



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

December 21, 2020

Tonya Arnold, Superintendent  
By e-mail: [superintendent@kidsrsu.org](mailto:superintendent@kidsrsu.org)

Re: Complaint No. 01-17-1345  
Kennebec Intra-District Schools Regional School Unit 2

Dear Superintendent Arnold:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Kennebec Intra-District Schools Regional School Unit 2 (District). The Complainant alleges that the District discriminated against her son (Student) on the basis of disability. These allegations include: (1) the District failed to appropriately implement the Student's Section 504 Plan; (2) the District failed to appropriately evaluate the Student for Section 504 eligibility and did not make an individualized determination about the necessary services and placement for the Student; (3) the District inappropriately removed items from the Student's Section 504 Plan and moved them into an Individualized Health Plan; and (4) the District subjected the Student to disability-based harassment XXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit 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) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

**Legal Issues**

OCR opened the following allegations for investigation:

1. Whether the District failed to implement the Student's Section 504 Plan during the 2016-2017 school year, and whether this failure constituted a denial of a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation 34 C.F.R. § 104.33 and the Title II implementing regulation at 28 C.F.R. § 35.130;

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

2. Whether, in interpreting evaluation data and in making placement decisions, the District failed to draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and ensure that the placement decisions are made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options, in violation of 34 C.F.R. § 104.35(c)(1)-(3) and 28 C.F.R. § 35.130;
3. Whether the District removed portions of the Student’s Section 504 Plan and placed them into a Health Plan to circumvent its Section 504 obligations, in violation of the Section 504 implementing regulations at 34 C.F.R. § 104.4 and 34 C.F.R. § 104.35(a), (c), and the Title II implementing regulation at 28 C.F.R. § 35.130;
4. Whether the District discriminated against the Student based on disability by subjecting the Student to disability-based harassment and/or by failing to adequately respond to disability-based harassment by other students, in violation of the regulations implementing Section 504 at 34 C.F.R. § 104.4 and 34 C.F.R. § 104.7, and Title II at 28 C.F.R. § 35.130 and 28 C.F.R. § 35.107; and
5. Whether the District denied the Student a FAPE by failing to consider the effects that the alleged bullying and harassment had on the Student’s receipt of a FAPE, in violation of the regulations implementing Section 504 at 34 C.F.R. § 104.4(a) and 34 C.F.R. § 104.33, and Title II at 28 C.F.R. § 35.130 and 28 C.F.R. § 35.107.

After carefully considering all of the information obtained during investigation, including reviewing documents provided by the District and speaking with Complainant, OCR found insufficient evidence to support parts of Allegation 1 and Allegations 2-5. As explained below, before OCR completed its investigation of the remaining parts of Allegation 1, the District expressed a willingness to resolve the remaining issues by taking the steps set out in the enclosed Resolution Agreement (Agreement).

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student’s plan or as otherwise agreed to by the student’s Team. If OCR finds that a district has not implemented a student’s plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by

the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; 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; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student’s educational program is not meeting the student’s individual needs, such as a significant decline in the student’s grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student’s 504 plan or placement are necessary.

A school’s failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student’s ability to participate in or benefit from the school’s programs, activities, or services.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

**Summary of Preliminary Investigation**

As part of its investigation, OCR reviewed documents provided by the District, including 504 Team meeting materials and contemporaneous correspondence with the Complainant and District staff, and spoke with the Complainant.

According to this information, during the XXXXX of 2017, the Student was a XXXX grader in the XXXXXXXXXX School in the District and was diagnosed with XXXXXX Diabetes on or about XXXXXX, 2017, XX. Complainant notified the District about Student’s XXXXXXXX via e-mail on XXXXXX, 2017. Over the next few weeks, Complainant and District e-mailed and spoke over the phone to create a plan for the Student’s safe return to school.

