



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

April 28, 2021

Re: OCR Docket #06171451

Dr. Mark Henry, Superintendent
Cypress-Fairbanks Independent School District
10300 Jones Road, P.O. Box 692003
Houston, Texas 77269
Via email (mark.henry@cfisd.net)

Dear Dr. Mark Henry:

The U.S. Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Cypress-Fairbanks Independent School District (CFISD or District), in Houston, Texas. The Complainant alleged that the CFISD discriminated against XXXX XXXX (Student) on the basis of disability [XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX]. Specifically, the Complainant alleged that the District failed to evaluate the Student for special education or related services during the 2016-XXXX school year.

OCR is responsible for determining whether entities that receive or benefit from federal financial assistance from the Department (recipient), or 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 (amended 1992), and its implementing regulations at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities. The CFISD is a recipient and a public entity. Therefore, OCR has jurisdiction to investigate this complaint under Section 504 and Title II.

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 a particular proposition is more likely than not). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

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

OCR reviewed documents provided by the CFISD and the Complainant, as well as information obtained during interviews with current and former CFISD staff members. Specifically, OCR interviewed seven of the Student's past teachers for math, science, writing, English, and language arts at the XXXX XXXX XXXX (XXXX) and the XXXX XXXX XXXX (XXXX) (Teacher 1, Teacher 2, Teacher 3, Teacher 4, Teacher 5, Teacher 6, and Former Teacher). OCR interviewed the Principal, the Assistant Principal, Nurse, a substitute nurse (Substitute Nurse), a Counselor, a former Counselor (Former Counselor), and two paraprofessionals (Paraprofessional 1 and Paraprofessional 2) at the XXXX. In addition, OCR conducted interviews with the Complainant. Based on review and analysis of the information obtained during this investigation, OCR determined that there is sufficient evidence to establish a conclusion of noncompliance with Section 504 and Title II with respect to the issue investigated. The basis for OCR's determination is explained below.

Issue Investigated:

Whether the CFISD discriminated against the Student on the basis of disability by failing to timely and/or properly evaluate XXXX need for regular or special education and related aids and services (e.g., after the Student was diagnosed with XXXX in or around XXXX 2015 and XXXX in or around XXXX 2015; after several staff members, including the XXXX Principal, Assistant Principal, Counselor, and the Student's teachers became aware of the Student's diagnoses; when the Student was failing school throughout the 2015-2016 and 2016-2017 school years; after the Complainant requested help and assistance for the Student several times; and prior to excluding the Student from class, when the Student was sent out of class as often as 2 or 3 times each week throughout the 2016-2017 school year), and thereby denied the Student a free appropriate public education (FAPE) during the 2016-2017 school year, in violation of Section 504 and Title II and their implementing regulations, at 34 C.F.R. §§ 104.33 and 104.35, and 28 C.F.R. § 35.130, respectively.

Legal Standard:

Under the Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.33(a) and 28 C.F.R. § 35.130, respectively, a public school district that receives Federal financial assistance from the Department (recipient) must provide a FAPE to each qualified student with a disability in the district's jurisdiction. The Section 504 regulations' evaluation procedures, at 34 C.F.R. § 104.35(a) and (b), state that a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student's initial educational placement and any subsequent significant change in that placement. The Section 504 regulations do not specify how quickly an evaluation must be completed after a recipient obtains notice that a student needs or is believed to need special education or related services. As a result, OCR applies a "reasonableness" standard to determinations regarding the timeliness of evaluations. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is considered

reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation, unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state.

Under Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. The Section 504 regulations specifically identify “learning” as a major life activity. Finally, the Section 504 regulations, at 34 C.F.R. § 104.35(c), provide that:

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

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

Findings of Fact:

The Complainant alleged that the Student was diagnosed with XXXX in XXXX 2015 and XXXX in XXXX 2015 and that XXXX informed staff members at the Student’s school, at the time of each diagnosis. The Complainant indicated that XXXX continuously discussed the Student’s disabilities with staff members at the XXXX thereafter, and that XXXX staff administered the Student’s XXXX XXXX. The Complainant provided OCR with medical records from the Student’s doctor, which indicate that the Student was diagnosed with XXXX and XXXX on XXXX XXXX, 2015 and that the Student was prescribed XXXX XXXX XXXX that day. The medical records additionally indicate that on XXXX XXXX, 2016, the Student was prescribed a different XXXX XXXX and directed to take it both before school (i.e., at 7:00 AM) and during school (i.e., at noon). The Complainant explained that staff members at the Student’s school participated in the XXXX evaluation and diagnosis by the Student’s doctor by completing various forms requested by the Student’s doctor.

