXXX, the complainant provided six examples to demonstrate the behavior of Teacher N described above and another teacher, Teacher C, and the harassment, hostility, and humiliation the Student allegedly experienced from his teachers during the 2015-2016 school year. Specifically, the examples provided were:

Example #1

Example #1 is an email exchange between Teacher N and the Student’s mother, dated XXXX XXXX, XXXX, with the subject line “[The Student’s name],” which the complainant provided to demonstrate Teacher N’s hostility toward the Student. The email expressed that Teacher N was stressed over trying to find a copy of a curriculum-required XXXX that provided XXXX to meet

the Student’s accommodation. In the email, Teacher N indicated that she tried to XXXX XXXX XXXX XXXX but could not, which resulted in her XXXX XXXX XXXX XXXX to prepare a class assignment for a shorter, less exciting replacement XXXX that included XXXX. In addition, Teacher N’s email advised that the Student complained about the XXXX XXXX and wanted to see the counselor instead of thanking her and remaining in class to XXXX XXXX XXXX with his peers. Finally, Teacher N’s email mentioned that the teacher had XXXX XXXX XXXX XXXX and XX—to end of sentence redacted—XX. She also conveyed feelings of being subjected to “XXXX XXXX XXXX” in spite of trying her best to accommodate the Student; however, the accommodations provided were not appreciated.

The Student’s mother responded to Teacher N’s email on the same date and concluded the email by advising Teacher N that she had provided “this resource”⁵ a year ago to take the burden off teachers and “give them another resource.”

On the same date, in another email, Teacher N responded and wrote that sometimes there are things that cannot be controlled with respect to XXXX. She additionally advised that the replacement XXXX she decided to use to accommodate the Student had not been approved by her team and that she would be “XX—to end of parenthetical redacted—XX.” She continued, “XX—to end of sentence redacted—XX.” She concluded with, “XX—to end of paragraph redacted—XX”

In her reply email, on the same date, the Student’s mother advised that Teacher N was trying to provide the Student’s accommodations and had a XXXX XXXX and that she thought the relationship could improve.

Example #2

Example #2 is a two-paragraph email. The first paragraph related to Teacher M and was previously addressed in Example #3 in connection with Issue #2 above; however, the second paragraph related to Teacher N and was a copy of an email from the Student’s mother to the complainant, dated XXXX XXXX, XXXX, with the subject line “XXXX,” in which the Student’s mother advised the complainant that Teacher N ridiculed the Student and asked him “XX—to end of parenthetical redacted—XX” and stated that she had the power to take him away from that. The email further read that the Student was ridiculed by Teacher N for “XX—to end of sentence redacted—XX. Encourage the other children to ridicule him. . . . She informed [the Student] that XX—to end of phrase redacted—XX in front of the other students..”

Example #3

Example #3 is a copy of an email from the Student’s mother to the complainant, dated XXXX XXXX, XXXX, with the subject line “XXXX.” The email read, “[Teacher C] XX—to end of paragraph redacted—XX.”

⁵ The “resource” was a XXXX XXXX XXXX, who could provide XXXX XXXX XXXX for the Student’s teachers.

Example #4

Example #4 is a copy of an email from the Student’s mother to the Assistant Principal (AP), dated XXXX XXXX, XXXX, with the subject line “XXXX XXXX XXXX.” In the email the Student’s mother advised that on that day the Student had brought home a XXXX XXXX XXXX because the AP had XX—to end of sentence redacted—XX. The Student’s mother also explained that the Student had XXXX that was recorded in his medical file. The Student’s mother also wanted to know why the Student was XX—to end of sentence redacted—XX. Example #4 also included a copy of the XXXX XXXX XXXX referenced in the email.

Example #5

Example #5 is a copy of an email from the AP to the Student’s mother, dated XXXX XXXX, XXXX, with the subject line “XXXX: XXXX XXXX XXXX,” in which the AP responded to the Student’s mother’s email delineated in Example #4. The AP advised that the Student’s mother email account was factually inaccurate on several points, including that the Student complained about the room being too XXXX, not XXXX XXXX XXXX XXXX, and that the AP did not XX—to end of sentence redacted—XX.

Example #6

Example #6 is a copy of an email from the Student to the his mother, dated XXXX XXXX, XXXX, with the subject line “XXXX” in which the Student informed his mother that his XXXX teacher asked him for some work he had turned in. He further wrote that he told the teacher that he had turned the work in but the teacher advised him that he had not. He continued his account of the incident, indicating that he showed the teacher XX—to end of sentence redacted—XX. The Student indicated that subsequently the teacher XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and he concluded the incident was an example of the teacher d XX—to end of sentence redacted—XX.

