UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

August 14, 2020

OCR Case # 06201277

Mr. Don Schmidt, Assistant Superintendent
Northside ISD
5900 Evers Rd.
San Antonio, TX 78238

Via email (don.schmidt@nisd.net)

Dear Dr. Woods:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above referenced complaint against Northside Independent School District (the District), in San Antonio, Texas. The Complainant alleged the District discriminated against a student (the Student) on the basis of disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department (recipients). OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination by public entities on the basis of disability. The District is a recipient and a public entity. Therefore, OCR has jurisdiction to investigate allegations of discrimination filed against the District under Section 504, and Title II.

A finding that a recipient or public entity 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, for example, 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 of this complaint, OCR considered evidence and statements submitted by the Complainant and the District. OCR also interviewed the Complainant and District officials. Based on analysis of the information collected, OCR determined that there is insufficient evidence to support a conclusion of noncompliance by the District under Section 504 and Title II with respect to the second issue investigated. The basis for this determination is set forth below.

Issue 1

Whether the District discriminated against the Student on the basis of disability by failing to 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 disabilities (learning disabilities), the Student needed or was believed to need such aids and services, and thereby denied the Student a free appropriate public education during the 2019-2020 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.

OCR's preliminary review indicated the Student was reevaluated by the District on February 6, 2019 and January 20, 2020 to discuss the Complainant's request for testing. OCR also reviewed In both reevaluations, the ARD committee relied on testing from the Student's prior school district conducted in 2016, which consisted of the Woodcock Johnson IV. OCR interviewed the Special Education Teacher (Teacher) who was involved in the reevaluations, who stated that the Licensed Specialist in School Psychology (LSSP) was indicating that there was no indication for disabilities in content areas. The Teacher also stated that the LSSP will decide if there is a disability and if there is no evidence of that particular disability, which indicates the decision may have been predetermined by a single member of the Committee. OCR interviewed the LSSP, who was uncertain how/whether the ARD Committee considered the Student's failure to pass state assessments for English, and the LSSP supervisor who attended a different ARD meeting thought it was discussed in the prior meeting she did not attend, based on her interview with OCR. While the Student's Woodcock Johnson IV results form 2016 were included, the Review of Existing Evaluation Data (REED) does not specify how the scores in each area translate to performance or to the existence of dyslexia, reading difficulties, or a learning impairment. OCR also interviewed the 504 Coordinator, who stated that she had concerns regarding the ARD Committee's decision because the Student was receiving accommodations for struggles not associated with ADHD, and she did not know why the District's special education department did not test the Student as part of the evaluation. The 504 Coordinator stated that the Student was receiving "oral administration," which the 504 Coordinator indicated is usually an accommodation for Students with dyslexia or reading issues. The 504 Coordinator stated that based on the accommodations the Student was receiving, if the Student were under the 504 program rather than evaluated by the special education department, she would have tested the Student based on the supports he was already receiving. OCR's preliminary review of the information reflects a concern that the District may not have properly evaluated the Student regarding all alleged disabilities.

Prior to the completion of OCR's investigation, the District proactively notified OCR of its interest in voluntarily resolving Issue 1. Section 302 of OCR's Case Processing Manual (CPM) provides that an allegation may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the allegation. The provisions of the resulting resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations. OCR approved the District's request to resolve Issue 1 prior to the conclusion of the investigation.

Issue 2

Whether the District 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-phrase redacted-XX), and thereby denied the Student a free appropriate public education during the 2019-2020 school year, 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.

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, 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.

Findings of Fact

The Complainant alleged the Student never received XX-phrase redacted-XX, which was one of his accommodations in his Individualized Education Plan (IEP). OCR reviewed the Student's IEPs provided by the District. The accommodations listed on the Student's January 29, 2020 IEP include: XX-phrase redacted-XX. The accommodations listed on the Student's February 6, 2019 IEP are identical.

OCR interviewed the Complainant on June 18, 2020 and provided an opportunity to respond to the District's information above. The Complainant stated that the IEP she had included XX-phrase redacted-XX on the list of accommodations. The Complainant offered to send her copy of the Student's IEP with XX-phrase redacted-XX. However, as of this date, the Complainant has not

provided OCR a copy of the Student's IEP containing an accommodation for XX-phrase redacted-XX.

Legal Analysis

OCR found a significant conflict in the evidence regarding whether the Student's IEP contained an accommodation requiring XX-phrase redacted-XX. While the Complainant alleged the Student's IEP required the District to provide the Student XX-phrase redacted-XX, OCR's review of the Student's last two IEPs did not include any mention of XX-phrase redacted-XX. Therefore, a preponderance of the evidence does not establish that the Student was denied an approved accommodation in his IEP as alleged.

Conclusion

Regarding Issue 1, the District voluntarily signed the enclosed resolution agreement (Agreement) on August 13, 2020. OCR determined the Agreement resolves Issue 1, upon implementation. Thus, OCR is closing the investigation of this complaint as of the date of this letter. OCR will monitor the District's implementation of the Agreement to ensure all commitments are satisfied.

Regarding Issue 2, OCR found insufficient evidence of a violation of Section 504 or Title II with respect to the issue investigated. This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Regarding Issue 2, this letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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

Please be advised that the District 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, 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 about this letter, please contact Brian Aurelio, the attorney assigned to this complaint, at (214) 661-9661 or Brian.Aurelio@ed.gov, or you may contact me at (214) 661-9648 or Timothy.Caum@ed.gov.

Sincerely,

Timothy D. Caum
Supervisory Attorney/Team Leader
Dallas Office