The Complainant provided OCR with copies of National Institute for Children’s Health Quality XXXX XXXX XXXX XXXX forms (XXXX Assessment Forms) completed and signed by the Student’s teachers, including Teacher 2, Teacher 3, Teacher 4, Teacher 6, and the Former Teacher, between December 18, 2014 and May 26, 2016. Each XXXX Assessment Form contains space to

indicate whether the Student is taking XXXX, the prevalence of various XXXX symptoms, academic performance, behavioral performance, and additional comments by teachers.

Teacher 2, Teacher 4, Teacher 6, and the Former Teacher each completed and signed the XXXX Assessment Form on three separate dates, and Teacher 3 completed and signed the Assessment Form on four separate dates. XXXX Assessment Forms completed by Teacher 6 and the Former Teacher on December 18, 2014 indicate that the Student “was not XXXX XXXX” and XXXX Assessment Forms completed by Teacher 6 and the Former Teacher on February 19, 2015 indicate that the Student “was XXXX XXXX.” Subsequent to December 18, 2014, all XXXX Assessment Forms completed and signed by Teacher 2, Teacher 3, Teacher 4, Teacher 6, and the Former Teacher, indicate that the Student “was XXXX XXXX,” at the time the form was completed. A XXXX Assessment Form completed by Teacher 6 contains text indicating that the Student works with XXXX “blocker” around XXXX to be alone. A XXXX Assessment Form completed by the Former Teacher contains text indicating that the Student cried 1-2 times a week and was irritable. A XXXX Assessment Form completed by Teacher 3 contains text indicating that the Student refuses to comply, seems angry, frustrated, defiant, and confused. A XXXX Assessment Form completed by another teacher contains text indicating that the Student mumbles to herself, and is irritated and bothered by others. A May 15, 2017 email between the Former Counselor and Teacher 1, which was provided by the CFISD, indicates that the Former Counselor sent the XXXX Assessment Forms to staff in April 2017, requesting receipt of the completed form from Teacher 1. A copy of the Student’s CFISD electronic record, which was provided by the CFISD, includes the following text: “Critical Alert – All XXXX XXXX Forms go in a sealed envelope home with [Student] to give to XXXX to give to doctor per conversation with XXXX XXXX.”

The Complainant indicated that the Student received failing grades throughout the XXXX and XXXX school years and was not promoted to the higher grade levels. The Complainant indicated that XXXX had to pay for the Student to go to Sylvan Learning Center to catch up on math and reading to pass the State of Texas Assessments of Academic Readiness (STAAR) exams. The Complainant explained that XXXX repeatedly asked XXXX staff members to assist the Student but that “nothing changed.” The Complainant indicated that the Student was sent out of class 2-3 times a week throughout the XXXX school year for cool-off time in relation to disruptive behaviors including not following directions or humming, which XXXX does when XXXX has trouble focusing. The Complainant explained that the Student acts out behaviorally when XXXX cannot XXXX and becomes frustrated.

The Complainant indicated that after XXXX learned about Section 504 from individuals outside of the CFISD in March 2017, XXXX immediately requested a Section 504 evaluation for the Student. The Complainant explained that the Student was evaluated for Section 504 in April or May 2017. XXXX also indicated the XXXX Principal told the Complainant that the XXXX had been in violation for not evaluating the Student previously.