Finding of Fact: Issue #3

Example #1

OCR’s review of the emails exchanged between the Student’s mother and Teacher N, provided by the complainant to illustrate that Teacher N ridiculed the Student or treated the Student differently in the context of his educational program actually demonstrated that Teacher N made personal sacrifices to ensure that the Student was provided the educational program determined appropriate by his Section 504 committee. Moreover, in the Student’s mother’s email, she specifically expressed that Teacher N provided the Student his accommodation of XXXX XXXX, was trying to provide the Student’s accommodations, and even had a “XXXX XXXX.”

During her interview with OCR, Teacher N stated that her comments in the XXXX XXXX, XXXX email were not directed to the Student in any way. According to Teacher N, although she was distraught about XXXX XXXX XXXX XXXX, she tried her very best to accommodate the Student, but the Student’s mother accused her of not serving the Student in the way the Student’s

mother found fit. Consequently, Teacher N stated that she felt hurt that the Student’s mother did not appreciate her efforts and tried to explain what she had gone through to accommodate the Student in the email.

In addition, none of the emails sent by Teacher N, provided by the complainant in Example #1, included the Student’s email address and therefore do not support the complainant’s assertion that Teacher N intended to subject the Student to ridicule or hostility. OCR’s investigation concluded that the emails provided by the complainant in Example #1 did not demonstrate ridicule or hostility on the part of Teacher N toward the Student or the Student’s mother.

Example #2

During her interview with OCR, Teacher N advised OCR that she did not recall making any comments to the Student about being a XX—to end of sentence redacted—XX. In fact, Teacher N advised OCR that she did not know that the Student was a XXXX XXXX XXXX XXXX XXXX and recalled only that the Student had a XXXX XXXX in class. With regard to the comments related to Teacher N’s XXXX, Teacher N denied that she would say anything like that to any of her students. During her interview, Teacher N admitted that her XXXX was XX—to end of phrase redacted—XX during the 2015-2016 school year, but she could not remember any context in which she would reference her XXXX unless a student asked about her XXXX.

OCR interviewed a group of the Student’s classmates from Teacher N’s class during the 2015-2016 school year while on site to determine whether any student witnessed Teacher N’s alleged attempts to disparage the Student. The students advised OCR that they recalled conflict between the Student and Teacher N. According to the students interviewed, Teacher N tried to accommodate the Student but the Student seemed to think that whatever Teacher N tried was never enough. The students indicated that the Student was unreasonable and would make a scene and initiate conflict with Teacher N, which resulted in the two arguing with each other. Moreover, the students interviewed advised OCR that the only special instruction they recalled the teacher mentioning in front of the class was instructing the Student to XX—to end of sentence redacted—XX.

In illustrating the conflict between the Student and Teacher N, the students described an occasion when the Student had XXXX XXXX XXXX XXXX XXXX XXXX and Teacher N instructed the Student to XXXX XXXX XXXX. The Student said “no” and that Teacher N could not XX—to end of sentence redacted—XX. One student advised OCR the XXXX XXXX incident was “100%” caused by the Student being stubborn. OCR reviewed an email from Teacher N to the Student’s mother, dated XXXX XXXX, XXXX. In the email Teacher N wrote that the Student “XX—to end of paragraph redacted—XX.”

None of the students interviewed remembered Teacher N making any statements about the Student being a XXXX XXXX XXXX XXXX XXXX, as alleged. On the contrary, all of the students interviewed by OCR agreed that Teacher N would not do anything like that, that she taught well, and that she was nice. All of the students interviewed agreed that Teacher N tried to help the Student. One student advised OCR that both the Student and Teacher N were obviously frustrated with each other; however, according to that student, Teacher N still tried to deal with the Student and made accommodations for him. Lastly, the students did not recall any other

students having any problems with Teacher N.

The Student's mother requested that OCR interview Teacher D. Teacher D advised OCR that she could not corroborate the complainant's claims of the ill treatment the Student experienced from Teacher N. During OCR's interview with Teacher D, she advised OCR that she had one conversation with Teacher N related to the Student's accommodations. According to Teacher D, during the conversation Teacher N discussed the lengths she went through in order to find XX—to end of sentence redacted—XX. However, Teacher D advised OCR that she did not know about the Student's conflict with any of his teachers because she was not in their classrooms. Furthermore, Teacher D recalled that the Student made comments that other teachers were not providing the accommodations he needed but did not mention any names to her.

