



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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Dallas, TX 75270

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TEXAS

September 30, 2022

Via E-Mail Only

Mr. Bubba Orgeron, Superintendent
Terrebonne Parish School District
TPSD Central Office
201 Stadium Drive
Houma, LA 70360
bubbaorgeron@tpsd.org

Ref: 06-21-1680
Terrebonne Parish School District

Dear Superintendent Orgeron:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against the Terrebonne Parish School District (TPSD or the District). The complaint alleged that the TPSD discriminated against students with disabilities when it decided to close XXX XXX XXX (XXX) on XXX and transfer its students to XXX XXX XXX (XXX) for the 2021-22 school year. Specifically, the complainants alleged that the District:

1. Discriminated against students with mobility impairments, including a named student (Student 1), because the XXX campus does not meet accessibility standards (*i.e.*, there is no elevator to second floor where restrooms, schoolwide auditorium, and classrooms are located); and
2. Discriminated against a named student (Student 2) based on her disability by failing to provide her services within her Individualized Education Program (IEP) at XXX (*i.e.*, XXX and XXX).

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. § 704 (amended 1992), and its implementing regulations at 34 C.F.R. § Part 104, which prohibit 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

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

has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. As a recipient of Federal financial assistance from the Department and a public entity, TPSD is subject to Section 504 and Title II, and their implementing regulations. Therefore, OCR had jurisdiction to investigate this complaint.

In reaching our compliance determination, OCR reviewed documentation provided by TPSD, the complainants and their attorney, and Student 2's XXX. OCR also conducted interviews with the complainants' attorney, the XXX of Students 1 and 2, and relevant District and school administrators and staff. In addition, OCR used videoconference technology to conduct accessibility inspections of XXX facilities assisted by TPSD personnel.

After a careful review of the information gathered during the investigation, OCR found that the preponderance of the evidence does not support a conclusion that the recipient failed to comply with Section 504 or Title II regarding Issue 2. Regarding Issue 1, OCR approved the District's request to resolve the allegation prior to the conclusion of the investigation pursuant to OCR's Case Processing Manual's (CPM's) Section 302. The resolution of this complaint is discussed below.

Issue 1: Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by the District because the second floor at XXX is inaccessible to or unusable by persons with disabilities (i.e., no elevator to upstairs restroom, schoolwide auditorium, and classrooms), in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

Legal Standard

The accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because an entity's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise, be subject to discrimination by the entity. The regulations implementing Section 504 and Title II each contain two standards for determining whether an entity's facilities are accessible to or usable by persons with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

Both Section 504 and Title II prohibit discrimination on the basis of disability in the programs and activities of covered entities. The regulation implementing each statute requires entities subject to the statute to provide "program accessibility" in programs and activities offered in existing facilities. In addition, each regulation establishes design and construction standards for new and altered facilities.

Existing Facilities

An existing facility under Section 504 is any facility that was constructed, or for which construction was commenced, prior to June 3, 1977, the effective date of the Section 504 regulation. Under Title II, an existing facility includes facilities that were constructed, or for which construction was commenced prior to January 26, 1992, the effective date of the Title II regulation.

For existing facilities, both Section 504 and Title II require public entities and recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. (The specific language of Title II also refers to services.) Neither regulation requires public entities or recipients to make all existing facilities or every part of the existing facility accessible to and usable by individuals with disabilities, if the service, activity, or program as a whole is accessible.

Under both regulations, program accessibility for existing facilities can be achieved by making nonstructural changes such as the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, or delivery of services at alternate accessible sites. Priority consideration, however, must be given to offering the programs or activities in the most integrated setting appropriate. It should be noted that if no effective alternatives can be provided to achieve program accessibility, a recipient or public entity is required to make necessary structural changes. These changes are to be made consistent with the requirements for new construction.

Depending on the date of construction, some facilities may be existing facilities for purposes of Title II but may also constitute new construction under Section 504 (e.g., buildings constructed on or after June 3, 1977, but before January 26, 1992.) In these cases, public entities/recipients that are covered under both Title II and Section 504 must meet the standards for existing construction under Title II and also the applicable accessibility standards for new construction and alterations under Section 504.

New Construction and Alterations

Both Section 504 and Title II require that a new or altered facility (or the part that is new or altered) be accessible to and usable by individuals with disabilities. However, there are differences in the applicable accessibility standards for new construction and alterations. Alterations standards recognize that structural impracticability or technical infeasibility may be encountered; however, new construction standards must be used in alterations whenever possible.