The CFISD's Operational Guidelines for Section 504 indicate that every teacher within the District should have information regarding how to initiate a Section 504 referral and know how to identify students who should be referred. The CFISD provided OCR with a copy of a document titled Section 504 Initial Evaluation & Periodic Reevaluation form, dated XXXX XXXX 2017 (Evaluation Form) and a corresponding notice which indicates that a meeting took place that day to complete an initial Section 504 evaluation for the Student. The Evaluation Form indicates that the Section 504 committee for the evaluation meeting included the Principal, Teacher 1, and the Complainant, and that the data considered included parent input, teacher/administrator input and recommendations, aptitude tests, grade reports, school health information, medical evaluations/diagnoses/physical condition, social or cultural background, and mitigating measures. The Evaluation Form, through the use of various checkboxes, indicates that the Student has XXXX, which is an impairment which substantially limits major life activities of the Student, and that the Student needs Section 504 services. The Evaluation Form does not contain any other summary or details of discussions or determinations during the meeting and does not contain any other details, summary, or analysis of any data or information considered during the evaluation. OCR was not otherwise provided with documentation regarding the evaluation.

A Section 504 Student Services Plan, dated XXXX XXXX 2017 (504 Plan) for the Student indicates accommodations determined to be necessary for the Student. The 504 Plan does not contain any details or summaries of discussions or determinations which occurred during the Section 504 meeting or determination for the Student, and does not indicate who participated in the meeting or determination. A separate document, provided by the CFISD, which is titled Staffing/IEP notes, dated XXXX XXXX 2017, indicates that Teacher 1, Teacher 5, and a Licensed Specialist in School Psychology were present, but does not contain any additional information. An undated Documentation of Initial Concern form containing health history information from the Nurse indicates that the Student takes XXXX XXXX XXXX. Neither the Evaluation Form, 504 Plan, nor any other documentation or information provided by the CFISD contain any indication that the CFISD considered whether the Student needed compensatory or remedial services based on a failure to evaluate the Student during the 2015-2016 and 2016-2017 school years.

OCR reviewed notes written by the Principal, indicating that the Principal and the Complainant had a telephone conversation on XXXX XXXX 2017. The notes indicate the Principal told the Complainant that XXXX had not fulfilled XXXX responsibilities as a principal. The hand-written notes, and email correspondence between the Principal and Complainant, indicate that the Complainant specifically requested a Section 504 evaluation for the Student during a telephone discussion with the Principal on XXXX XXXX 2017. A document titled "Elementary Conference Form" indicates that Teacher 2 had telephone conversations with the Complainant a year earlier on XXXX XXXX and XXXX XXXX 2016, that Teacher 2 discussed the Student's grades and behavior, that the Complainant indicated that XXXX was going to take the Student back to XXXX doctor in relation to XXXX behavior, and that the Student was being placed into the next grade as opposed to promoted because the Student did not maintain grades above a 70%-pass for core subjects. The conference form includes the Student's grades for each class and each semester of the 2015-2016

school year. The conference form and the Student's report card indicate that the Student received cumulative grades of XXXX in reading and XXXX in math during the 2015-2016 school year, and included individual quarter grades of XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and XXXX for several subjects. A 2016-2017 report card indicates that the Student received cumulative grades of XXXX in language arts, XXXX in math, XXXX in science, and other individual quarter grades of XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and XXXX in several subjects.

A copy of the Student's Medical Card Report, maintained electronically by the CFISD, indicates that CFISD staff members, including the Nurse, Substitute Nurse, Paraprofessional 1, and Paraprofessional 2, issued XXXX, identified with Rx code "XXXX" to the Student approximately twenty times between XXXX XXXX and XXXX XXXX 2016. The Medical Report Card contains text indicating that, on XXXX XXXX 2015, the Student started XXXX new XXXX. The Medical Report Card additionally indicates the Student has XXXX, but does not indicate when this information was added to the Medical Report Card. The CFISD's medication policy indicates that the District must receive a written request from a parent to administer medication. The CFISD's medication request consent form includes space for parents to identify the medication, dosage, and reason for the medication. The CFISD did not provide OCR with a copy of a completed medication consent form for the Student.