OCR's investigation determined that Example #2 was a subjective account of an incident between the Student and Teacher N as provided by the Student's mother based on information received from the Student, who was confrontational and disrespectful with Teacher N at times, as relayed by interviews. Based on OCR's interviews with Teacher N and students in Teacher N's class during the 2015-2016 school year and email documentation between the Student, Teacher N, and the Student's mother, OCR found no evidence to support the that Teacher N ridiculed the Student in any way.

In contrast, interviews with other students in the same class, considered by OCR to be neutral firsthand witnesses, revealed that the Student initiated conflict with Teacher N, discussed his XXXX XXXX accommodation in front of other students in Teacher N's class, and contributed to an ongoing conflict that existed between him and Teacher N. This information is buttressed by the Student's own statement to OCR during his interview that a female student yelled at him once when they left Teacher N's classroom and asked him why he was so mean to Teacher N. In fact, according to the other students and Teacher N, in spite of this, the teacher never retaliated against the Student and continued to provide the Student accommodations as required in his Section 504 plan.

Example #3

During OCR's interview with Teacher C, OCR asked Teacher C about her discussions in class with the Student regarding his accommodations and her response to the allegation that she ridiculed the Student or treated him in an unprofessional manner. Teacher C advised OCR that she did not recall discussing the Student's accommodations with him in class. Teacher C further advised that she remembered the Student accusing her of treating him unprofessionally due to his disability when he had computer problems. Teacher C stated that the accusation was false. According to Teacher C, the Student was having technical issues with his computer, and she offered to provide him XX—to end of sentence redacted—XX.

OCR interviewed the Student's classmates, also considered by OCR to be neutral firsthand witnesses, from Teacher C's class during the 2015-2016 school year. The students interviewed all agreed the Student frequently interrupted the class and argued with Teacher C when she was teaching. According to the students interviewed, Teacher C typically did not show any emotion when responding to the Student. One student advised OCR that he would have yelled at the

Student, but Teacher C handled the situation well, although sometimes she would scream because the Student kept interrupting class. The students also all agreed that the Student’s behavior caused Teacher C frustration.

In addition, during her interview Teacher D, the witness requested by the Student’s mother, advised OCR that Teacher C told to her during a meeting that she was physically afraid of the Student. Teacher D could not provide any other information with regard to Issue #3.

OCR’s investigation determined that Example #3 did not support the complainant’s allegation that Teacher C ridiculed the Student or was disparaging to the Student in any way. To the contrary, the students interviewed from Teacher C’s class remembered the Student having negative behavior that Teacher C did her best to manage.

Example #4 and Example #5

OCR interviewed the AP regarding the incident in Examples #4 and #5. The AP indicated that he received the XXXX XXXX XXXX from Teacher M and the Student complained to him that the classroom was too XXXX. In response, the AP stated that he went to the classroom himself to see if the room was XXXX. However, the AP revealed that the room was XXXX but that the Student still did not want to take his final. According to the AP, the Student can be very obstinate, and he had not encountered the Student experiencing “XX—to end of parenthetical redacted—XX” prior to that incident or since that incident.

OCR’s investigation determined that Examples #4 and #5 demonstrated that the Student’s behavior on XXXX XXXX, XXXX, in Teacher M’s class resulted in the Student being XX—to end of sentence redacted—XX. At the time of the incident, the AP investigated the situation personally and recalled the event clearly when questioned about it during his interview with OCR. As a result of investigating the Student’s claims and the classroom himself, the AP determined that the Student’s assertions were not credible and provided the Student’s mother a thorough explanation for the actions he took that resulted in the Student receiving a XXXX XXXX for his behavior.

OCR’s investigation concluded that Examples #4 and #5, provided by the complainant to illustrate the hostility experienced by the Student, did not support the complainant’s allegation. As it relates to discipline, a student with a disability is subject to the same disciplinary sanction(s) imposed on students without disabilities according to the disciplinary policy unless the disciplinary action causes a significant change in the student’s placement. In this instance, the AP imposed a XXXX XXXX, XXXX XXXX, on the Student, only after investigating the situation, which as an administrator is his responsibility to oversee. OCR’s investigation further determined that the AP had a legitimate nondiscriminatory reason for his action on XXXX XXXX, XXXX, and the reasons proffered were not pre-textual for discrimination based on the Student’s disability. Therefore, Examples #4 and #5, provided by the complainant to illustrate hostility toward the Student, did not support the complainant’s assertions.

Example #6

During OCR’s interview with Teacher N, OCR specifically asked Teacher N about the Student’s email on XXXX XXXX, XXXX. In that email, the Student indicated that after being informed by Teacher N that the he was missing an assignment, the Student asked Teacher N whether she misplaced or lost the Student’s homework assignment, accused the teacher of XX—to end of phrase redacted—XX, and stated that Teacher N informed him the assignment was XX—to end of sentence redacted—XX.

