



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE., SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

January 17, 2014

Dr. Mary Ellis
Superintendent
Union County Public Schools
400 North Church Street
Monroe, North Carolina 28112

RE: OCR Complaint No. 11-13-1324
Resolution Letter

Dear Dr. Ellis:

This letter is to inform you of our disposition of the above-referenced complaint, which was filed with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education, on September 18, 2013, against Union CPS (the District). The Complainants filed this complaint on behalf of their daughter (the Student), who attends the District's XXXX Elementary School (the School).

The Complainants alleged that the District discriminated against the Student on the basis of her disability (a severe peanut/tree nut allergy, or PTA) during and since the Spring 2013 semester by failing to provide her with a free and appropriate public education (FAPE), that is, regular or special education and related aids and services that are designed to meet her needs as adequately as it meets the needs of students without PTAs by adequately addressing her PTA-related needs and ensuring a medically safe educational environment for her that is completely free of peanuts and tree nuts and products containing them (PTs), including failing to:

1. Provide the Student with a timely and appropriate Section 504 Plan; and
2. Provide adequate notice to all parents and students at the School and on the Student's bus that there are students with PTAs attending the School and of the potential harm to students with PTAs from exposure to PTs.

What follows is a discussion of OCR's jurisdiction, the legal standards and analysis applicable to the allegations, and the Resolution Agreement signed by the District to resolve this case.

OCR Jurisdiction

As we informed you in our prior letter, OCR is responsible for enforcing certain Federal civil rights statutes and regulations, including 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. Section 504 prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District is a recipient of Federal financial assistance from the Department and a public entity, it is subject to the provisions of the above laws and we have jurisdiction over it. Because the Complainants are alleging disability discrimination, we have jurisdiction over the allegations.

Applicable Legal Standards and Analysis

Under the Section 504 regulation, at 34 CFR § 104.33, the District is required to provide the Student with FAPE, that is, regular or special education and related aids and services that are designed to meet her needs as adequately as it meets the needs of students without disabilities by adequately addressing her PTA-related needs and ensuring a medically safe environment for her. We interpret Title II as imposing similar requirements.

In addition, 34 C.F.R. § 104.4(a) provides that no person, on the basis of disability, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives Federal financial assistance. The regulation implementing Title II contains a similar provision at 28 C.F.R. §35.130(a).

Finally, the regulation implementing Title II, at 28 C.F.R. §35.130(b)(7), requires a school district to make reasonable modifications in policies, procedures or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity. OCR interprets these provisions to require that public school districts take those steps necessary to ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities.

The District's submissions indicate that, although the Student, 29 other students with PTAs, and students with food allergies at the School have Individual Health Plans (IHPs), it failed to develop or implement Section 504 Plans for any of these students.

Although these students were receiving services pursuant to IHPs, the District is still required to promptly conduct evaluations of them and determine whether they were eligible for services as students with disabilities. The District's IHP provisions don't provide Section 504 protections, e.g., they include no provisions requiring that IHP-related decisions be made by a group of people who are knowledgeable about the student and the data being considered, a commitment by the District that it will provide all (or any) of the aids or services contained in the IHP (which are prepared by the School nurse), and no hearing, appeal, or other due process procedures or rights. Compare the District's IHP provisions, at http://tss.ucps.k12.nc.us/health/ind_health_plan.php with its Section 504 provisions, at https://webcp.ucps.k12.nc.us/forms_manager/documents/290/504%20Handbook%20for%20Educators.pdf.

Additionally, although the District has procedures for providing notice to all parents and students at the School that there are students with food allergies attending the School, there is evidence indicating that the District failed to follow those procedures and provide such notice.

However, we will not conduct an analysis of these compliance concerns because the District has signed the enclosed Resolution Agreement, in which it has committed to: (1) evaluate all School students with food allergies (including those with PTAs) under Section 504 and Title II to determine whether they are in need of disability-related aids and/or services; (2) develop and implement adequate Section 504 Plans for those students who are in need of such aids and/or services; (3) to the extent needed to implement the Agreement, amend District and School food allergy-related policies, procedures, and practices; (4) notify appropriate staff of all Section 504 Plans for School students with food allergies; and (5) notify all School staff, parents, and students of the policies, procedures, and practices established or amended pursuant to the Agreement.

The Resolution Agreement is aligned with the complaint allegations and the information obtained during our initial investigation and will resolve any possible compliance concerns identified by OCR. Based on the enclosed Agreement, we are closing our investigation of the complaint effective the date of this letter. However, we will monitor the District's implementation of the Agreement to ensure that it fully complies with it and thereby resolves the complaint.

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.

We remind the District that it is not permitted to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment.

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

If you have any questions about this letter or the outcome of this complaint, please contact Peter Gelissen, the OCR attorney assigned to this case, at (202) 453-5912 or peter.gelissen@ed.gov.

Sincerely,

/s/

Dale Rhines
Program Manager
District of Columbia Office
Office for Civil Rights