***I. XXXXX 2017 Team Meeting***

On XXXXXXX, 2017, the District convened an initial 504 Team meeting for the Student. The meeting included: the 504 Coordinator<sup>1</sup>; Principal; Complainant; Teacher; Guidance Counselor/Case Manager; School Nurse; and Assistant Principal. The “Section 504 Eligibility Determination Form” for this meeting indicates that the Team members reviewed the Student’s school records, medical/health information, teacher reports, and nursing assessment. The “other” section indicates that Team members also reviewed a “letter from [Student’s] primary care doctor.” The XXXXXX, 2017 letter from Student’s doctor notes that Student “was recently diagnosed with XXXXXX diabetes and will need to have immediate access to a nurse or well trained professional when he is at school as this could be life threatening.”

The Team developed a transitional plan for Student’s return to School during the week of XXXXXXXXXXX, 2017, which included tutoring and gradually increasing Student’s time in the classroom until an educational aide was hired for the Student and staff were trained. The Team also noted that a “tutoring schedule early in the school day will allow for a baseline of [Student’s] sugar levels.” In addition to developing the Student’s 504 Plan, the District also developed an Individualized Health Plan (IHP) for the Student. The District represents that the School Nurse finalized Student’s IHP and had it “in place for the Student’s anticipated return to [s]chool . . . .” In creating the Student’s plan, the Team discussed Student’s current medical state and considered the following issues:

- how the Student’s diabetes was uniquely affecting him,
- Complainant’s concern that the School Nurse was not full-time in the Student’s school,
- recommendations and instructions from Complainant on Student’s medical care, and
- Complainant’s XXXXX to come to school with the Student.

The District represents that prior to the Student’s return, and in response to Complainant’s concern regarding the School Nurse, the District adjusted the School Nurse’s schedule so that she would be on a full-time schedule. The meeting minutes concluded with: “[Complainant] would like to review the 504 Plan with [the Student]’s doctor before signing any 504 paperwork.”

The Student’s 504 Plan includes four provisions relevant to the OCR complaint, and the IHP addresses two of these four provisions (see (b) and (c) below). The 504 Plan provided that this “[m]edical plan will be attached to this 504 Plan.” The relevant provisions of the 504 Plan and IHP are summarized below:

- (a) *504 Plan: Access to Nurse:* According to the 504 Plan, “[a] school nurse or medical personnel will be in the building at all times when [the Student] is in school.” The school will “[c]ontact the parent when the school nurse is absent, leaving his school attendance up to the parent on those days.” OCR notes that neither the Team meeting minutes nor the 504 plan define “medical personnel.”

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<sup>1</sup> OCR notes that the same staff member listed as the 504 Coordinator is also identified as the Special Education Director.

- (b) *504 Plan and IHP: Medical Kit:* The 504 Plan states: “[The Student] will have a kit accessible at all times with a backup of these basic supplies kept in the nurse’s office.” The 504 Plan also states: “[The Student] must have his testing kit, fast acting glucose, glucagon, and other diabetes tools with him at all times during the school day . . . .”

The IHP states: “[The Student] [w]ill have a bag with supplies for testing, insulin, syringes, snacks, glucagon that will travel with [the Student] to his specials and to lunch/recess.” In addition, the IHP provides that the glucagon emergency kit “[w]ill be kept with [the Student] at all times.”

- (c) *504 Plan and IHP: Staff Training:* The 504 Plan provides that two staff, in addition to the School Nurse, would be trained “in the administration of medication, blood glucose testing, and testing for ketones when necessary.” The 504 Plan further provides that “[t]raining will include administration of medication which involves knowing how to perform boluses using [Student’s] pump, knowing how to administer both insulin and glucagon via injection in the event of a medical emergency, knowing how to test blood glucose level and an understanding of what action is necessary depending on the blood glucose level.”<sup>2</sup>

The IHP identifies four staff members who were “trained to monitor glucose levels” and five staff members who were “trained to administer Glucagon.”

- (d) *504 Plan: Monitoring/Health Contact Log:* According to the 504 Plan, “the school RN will provide family with daily reports of [the Student’s] blood glucose levels and any/all treatment(s) provided during the school day.” The 504 plan also provides that “[a] trained adult will monitor the quantity of food [Student] eats during snack and lunch times for carbohydrate amounts so the insulin bolus can be administered according to the insulin/carbohydrate ratios provided by parents (and programmed in the bolus wizard feature of the insulin pump).” The XXXXXX, 2017 meeting minutes note that the “School nurse will provide parent with [daily] sugar levels via log.”