During an interview with OCR, the Nurse indicated that XXXX was not aware that the Student had XXXX and XXXX before receiving notice of this OCR complaint. The Nurse explained that XXXX administered XXXX, which XXXX identified as XXXX in the Student's Medical Card Report and which is also known as XXXX, to the Student at school each day at noon. XXXX indicated that XXXX XXXX 2016 was the first time the Student received this XXXX at school, and that XXXX was not aware of why the Student was taking Methylphenidate when XXXX administered it to the Student. The Nurse indicated that the only reasons XXXX is aware of that a student would take XXXX would be if the Student has XXXX, XXXX, XXXX XXXX, or XXXX. The Substitute Nurse indicated that XXXX did not know why XXXX XXXX XXXX to the Student on XXXX XXXX 2016 and XXXX 2017, that XXXX generally does not know students well because XXXX floats between campuses, and that usually nurses at the campuses know more about the students. The Substitute Nurse indicated that XXXX does not know what XXXX stands for specifically but that XXXX knows it is an XXXX XXXX. The Substitute Nurse additionally indicated that the XXXX can also be taken for XXXX.

The Nurse indicated that Section 504 evaluations and Section 504 plans are academic documents only, and that XXXX does not have any involvement in creating or reviewing them. The Nurse additionally explained that XXXX does not, cannot, and has never requested a Section 504 evaluation, or notified other staff members about a possible need for a Section 504 evaluation, because Section 504 evaluations are academic processes only. The Nurse indicated that XXXX has never participated in any Section 504 meetings for students. The Nurse explained that when health plans are needed for

students, the health plans are created by XXXX, kept in the clinic, and are only for medical professionals – not provided to administrators. The Nurse further explained that the only scenario in which XXXX would ever inform administrators that a student has a disability would be if information is requested from XXXX after a Section 504 evaluation has started and only if XXXX knowledge of a student’s disability comes from documentation from a physician licensed in the state of Texas.

The Former Counselor indicated that the Complainant informed XXXX in the Spring of 2016 that the Student was XXXX XXXX but that the Former Counselor did not know what XXXX the Student XXXX XXXX. Teacher 1 indicated that XXXX did not remember when XXXX learned that the Student had XXXX and XXXX. Teacher 1 indicated that XXXX knew the Student took XXXX because the Student sometimes told XXXX that XXXX had forgotten to XXXX XXXX XXXX, but that XXXX did not know what XXXX the Student took and that some students tell Teacher 1 that gummy vitamins are XXXX XXXX. The Counselor indicated that XXXX was not aware that the Student had XXXX or XXXX because XXXX is assigned different students and has not worked with the Student. The Counselor explained that if XXXX was informed that a student had XXXX, XXXX would go directly to administrators about it because XXXX affects everything a student does.

The Principal explained that XXXX believed that external factors – the Student being hungry, having to self-care and get to school independently while the Complainant was at work, and having resentment in relation to no longer living with XXXX XXXX — were reasons for the Student’s academic and behavioral struggles. The Principal explained that as the Section 504 Coordinator, XXXX keeps track of students struggling academically, tries to figure out general education interventions for the students, and then, as a next step, identifies students with disabilities to determine if they need services under Section 504. The Principal explained that when a student is struggling, CFISD staff members investigate to find out if the student has a disability, that if a student has a disability and the student is not responding to general education interventions, then they discuss Section 504 and/or special education with a student’s parent.

The Assistant Principal indicated that staff members try every intervention or other action they can prior to providing a student accommodations through a 504 Plan. The Former Counselor explained that staff members determine interventions at student intervention meetings and, if it appears that the interventions are ineffective and that the student is not responding to numerous interventions that have been tried, the staff would decide whether to move forward with a Section 504 evaluation. Teacher 2 explained that students are provided accommodations based on discussions in student intervention meetings and then, if the accommodations do not work, staff members will maybe consider a referral for Section 504 services.

The Principal and Assistant Principal explained that administrators and teachers participate in student intervention meetings every nine weeks to discuss students they have academic or behavior concerns about, that staff members began discussing the Student at these meetings midway through XXXX XXXX grade year, around the middle of XXXX 2015, and that staff members devised interventions

for the Student. The Principal and Assistant Principal indicated that staff members discussed the Student's grades because XXXX was failing. Teacher 1 indicated that XXXX discussed concerns with the Student's behavior at student intervention meetings. Teacher 1 indicated that XXXX also told the Complainant that the Student was failing academically. The Assistant Principal indicated that the interventions provided to the Student based on the student intervention meetings, including, but not limited to reading tutorials, assistance from a reading specialist, math supports with a math specialist, and allowing or directing the Student to leave class temporarily, had minimal results. The Former Counselor explained that XXXX attempted to work with the Student to help XXXX cope with feelings of anger XXXX had but that XXXX was never very successful with the Student.

