Mr. Richard A. Carranza, Superintendent of Schools  
Houston Independent School District  
4400 West 18th Street  
Houston, TX 77092-8501

Re: OCR# 06171037

Dear Mr. Carranza:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has resolved the above-referenced complaint filed against the Houston Independent School District (HISD), Houston, Texas, which OCR received on October 12, 2016, and was filed on behalf of the complainant’s son (the Student), who attended the HISD’s Ed White Elementary during the 2015-2016 school year. The complainant alleged that HISD discriminated against the Student on the basis of disability when it failed to timely evaluate the Student’s need for regular or special education or related aids and services and failed to fully implement the Student’s Section 504 plan during the 2015-2016 school year.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance, either from the Department or from an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging disability discrimination against public entities, such as public preschools, elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries.

The HISD is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction to process this complaint under Section 504 and Title II.

OCR opened an investigation of the following legal issues:

1. Whether the HISD discriminated against the Student on the basis of disability by failing to timely evaluate the Student’s need for regular or special education and
related aids and services despite having notice that, because of the Student’s alleged disability, the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education (FAPE) during the 2015-16 school year, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

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 individualized educational needs (e.g., small group testing, tests read aloud, extra time for tests, and re-testing), and thereby denied the Student a FAPE during the spring semester 2016, 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.

During the course of the investigation, OCR received information from the HISD as well as the complainant regarding the issue under investigation. OCR’s review of the evidence indicated that the Student transferred to HISD at the beginning of the 2015-2016 school year. The complainant, ********************************************, alleged that the Student’s 504 plan from the Student’s previous school was made known to the HISD, but that it was rejected until a medical diagnosis could be provided. The complainant alleged that it was not until January of 2016, when she was able to provide a medical diagnosis, that a 504 evaluation meeting was granted by HISD. The Complainant also maintained that HISD staff failed to fully implement the Student’s 504 plan once it was put in place by failing to read tests out loud or test in a small group environment as required by the Student’s 504 the plan. Documentation from the HISD reflects that the Student’s Section 504 plan from his previous school was shared with teachers on September 25, 2015, approximately five weeks into the school year. In its response to OCR, the HISD maintained that it fully implemented the Student’s previous 504 plan as well as the 504 plan created in January of 2016.

Prior to the conclusion of OCR’s investigation, the HISD expressed interest in voluntarily resolving the complaint. Section 302 of OCR’s Case Processing Manual (CPM) provides that a complaint may be resolved when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement during the course of an investigation. Upon consideration of the evidence gained thus far during the investigation, OCR entered into negotiations with the District to resolve the complaint allegations. Consistent with Section 302 of the CPM, the HISD agreed to the enclosed Resolution Agreement (the Agreement) on April 28, which OCR has determined addresses the compliance issues alleged in the complaint and which, when fully implemented, will resolve this complaint.

Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this complaint. However, OCR will actively monitor the HISD’s implementation of the Agreement to determine whether the commitments made therein
have been implemented consistently with the terms of the Agreement. Please be advised that if the HISD fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

Effective the date of this letter, OCR is closing the investigative portion of this case. This concludes OCR’s investigation of the complaint and should not be interpreted to address the recipient’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. Please also note that 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 a recipient may not threaten, coerce, intimidate, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR, or because the individual made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing held in connection with an OCR complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, 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, you may contact the attorney investigator assigned to this case, Samire K. Elhouty at (214) 661-9689 (samire.elhouty@ed.gov), or Lori Bringas, Team Leader, at (214) 661-9638 or (lori.bringas@ed.gov).

Sincerely,

Taylor D. August
Director
Office for Civil Rights
Dallas Office

Enclosure

cc: Hans Graff, Deputy General Counsel (via email)