Teacher N advised OCR during her interview that there were many assignments not turned in by the Student that were still reflected in the computerized grading system at BHS, the HUB. Teacher N further informed OCR that student assignments are turned in through the HUB. In addition, Teacher N revealed that teachers have access to a preloaded computer app on students’ school-issued laptops that tracks information regarding when a student accesses documents or assignments and the amount of time spent by the student on the assignment; therefore, any assignments completed by the Student are archived and credited to him in the HUB and would show up there. According to Teacher N, the HUB prevents students’ assignments from being lost, misplaced, or deleted by teachers.

OCR’s investigation determined that Example #6 consisted of a subjective account of an incident in Teacher N’s classroom, as described by the Student. The complainant did not provide any information that the Student’s account was provided to Teacher N or addressed in any way with Teacher N at the time it occurred, despite the Student and the Student’s mother’s ongoing emails with many of the Student’s teachers regarding many concerns that arose in the Student’s classes during the 2015-2016 school year. In addition, the incident as described in the Student’s email does not provide evidence that the teacher actually XXXX any of the homework assignments submitted by the Student or that the Student was not given appropriate credit for assignments submitted to Teacher N. Based on OCR’s investigation, the HUB was an effective way for the Student or the Student’s mother to verify any questions or concerns regarding assignments determined missing or XXXX by Teacher N. Moreover, Teacher N’s contention that the Student had many missing assignments during the 2015-2016 school year was supported by other teachers during the same year, interviewed by OCR, who consistently advised OCR that the Student had many missing assignments in their classes as well.

Analysis: Issue #3

Based on OCR’s careful review and analysis of the information obtained during our investigation, OCR determined that there is insufficient evidence to support that Teacher N and Teacher C ridiculed the Student as alleged. Based on the only neutral evidence obtained during OCR’s investigation, specifically the student interviews, both Teacher N and Teacher C generally treated the Student professionally in spite of the Student’s frustrating behavior of interrupting the teachers and being argumentative.

None of the examples provided by the complainant, in support of her allegation, as delineated in Example #1 through Example #6 and discussed above, demonstrated the complainant’s assertions. The evidence shows that Teacher C yelled at times in class due to frustration from the Student’s behavior and that Teacher N complained in an email to the Student’s mother about XXXX XXXX XXXX XXXX XXXX in order to provide the Student a XX—to end of sentence

redacted—XX. However, even if OCR assumes that these actions constituted different treatment on the basis of the Student’s disability, OCR concludes that Teacher C and Teacher N had legitimate, nondiscriminatory reasons for these actions—specifically, their frustration with the Student’s disrespectful behavior, which was not based on the Student’s disability. In light of the information that OCR gleaned from the student witnesses from Teacher N’s and Teacher C’s classes, OCR concludes that this legitimate, nondiscriminatory reason is not pretext for discrimination.

Therefore, OCR has determined that there is insufficient evidence to support the allegation that the HISD treated the Student differently on the basis of disability in the context of an educational program or activity 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 the HISD.

Conclusion

With respect to Issue #1, OCR has determined that the District discriminated against the Student based on disability by failing to provide him with an aid, benefit, or service that was as effective as that provided to others, failing to furnish appropriate auxiliary aids and services where necessary to afford the Student an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity, and by failing to give primary consideration to the Student’s request for XXXX XXXX as required by the regulations implementing Title II. OCR found insufficient evidence to establish that the District violated Section 504 and Title II as alleged with respect to Issues #2 and #3.

The District submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the District’s representative signed the Agreement on December 14, 2017. OCR has determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolves them. Further, OCR accepts the Agreement as an assurance the District will fulfill its obligations under Section 504 and Title II with respect to this complaint. The dates for implementation and specific actions are detailed in the enclosed Agreement. OCR will actively monitor the District’s implementation of the Agreement. Please be advised that if the District fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

There are no further complaint allegations appropriate for resolution; therefore, OCR is closing the investigation of the above-referenced complaint as of the date of this letter. The complainant has been notified of this action. This letter is not intended, nor should it be construed, to cover any other matters that may exist but are not specifically included 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 a 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 whom 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 an investigation, proceedings or hearing held in connection with a complaint.

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, please feel free to contact Treslyn Patterson, Equal Opportunity Specialist, by telephone at (214) 661-9645 or email to treslyn.patterson@ed.gov. You may also contact Melissa Malonson, Team Leader Attorney, at (214) 661-9637, or by email to melissa.malonson@ed.gov.

Sincerely,

/s/

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