The Principal indicated that XXXX first learned that the Student had XXXX and XXXX on XXXX XXXX 2017, when the Complainant completed a parent input form for the Student's Section 504 evaluation. The Principal's written notes indicate that the Principal and the Complainant discussed the Student having XXXX and XXXX via phone on XXXX XXXX 2017. The Assistant Principal indicated that XXXX first learned that the Student had XXXX and XXXX, and that the Student was XXXX XXXX on XXXX XXXX 2017. The Assistant Principal indicated that XXXX saw from the electronic health report card that the Student was XXXX XXXX at school on XXXX XXXX 2016, but that XXXX did not know what XXXX the Student XXXX XXXX. The Assistant Principal indicated that students sometimes indicate that they XXXX XXXX, but because the students may be talking about vitamins, staff members are generally not aware of a student's medical diagnoses unless a parent tells staff members.

The Principal indicated that there were times in which XXXX or another administrator were called to the Student's class to assess the Student's behavior but XXXX was not aware of how frequently this occurred. Paraprofessional 1 explained that the Student periodically went to a discipline management class to complete XXXX work when XXXX had to be removed from class, but that XXXX did not know when that occurred or how often it occurred. The Assistant Principal indicated that XXXX was not aware of the Student being sent out of class by teachers. The Principal indicated that the staff do not send students out of class and that XXXX was not aware of the Student being sent out of class by teachers. Teacher 5 indicated that XXXX did not recall sending the Student out of the class and that it would not have been safe for teachers to send students outside of the classroom during the Student's 5th grade school year because classes were in portable buildings.

Teacher 1 indicated that the Student was "a smart kid," but that XXXX would become frustrated, overwhelmed, and "just had a lot of whatever it was holding XXXX back." Teacher 1 indicated that XXXX would notice the Student "hit a wall," "like I cannot do this anymore," and then the Student would start to act out in class. Teacher 1 indicated that during the XXXX XXXX school year, when the Student became overwhelmed and started acting out, Teacher 1 would send XXXX out of class to "cool off." Teacher 1 indicated that XXXX sent the Student out of class to cool off more often than not, which was a couple days each week, and that the Student was usually outside of the class for less than 10 minutes. Teacher 1 explained that XXXX also had to call the Assistant Principal to come

and get the Student because of the Student's behavior, but that XXXX did not remember when or how often. The Former Teacher explained that the Student had meltdowns during class that negatively affected XXXX academically, and required the Student to be pulled aside to have time to cool down.

The Principal explained that on XXXX XXXX 2017, there was a meeting regarding the Student to go over evaluation data, discuss the 504 Plan, and to obtain consent to put the 504 Plan in place. Teacher 1 explained that XXXX name was on the Student's Evaluation Form only because XXXX was the Student's homeroom teacher, and that XXXX had not participated in 504 meetings for any student while XXXX was employed at the XXXX. Teacher 5 indicated that XXXX did not participate in any Section 504 meetings for the Student because XXXX would not have known the Student well and would not have had much to say about the Student, and that teachers who knew the Student better would have participated.

The Former Teacher indicated that XXXX did not remember completing the XXXX Assessment Form for the Student, but that XXXX believed that the forms were used as part of the battery of tests to determine a student's diagnosis. Teacher 2 indicated that the XXXX Assessment Forms focus on XXXX and a student's XXXX in class. Teacher 6 indicated that during the XXXX school year, XXXX remembered the Student having trouble following directions and staying on task. Teacher 6 explained that a blocker, referenced in a XXXX Assessment Form completed by Teacher 6, is a long piece of cardboard that folds into thirds, which students can put around them to block everyone else out, but that XXXX did not remember whether the Student used a blocker.