With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, districts had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992, and prior to September 15, 2010. For facilities where construction

or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that districts had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards).¹ The Title II regulation provides that districts are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012.² For the purposes of Title II compliance, a public entity must comply with the 2010 Standards as of March 15, 2012, even if UFAS remains an option under the Section 504 regulations after that date.

Findings of Fact

The complainants' attorney indicated that Student 1, who had a XXX XXX, started school at XXX despite the school's facilities' lack of physical accessibility, and he would not be able to attend any schoolwide functions in the auditorium as it was not XXX accessible.

OCR contacted Student 1's XXX who reported that she thought all his classes were on the first floor and that staff went to his classroom. She related she thought he had been able to participate in XXX XXX (XXX). She commented that she was not sure whether there had been any activities in the second-floor auditorium, in which he would have been unable to participate, as parents were not allowed in the school because of COVID.

Based on information from TPSD, the District constructed XXX (main building) in XXX with classrooms added in XXX. OCR reviewed diagrams and photos of the XXX facility provided by the District. Regarding the main building, a photo revealed that there were two front entrances, one with stairs and one level with the front sidewalk. A diagram and photos showed the first floor included the cafeteria, an open "breezeway" area, a Boys' restroom (six stalls), a Girls' restroom (six stalls), a faculty lounge with a restroom (single use), and classrooms (Resource [Special Education], Gifted and Talented, Kindergarten, and Pre-Kindergarten). Also, there were five sets of stairs leading to the second floor (three interior and two outside). The following facilities were located on the second floor: an auditorium with stage (used for third grade classes), classrooms (first to fourth grade), a faculty restroom, and offices for the Principal and Secretary. The campus also had four outside portable buildings with ramps (used for classrooms, XXX, XXX, and XXX). In addition, there was a large XXX activity area behind the main XXX building ("XXX XXX") installed in XXX.

Concerning any new construction or accessibility modifications, TPSD reported installing grab bars in the first-floor restrooms on the following dates: Boys' restroom (one stall) on approximately XXX, in the Girls' restroom on about XXX, and in the Lounge restroom within the last 10 years (since approximately XXX), all using the 2010 Standards. The District informed OCR that it installed the portable classrooms in about XXX and the ramps in the summer of XXX, stating that the 2010 Standards "should have been used" for the ramps. The District reported that the route (i.e., sidewalk) from the main building to the ramp(s) leading to the portable classroom(s) was likely built in the late XXXs using the 1991 ADAAG.

¹ The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

² The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulations now require the use of the 2010 Standards in new construction and renovations.

During the 2021-22 school year, OCR found Student 1 was XXX XXX XXX XXX student at XXX, and there were XXX XXX XXX employees. Regarding the accessibility of XXX's program to Student 1, the XXX teacher and XXX reported that Student 1's classroom was located on the first floor and activities were brought to him; he also used the XXX restroom or XXX (XXX) restroom on the first floor. Although an XXX XXX teacher visited his classroom, OCR found that Student 1 sometimes participated in XXX XXX outside or in a portable building. Also, XXX used the outside "XXX XXX" for student activities (e.g., P.E., social studies and science activities, guest speakers, etc.). Based on interviews with the XXX and XXX teacher, the school utilized the first-floor cafeteria and breezeway for assemblies and had not employed the second-floor auditorium for activities or assemblies for about two years prior to the 2021-22 school year. XXX employees stated during interviews that the school had a bell and intercom system to contact the XXX, while the XXX could be contacted via cell phone, radio, or P.A. system; accordingly, the XXX and XXX came downstairs as needed.

On August 26, 2022, September 1, 2022, and September 16, 2022, OCR conducted accessibility inspections of XXX facilities via videoconference with TPSD personnel. The inspections focused on facilities that were constructed or altered on or following June 3, 1977 (the effective date of the Section 504 regulation). These included the altered first floor restrooms (Boys,' Girls,' and Lounge), the ramps to the portable buildings used for XXX and the XXX and XXX, and the entrances to these portable buildings. Also, OCR also examined the route (sidewalk) connecting the main building to these ramps to ensure it was accessible to individuals with disabilities.

Regarding each of the restrooms referenced below, OCR applied the 2010 Standards based on the date the District installed the grab bars and the standards reportedly used.

