

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921



July 27, 2016

Dr. Debra L. Dunn  
Superintendent of Schools  
469 US Route 1  
York, Maine 03909

Re: Case No. 01-16-1102  
York School Department

Dear Dr. Dunn:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against York School Department (District). The Complainant alleged that the District denied her daughter (Student) a free appropriate public education (FAPE) by failing to initiate the Section 504 process in a timely manner (Allegation 1), failing to convene a team of persons knowledgeable about the Student, evaluation data, and placement options (Allegation 2), failing to conduct its own evaluations or consult with the Student's allergist (Allegation 3), and failing to consider the evaluation data in making placement decisions (Allegation 4). As explained below, the District agreed to resolve Allegation 1 before OCR reached a compliance determination, pursuant to the enclosed voluntary resolution agreement (Agreement). As also explained below, OCR determined that there was insufficient evidence of a violation regarding the Complainant's remaining Allegations 2-4.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the U.S. Department of Education and is a public elementary and secondary education system. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504 and Title II.

During its investigation, OCR reviewed documentation submitted by the Complainant and the District, including emails between the Complainant and District personnel, the Student's

Individualized Health Plans (IHPs) and Section 504 plans, Section 504 meeting notes and recordings, and the evaluation data considered by the Section 504 team. In addition, OCR interviewed the school principal, who serves as the school’s Section 504 coordinator, and the school nurse.

**Factual Background**

The Student, who has life-threatening food allergies, enrolled in the District  
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In August of 2015, the Complainant told OCR that she had a conversation with the principal and requested a Section 504 eligibility determination meeting, but the principal told her that the Student only needed an IHP and directed her to speak with the nurse about developing an IHP. The Complainant told OCR that the nurse declared the Student ineligible for a Section 504 plan. The nurse did not have any recollection of speaking to the Complainant at this time but denied that she would ever make such a statement based on her understanding that only a team may make an eligibility determination.

According to the preliminary information OCR reviewed, the District appears to have a general practice of placing students with life-threatening allergies on IHPs unless a parent requests a Section 504 plan or the nurse makes a referral after a student experiences anaphylactic shock. On October 8, 2015, the Student underwent a “food challenge” to test the severity of her allergies and had an anaphylactic reaction. After a series of correspondences, the District and Complainant agree that on or about November 5, 2015, the District agreed to convene a Section 504 team, but the Complainant insisted on meeting with the principal and superintendent first.

On November 10, 2015, the nurse requested permission from the Complainant to speak with the Student’s allergist. The Complainant refused to give consent. On November 20, 2015, the District received a letter from the Student’s allergist, dated November 18, 2015, with recommendations that  
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The District convened a Section 504 eligibility determination meeting on December 10, 2015, which included the principal, nurse, school counselor, teacher, parents, and parents’ advocate. At this meeting, the team determined the Student did qualify for accommodations under Section 504, and began to create a plan. The eligibility determination form documents that the team considered school records, student observations, a nursing assessment, parent and/or student reports, and the student’s medical information. The parents agreed to provide consent for the nurse to consult with the Student’s allergist but signaled that the allergist may not be available for months. The team decided to consult with the District’s physician and hold a follow-up meeting.

Following the meeting, the Complainant provided conditional consent for the District to communicate with the Student’s allergist, which would have required the nurse to submit questions to the Complainant 24 hours in advance of communicating with the allergist, and the Complainant to be present for any communication. On December 16, 2015, the nurse, principal, and superintendent met with the District’s physician in person. At that meeting, team members asked the doctor about typical accommodations for children with allergies in a school setting and provided him with a copy of the draft Section 504 plan in order to receive his input on the accommodations that the Student’s team had agreed to thus far. Team members also provided the doctor with the Complainant’s specific requests, which were still under consideration. On the same date, and, again, on January 15, 2016, the Complainant submitted lengthy emails detailing her concerns with the draft Section 504 plan and asking why the nurse had not contacted the allergist. The principal responded by circulating a revised draft and explained that the team did not have any questions for the allergist at that time.

The District convened the second Section 504 team meeting on January 21, 2016, with the principal, nurse, school counselor, teacher, parents, and District’s educational consultant in attendance. The team reviewed a detailed chart prepared by the consultant listing the Complainant’s concerns and the District’s response to each concern. The meeting minutes indicate that when the District declined to implement XXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, the parents informed the team they would take the District to a due process hearing on the matters.<sup>1</sup> The final draft of the Section 504 plan, dated January 22, 2016, includes a number of accommodations designed to address specific parental concerns that were discussed during this second meeting.

### Legal Standard

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires public school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability in their jurisdictions. The provision of FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. OCR interprets the Title II regulations at 28 C.F.R. §§35.103(a) and 35.130(b) to require districts to provide a FAPE of no lesser standard than required under Section 504.

The regulation at 34 C.F.R. §104.3(j)(1), defines an individual with a disability as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Pursuant to the

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<sup>1</sup> It is OCR’s policy to refrain from assessing the appropriateness of a district’s decisions about services or placements believed necessary to provide a student with a FAPE, so long as those decisions are in accordance with the procedural requirements of Section 504 and Title II. A parent/guardian may request a due process hearing to address substantive disagreements with determinations made by a team.

regulation at 34 C.F.R. § 104.35(a), a district must conduct an evaluation of 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 initial placement of the person in regular or special education and any subsequent significant change in placement. Pursuant to the regulation at 34 C.F.R. § 104.35(b), tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. The regulation also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

In interpreting evaluation data and in making placement decisions, the regulation at 34 C.F.R. § 104.35(c), requires a district to draw upon information from a variety of sources, and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. This group determines the amount of evaluation data required to make a knowledgeable placement decision. The information obtained from all such sources must be documented, and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. The results of an outside independent evaluation may be one of many sources to consider. The weight of the information is determined by the group given the student's individual circumstances.