Analysis:

The information above indicates that although the Student was diagnosed with XXXX on XXXX XXXX 2015 and with XXXX in or before XXXX 2015, the CFISD did not complete a Section 504 evaluation for the Student until XXXX XXXX 2017, subsequent to a specific request from the Complainant on XXXX XXXX 2017. During the time period between the Student's diagnosis and evaluation, the evidence indicates the CFISD was aware of the Student struggling academically. As noted above, the Student received failing quarter and final grades in multiple classes throughout the 2015-2016 and 2016-2017 school years, the Student was placed into subsequent grade levels instead of being promoted, teachers discussed the Student's failing grades with the Complainant, and teachers and administrators discussed the Student's failing grades in regular student intervention meetings each nine weeks.

Throughout the 2015-2016 and 2016-2017 school years, CFISD staff members were additionally aware of the Student struggling behaviorally. As noted above, teachers observed the Student having "meltdowns" and acting out after XXXX would become frustrated because something was holding XXXX back, because XXXX hit a wall, because XXXX felt like XXXX could not do it anymore, and/or because XXXX was overwhelmed, and the Student was sent out of class to cool down multiple times per week, and periodically sent to a discipline management class. The evidence indicates that CFISD staff members discussed the Student's behavior with the Complainant, that the Complainant

informed CFISD staff members that the Complainant was going to take the Student back to XXXX doctor in relation to XXXX behavior, and that teachers and administrators discussed the Student's behavior in regular student intervention meetings each nine weeks. The information indicates that based on discussions of academic and behavioral concerns for the Student at student intervention meetings, CFISD staff members determined various interventions for the Student, that these interventions were attempted prior to considering a Section 504 evaluation for the Student, and that that the interventions had minimal results. The information additionally indicates apparent CFISD staff member confusion concerning Section 504 requirements and CFISD policies, including staff member beliefs that all general education interventions must or should be tried prior to considering Section 504 evaluations, beliefs that some staff members are not able to request Section 504 evaluations, and beliefs that some staff members should not, cannot, or do not need to share information about a student's potential disability with administrators, including the local campus Section 504 Coordinator.

The evidence further indicates the CFISD was aware of the Student's medical condition as early as XXXX 2015. Multiple CFISD staff members had discussions with the Student and/or the Complainant concerning the Student XXXX XXXX, the Student's electronic record was notated to indicate that the Student first began XXXX on XXXX XXXX 2015, the Student was XXXX XXXX daily at school starting on XXXX XXXX 2016, and the Nurse and Substitute Nurse were aware that the XXXX XXXX to the Student XXXX XXXX to treat XXXX and one or more other potential disabilities. The evidence further indicates that several of the Student's teachers completed ongoing XXXX -related assessment forms starting approximately one month before the Student was diagnosed with XXXX, rating XXXX symptoms of the Student, indicating that the Student XXXX XXXX XXXX, and including comments that the Student was irritable, irritated and bothered by others, frustrated, used a physical blocker to block out other students, refused to comply, and cried multiple times a week.

A preponderance of the evidence demonstrates that the CFISD has not met its obligations under 34 C.F.R. §§ 104.33 and 104.35 as well as 28 C.F.R. § 35.130 to provide a FAPE (*e.g.*, timely evaluate, provide the necessary special education services, etc.) for the Student during the 2015-2016 and 2016-2017 school years. Accordingly, OCR has determined that there is sufficient evidence to establish a conclusion of noncompliance with Section 504 and Title II.

On April 27, 2021, OCR obtained a signed resolution agreement (Agreement) to remedy the Section 504 and Title II violation. The provisions of the Agreement are aligned with the complaint allegations and appropriately resolve the issue under investigation. The dates for implementation and specific actions are detailed in the Agreement. OCR will monitor the CFISD's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This determination should not be interpreted to address the CFISD's compliance with any other statutory or 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 a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that a recipient 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 individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact the Civil Rights Attorney assigned to investigate the complaint, Michael J. Pillera at 214-661-9614 or by email at Michael.Pillera@ed.gov. You may also contact Timothy D. Caum, Supervisory Attorney, at 214-661-9648 or by email at Timothy.Caum@ed.gov.

Sincerely,

J. Aaron Romine
Acting Regional Director
Office for Civil Rights
Region VI, Dallas Office

cc: XXXX XXXX, XXXX XXXX XXXX the CFISD, via email XXXX