OCR identified the following accessibility concerns related to the **Lounge Restroom**:

- There was no signage for the toilet room (restroom).
- The restroom was not accessible upon inspection and did not have a sign giving direction to accessible restrooms.
- For the entrance, the clear door opening width with door open at 90 degrees was only 30 inches.
- The front approach to the pull side of the entrance door (door swung inside) had only 3 inches of maneuvering clearance beyond the latch side.
- The front entrance door hardware (doorknob) required tight grasping or twisting of wrist.
- The clear floor space to turn a wheelchair was only 42 inches wide.
- In the single use restroom with the door swinging in over a clear space there was only a clear floor space of 36 inches by 21 inches.
- Regarding the mirror over the lavatory (sink), the bottom edge of the reflecting surface was 43 inches above the floor (too high).
- The pipes below the sink were not insulated or otherwise configured to protect against contact.
- The faucet (knob) required tight grasping or twisting of wrist.
- The operable parts of the towel dispenser were 51 inches above the floor (too high)
- The centerline of the water closet (toilet) was 18 ½ inches from the side wall (too far).

- The clearance around the toilet was only 45 inches from the side wall and 41-52 inches from the rear wall.
- The grab bar on the side wall was only 36 inches long and extended only 41 ½ inches from the rear wall.
- The grab bar on the rear wall extended only 21 inches on the open side.
- The toilet paper dispenser was located behind the front of the toilet.

OCR identified the following accessibility concerns regarding the **Boys' Restroom**:

- The sign labelled “Boys” was located on the upper center of the door and not mounted on the wall on the latch side of the door as required. It did not meet signage requirements regarding raised characters, Braille, location, and height from floor.
- The restroom was not accessible upon inspection and did not have a sign giving directions to the accessible restrooms.
- Regarding the entrance, the clear door opening width with door open at 90 degrees was only 30 inches.
- The front approach to the pull side of the entrance door (door swung inside) had only 12 inches of maneuvering clearance beyond the latch side.
- The pipes below the sink were not insulated or otherwise configured to protect against contact.
- Regarding the designated wheelchair-accessible compartment (stall):
 - The door opening width was only 24 inches clear between the face of the door and the stop when the door was open 90 degrees.
 - There was a front approach to the pull side of the door with only 3 inches of maneuvering clearance beyond the latch side plus only 34 inches clear depth.
 - There was no door pull on the inside of the door.
 - The stall was only 32 inches wide.
 - The toilet was floor mounted, and the stall was only 50 inches deep.
 - Clearance provided around the toilet was only 32 inches from the side wall and only 50 inches from the rear wall.
 - The height of the toilet was only 16 inches above the floor measured to the top of the seat.
 - The grab bar on the side wall was only 36 inches long.
 - The side grab bar extended only 50 inches from the rear wall.
 - The side grab bar was mounted only 25 inches above the floor to the top of the gripping surface.
 - There was no grab bar on the rear wall.
 - Due to the toilet being located in middle of stall (i.e., there was no “open side” of the stall), the flush control was not on the open side of the toilet.

OCR identified the following accessibility concerns regarding the **Girls' Restroom**:

- The sign labelled “Girls” was located on the upper center of the door and not mounted on the wall on the latch side of the door as required. It did not meet signage requirements regarding background contrast, raised characters, Braille, location, and height from floor.

- The restroom was not accessible upon inspection and did not have a sign giving directions to the accessible restrooms.
- Regarding the entrance, the clear door opening width with door open at 90 degrees was only 30 inches.
 - In the restroom, the clear floor space to turn a wheelchair was only 55 inches wide.
- There was only 26 ½ inches clearance from the floor to the bottom of the sink.
- Pipes below the sink were not insulated or otherwise configured to protect against contact.
- The faucet was operated by a knob which required tight grasping or twisting of the wrist.
- Regarding the designated wheelchair-accessible stall:
 - The door opening width was only 22 inches clear between the face of the door and the stop when the door was open 90 degrees.
 - There was no door pull on the inside of the door.
 - The stall was only 30 inches wide.
 - The clearance provided around the toilet was only 30 inches from the side wall and 51 ½ inches from the rear wall.
 - The height of the toilet was only 15 ½ inches above the floor measured to the top of the seat.
 - The grab bar on the side wall was only 36 inches long.
 - The side grab bar extended only 46 inches from the rear wall.
 - The side grab bar was mounted only 25 inches above the floor to the top of the gripping surface.
 - There was no grab bar on the rear wall.
 - Due to toilet being located in middle of stall (i.e., there was no “open side” of the stall), the flush control was not on the open side of the toilet.
 - The toilet paper dispenser was located only 6 ½ inches in the front of the toilet.