## **Legal Analysis**

### Allegation 1: Resolved by Entering Into Agreement

With respect to the allegation that the District failed to initiate the Section 504 process for the Student in a timely manner, the Complainant and District agree that the District convened an initial determination meeting on December 2015, several months after being on notice of the Student's potential disability. However, before OCR concluded its investigation into whether this timing violated Section 504 – including assessing the impact any delay may have had on the Student, or whether there was a systemic concern with the District's use of IHPs for students with allergies – the District requested to resolve this allegation by entering into the enclosed Agreement. As detailed in the Agreement, the District will convene the Student's Section 504 team to discuss whether the Student needs compensatory and/or remedial services as a result of the District not convening an initial team meeting until December 2015. The Agreement also requires the District to revise the Allergy Procedure to clarify that all students identified with life-threatening allergies will be referred to the Section 504 coordinator; to refer all students previously identified with life-threatening allergies who have not been evaluated pursuant to

Section 504 to be referred to the Section 504 coordinator; to provide training on the revised Allergy Procedure to relevant staff; and to incorporate the Section 504 provisions of the revised Allergy Procedure in future Section 504 trainings on the identification, evaluation, and placement of students with qualifying disabilities.

Allegations 2, 3, and 4: Insufficient Evidence of a Violation

OCR found insufficient evidence of a violation of Section 504 or Title II for the remaining Allegations 2-4, specifically, allegations that the District failed to convene a team of persons knowledgeable about the Student, evaluation data, and placement options; failed to conduct its own evaluations or consult with the Student's allergist; and failed to consider the evaluation data in making placement decisions.

Section 504 does not require that particular people, such as a specific medical specialist, attend team meetings; only that the team is composed of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Nor does Section 504 require the team to consult with particular people, such as a specific medical specialist, or adopt the recommendations of any specific specialist, whether presented by a parent or a district. Here, the team included the nurse, who has extensive medical experience working with students with serious allergies generally, and who was able to explain the Student's disability by reviewing relevant medical documentation, including those provided by the Complainant. There is no information to suggest that the quantity or quality of the evaluative data exceeded the nurse's understanding or ability to explain to other team members. In addition, the principal and nurse met with the District's physician to consult on best practices for students with serious allergies, the Student's draft plan, and the Complainant's requests. Therefore, while the team declined to consult the Student's allergist under the limitations imposed by the Complainant, there is insufficient evidence to conclude that the team itself was not composed of knowledgeable persons, or that an insufficient evaluation was conducted, or that the evaluative data was insufficient to make a placement determination. On the contrary, OCR's investigation indicates that the team drew from a variety of sources, as required under Section 504, by using the medical documents submitted by the Complainant, consulting with the physician, inviting the consultant to participate in the second team meeting, and considering input from all team members, including the parents.

For these reasons, OCR was unable to find sufficient evidence that the Student's team did not include persons knowledgeable about the child, evaluation data, and placement options (Allegation 2); that the team failed to conduct a sufficient evaluation by not directly consulting the Student's allergist (Allegation 3); or that the team failed to consider evaluation data from a variety of sources in crafting a plan to provide the Student with a FAPE (Allegation 4).

OCR notes the Complainant's concern that the team ultimately rejected the allergist's recommendations. However, OCR's review of the meeting minutes, the consultant's chart, and the recordings of the meetings, along with OCR's interviews with the principal and nurse, demonstrated

that the team considered and discussed the recommendations, but ultimately disagreed that they were actually necessary to provide a FAPE. While the Complainant's concerns are understandable, these concerns ultimately center around the substantive appropriateness of the team's final placement determinations, after the team sufficiently consulted knowledgeable persons and reviewed relevant evaluative information. As the appendix to the Section 504 regulation states, it is not the intention of the U.S. Department of Education, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaluation, and due process procedures). Instead, such disputes may be resolved through due process proceedings.

The District has informed the Complainant, and she has expressed her understanding to OCR, that she has the right to file for due process to address substantive disagreements with the team about the sufficiency and appropriateness of the team's ultimate placement decision(s). Therefore, the Complainant's understandable concerns about the team's ultimate placement determinations do not alter OCR's findings in this case.

### **Conclusion**

Before OCR reached a compliance determination with Allegation 1, the District agreed to resolve it through the enclosed Agreement. OCR will monitor the District's implementation of the Agreement.

OCR did not find sufficient evidence to find violations with respect to the remaining Allegations 2-4. Accordingly, OCR will take no further action with respect to those allegations and has closed the complaint as of the date of this letter.

OCR's findings only address the specific allegations and legal issue identified in this complaint and do not pertain to the School's compliance with other aspects of Section 504, Title II, or any other laws enforced by OCR. This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases, are not formal statements 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 Complainants may have the right to file a private suit in federal court, whether or not OCR finds a violation.

Please also 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 Complainant 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. If OCR receives such a request, OCR will seek to

protect all personal information, to the extent provided by law, that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact attorney Sandy Lin at (617) 289-0095 or [sandy.lin@ed.gov](mailto:sandy.lin@ed.gov).

Sincerely,

/s/ Ramzi Ajami  
Ramzi Ajami  
Compliance Team Leader

Enclosure

cc: Jeanne M. Kincaid