OCR inspected the **Accessible Route** (sidewalk) from the main XXX building to the ramps to the portable buildings used for XXX, XXX, and XXX. Based on the District’s information regarding when the sidewalk was constructed and the standards reportedly used, OCR applied the 1991 ADAAG regarding exterior accessible routes. OCR identified the following accessibility concerns:

- There were two walkway level changes (sidewalk cracks) that were too high:
 - First walkway level change on route (near beginning of accessibility route): ¾ inch high.
 - Second walkway change on route: 1 inch high.

Regarding the **Ramp to Portable Building used for XXX**, based on the date the ramp was constructed and the standards reportedly used, OCR applied the 2010 Standards. OCR identified the following concerns:

- The measurement of the running slope was 6.0 to 6.2 degrees (appx. 1:8-1.9) with a 5 ½ inch rise (too steep).
- There was no landing at the top of the ramp.

- With respect to the handrails on each side of the ramp, the handrail gripping surface was non-circular (square), but the perimeter of the handrail gripping surface was 10 inches while the cross-section of the gripping surface was 6 inches (too large for non-circular gripping surface).

Regarding the **Ramp to Portable Buildings used for XXX and XXX**, based on the date the ramp was constructed and the standards reportedly used, OCR applied the 2010 Standards. OCR identified the following concerns:

- With respect to the handrails on each side of the ramp, the handrail gripping surface was non-circular (square), but the perimeter of the handrail gripping surface was 10 inches while the cross-section of the gripping surface was 3 ¼ inches (too large for non-circular gripping surface).
- The surface of the ramp did not extend beyond the inside face of the handrail, and there was not a curb or barrier at the bottom of the handrail.

Based on the date the portable building was installed, OCR applied the 1991 ADAAG for entrances. Regarding the **Entrance to the Portable Building used for XXX**, OCR did not identify any accessibility concerns.

Regarding the **Entrance to the Portable Building used for XXX**, OCR identified the following concerns:

- The threshold level was ¾ inch (too high).
- There was a standard door handle that was not operable with one hand and without tight grasping or twisting of the wrist

Regarding the **Entrance to the Portable Building used for XXX**, OCR identified the following concerns:

- The threshold level was ¾ inch (too high).
- There was a standard door handle that was not operable with one hand and without tight grasping or twisting of the wrist

During a telephone call on September 8, 2022, OCR provided the complainants an opportunity to rebut the information obtained in the investigation of Issue 1. No additional information was provided.

Analysis:

OCR first considered the dates XXX was constructed and altered to determine whether the building was subject to an existing construction (program accessibility) or new construction (readily accessible) accessibility standard. As stated above, the District reported it constructed XXX (main building) in XXX adding classrooms in XXX and the “XXX XXX” activity area in XXX. Therefore, OCR primarily used the existing facility standard under Section 504 and Title II (program accessibility) in its analysis with some exceptions as explained below. OCR determined that the above XXX facilities were constructed prior to the effective date of the

implementing regulations for Section 504, at 34 C.F.R. § 104.22, which is June 3, 1977, and prior to January 26, 1992, the effective date of the Title II regulation. Therefore, the XXX main building and XXX XXX, as existing facilities, need not be readily accessible to and usable by qualified individuals with disabilities. Rather, the District was to operate each of the school's programs and activities so that the program or activity, when viewed in its entirety, was readily accessible to and usable by persons with disabilities. Thus, TPSD was not required to install an elevator to the second floor.

However, the investigation revealed that the District added grab bars to the three first floor XXX restrooms respectively “within the last 10 years” (since approximately XXX), on XXX, and on XXX. OCR determined that the additions were alterations that affected the accessibility of these parts of the XXX building and that the first-floor restrooms constituted new construction under both Section 504 and Title II. Based on the above dates, the restrooms were required to meet UFAS or the 2010 Standards for these facilities, and the evidence indicated TPSD used the 2010 Standards for the grab bars in the above restrooms.

In addition, in making some of its programs and activities accessible to Student 1 in the 2021-22 school year (some XXX activities, XXX, and XXX), OCR found MES utilized portable buildings installed in about XXX (with ramps installed in summer/fall XXX) with a route from the XXX main building to the portable buildings (sidewalk) installed in about the late XXX's. OCR determined these facilities constituted new construction under both Section 504 and Title II. Based on the above dates, the portable buildings and sidewalk were required to meet UFAS or the 1991 ADAAG standards while the ramps were required to meet UFAS or the 2010 Standards. Based on information from TPSD, the District used the 1991 ADAAG standards for the sidewalk and the 2010 Standards for the ramps.

Interviews and documentation revealed that the District made its programs and activities in the main XXX building accessible in their entirety to Student 1 during the 2021-22 school year. However, OCR identified compliance concerns regarding whether the first-floor restrooms and the portable buildings for XXX, the XXX, and the XXX (entrances and ramps) used by Student 1 met the appropriate accessibility standards for new construction/alteration. However, prior to the completion of OCR's investigation, on September 16, 2022, the District informed OCR that it was interested in resolving the complaint.

Under Section 302 of OCR's CPM, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. Based on the District's willingness to voluntarily resolve this complaint, and because OCR's investigation identified concerns that could be addressed through a resolution agreement, OCR approved the District's request and determined that voluntary resolution is appropriate for this complaint. TPSD signed the enclosed agreement (Agreement) which, when fully implemented, will address the compliance concerns OCR identified under Issue 1. OCR will monitor the District's implementation of the Agreement.

Issue 2: Whether the District discriminated against Student 2 on the basis of disability by failing to provide regular or special education and related aids and services deemed

necessary to meet Student 2's individual educational needs (i.e., XXX and XXX XXX XXX), and thereby denied Student 2 a free appropriate public education during the 2021-22 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 free, appropriate public education (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 complainants' attorney related that Student 2 has XX – phrase redacted - XX. She added that due to the above XXX, Student 2 did not attend school on XXX. Since being assigned to XXX for the 2021-22 school year, the complainants' attorney maintained that Student 2's XXX XXX XXX had been extended by XXX XXX XXX XXX. She later reported that the XXX XXX XXX had increased to XXX XXX and XXX each way.

XX –paragraph redacted – XX.

Documentation revealed that on XXX, TPSD provided Student 2 with a re-evaluation of her individual educational needs while she was in grade XXX and attending XXX; Student 2 had been previously identified by the District as having XXX and XXX XXX in XXX and XXX respectively. According to the documentation, the following individuals conducted the re-evaluation pursuant to the Individuals with Disabilities Education Act (IDEA): an educational XXX, Student 2's XXX teacher, a regular education teacher, the XXX XXX, a certified XXX

XXX, two XXX (XXXs), an XXX XXX, a school XXX XXX, and a XXX XXX. The evaluation included interviews with Student 2 and XXX XXX, teacher observation data, progress report data (from Student 2's teacher, XXX XXX, and XXX), and a health assessment. Furthermore, the District administered Student 2 testing in the areas of achievement, adaptive behavior, intelligence, and XXX. The evaluation report classified Student 2's disabilities as XXX and XXX (XXX).

TPSD provided a copy of Student 2's most recent IEP. This documentation revealed that on XXX, an ARD committee met regarding Student 2, including Student 2's XXX (by telephone), an educational XXX, an XXX XXX, XXX XXX, two of Student 2's regular education teachers, two XXXs, an educational XXX, Student 2's XXX teacher, and the XXX XXX. Based on the documentation, the above committee reviewed information from the XXX re-evaluation as well as parent concerns and placed Student 2 in regular education classes with XXX instruction totaling XXX minutes XXX times a week [XXX (XXX) and XXX XXX], XXX XXX, and XXX XXX. OCR confirmed that the ARD committee's accommodations for Student 2 included "Allow XXX during XXX XXX, between XXX, during XXX," and the IEP stated that the IHP needed to be attached. The District's copy of the IHP attached to the IEP was nearly identical to the complainants' attorney's version, stating that Student 2 would benefit from a XXX XXX XXX; however, it did not include the Parent Health Information form stating needs for XXX XXX, XXX XXX, and XXX XXX. Further, neither the IEP, nor the IHP, provided that Student 2 have XXX access to XXX XXX or XXX XXX XXX (XXX XXX).

OCR interviewed multiple members of the above ARD committee. Based on the above information, OCR confirmed that the committee considered the IHP to be part of the IEP. However, during an OCR interview, an ARD committee member indicated that the Parent Information sheet indicating a need for XXX XXX XXX was not part of the IHP. In addition, interviews with other ARD committee members did not support that the committee identified XXX access to XXX XXX or XXX XXX XXX/XXX as needed related services.

Regarding whether XXX XXX allowed under accommodations were to be used for XXX XXX, one ARD committee member responded in the affirmative, while two other members related that XXX XXX could be used for XXX XXX or other purposes. A fourth member reported she did not know, and a fifth member stated that Student 2 was allowed XX – remainder of paragraph redacted – XX.

The 2021-22 school year started on August 10, 2021. Based on a review of the 2021-22 TPSD school calendar and Student 2's attendance records, Student 2 attended XXX for XXX days (XXX, XXX-XXX, XXX, and XXX) but had unexcused absences on XXX, XXX, XXX, and XXX. According to the District's XXX XXX, due to a storm (XXX XXX), the school was closed from XXX to XXX, and Student 2 was withdrawn from TPSD on XXX. Therefore, OCR determined Student 2 only attended XXX days of school during the 2021-22 school year prior to her withdrawal.

Concerning whether TPSD provided Student 2 with the above IEP XXX services while at XXX in XXX, OCR interviewed three regular education teachers (Teachers 1-3) and two XXX teachers (Teachers 4 and 5) assigned to Student 2, as well as the XXX XXX. OCR also obtained supplemental written statements from Teachers 2 and 3. Based on the above information, all of

Student 2's teachers related they received her IEP/IHP. Teachers 1, 4 and 5 further related that the IEP/IHP included a XXX XXX or XXX, and/or XXX XXX XXX XXX as needed. However, Teachers 2 and 3 reported that they could not remember the contents of the IEP/IHP due to the short duration of time they had Student 2 in their class. According to Teachers 1, 3, and 5, and a school XXX, students received scheduled XXX during the day (e.g., early morning, in homeroom, mid-morning, lunch, recess, and the end of the day). Teachers 1, 3, and 5 also indicated that Student 2 was allowed XX – phrase redacted – XX upon request. However, Teachers 1, 3, and 4 related that they did not remember whether Student 2 XX- phrase redacted - XX.

During a telephone call on September 8, 2022, OCR provided the complainants' attorney an opportunity to rebut the information obtained in the investigation of Issue 2. She responded that Student 2 was XXX and that the XXX attributed XXX XXX to XX – phrase redacted - XX. According to the complainants' attorney, the XXX advised Student 2's parents not to send her to XXX. She added that Student 2's current school is providing her services.

Analysis:

The investigation revealed that on XXX, the District evaluated Student 2 as required under Section 504 and determined she was a qualified individual with a disability. Based on documentation and interviews, in a meeting on XXX, a group of persons knowledgeable about Student 2 and the information considered (ARD committee) identified Student 2's needs on an individualized basis, which were documented in an IEP and attached IHP. The evidence did not show that the ARD committee determined that Student 2 required XXX XXX XXX (XXX XXX) or XX – phrase redacted - XX as alleged. However, the ARD Committee decided Student 2 would receive XX – phrase redacted - XX.

Regarding whether the District provided the services determined necessary for Student 2, OCR determined that the period in question was a total of XXX days when Student 2 attended school between XXX and XXX. With respect to a XXX XXX and XXX, based on information from three teachers and an XXX XXX, Student 2 received XXX XXX that were scheduled for all students. Regarding XXX XXX, the majority of Student 2's teachers indicated that XX – phrase redacted – XX upon request. However, OCR was unable to establish whether Student 2 made such requests. OCR did not receive information corroborating the complainants' assertion that Student 2 was not given the XXX XXX provided for in her IEP. Based on the foregoing, OCR was unable to conclude, based on a preponderance of the evidence, that the District failed to implement the above provisions of Student 2's IEP.

Conclusion

OCR determined that there was insufficient evidence to conclude that the District violated Section 504 or Title II with respect to Issue 2, and the above Agreement resolves OCR's compliance concerns regarding Issue 1. OCR's determination should not be interpreted to address the District'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. A complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

The complainants have a right to appeal OCR's determination regarding allegation 2 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 complainants appeal 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 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, 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 regarding this letter, please contact Page Baird, the investigator assigned to this complaint, at (214) 661-9604 or page.baird@ed.gov. You may also contact me at (214) 661-9638 or lori.bringas@ed.gov.

Sincerely,

Lori Bringas
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure (Agreement)

cc: Dr. Monica Breaux,
TPSD Supervisor of Special Education Services
Via E-Mail Only to monicabreaux@tpsd.org