- (e) *Classroom Testing:* The Team meeting minutes, the Student’s 504 Plan, and the IHP do not address the location of the Student’s testing (i.e., whether in the classroom, or outside the classroom).

In developing the 504 Plan, the District acknowledged that “the Team referenced a plan guide for diabetic students issued by the Maine Department of Education,” but asserts that “the Team reviewed and tailored the suggested plan specifically to the Student.” The District also represented to OCR that it “obtained extensive medical information from the Complainant” and the School Nurse “remained in regular contact with the Complainant as to the Student’s conditions and needs.” The District also represented it was in “constant contact” with the Complainant during the remainder of the school year via email and in person because Complainant was at school XXXX. According to the District, the School Nurse consulted with

<sup>2</sup> The XXXXXX, 2017 meeting minutes indicate that “staff can be trained by Diabetic Center Staff-to be set up by [School Nurse].”

the Student’s physician’s practice and the District “obtained extensive medical information” from Student’s medical providers and Complainant—“both diagnostic information and specific direction regarding testing of blood sugars, treatment, emergency protocols and other important medical data.”

In the complaint, Complainant notes that she disagreed with the 504 Plan and made her disagreement clear at the XXXXXXX, 2017 Team meeting. On XXXXXXX, 2017, the Director of Special Education emailed the Complainant addressing the Complainant’s concerns about the Plan and explaining that the proposed 504 Plan was not generic and informing Complainant to “[p]lease feel free to provide accommodations that were not mentioned so they can be discussed.” The Team also agreed to reconvene to finalize the 504 Plan once the Student had returned to school.

The 504 Plan is signed and dated XXXXXXX, 2017; however, OCR’s investigation indicates that District considered that these terms were in effect following this Team meeting.

## ***II. Student’s Return to School***

The Student returned to School during the week of XXXXXXXXXXX, 2017 with a transitional plan that included tutoring and gradually increasing Student’s time in the classroom until an educational aide was hired for the Student and staff were trained. In anticipation of his return, the District represents that school staff, including the School Nurse and Student’s Teacher, “took a number of steps to prepare [Student’s] classmates for the Student’s return. Knowing that the Student was going to be, at times, testing his blood sugar with the nurse in the classroom, XX.

The evidence shows that on XXXXXXX, 2017—one day before the Student returned to the classroom for part of the day on XXXXXXX, 2017—the Student’s Teacher responded to an e-mail from the Principal and asked if the Guidance Counselor and School Nurse would meet with the Student’s class XX. The Teacher further asked, XX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The District advised that in response, both the Student’s Teacher and the School Nurse explained XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The District reports that XXXXXXXXXXXXXXXXXXXXXXXX again was addressed by [Student’s Teacher] and [School Nurse].”

The Student returned to the classroom for part of the day on XXXXXXX, 2017. OCR’s investigation indicates that there was uncertainty as to the Student’s testing protocol at that time. For example, on XXXXXXX, 2017—when the Student returned to the classroom for part of the day—the Student’s Teacher e-mailed the School Nurse, asking if the Student could test his XXXXXX outside the classroom, XXXXXXXXXXXXXXXXXXXXXXXX. In her response, the School Nurse included the Director of Special Education on the e-mail chain. The Director of Special Education responded that the testing could happen in the classroom. While the Teacher expressed concerns XXXXXXXXXXXXXXXXXXXXXXXX in a response e-mail, the Director of Special Education again responded, “[w]e can chat about this. I hear your concerns.”

In addition, the Director indicated that “[w]e are building a program that meets the 504 protections for a disability.” The Assistant Principal and the Principal were also included on this e-mail.

That same day, the Director of Special Education e-mailed Complainant, addressing the fact that the Student XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The Director of Special Education informed the Complainant that XXXXXXXXXXXXXXXXXXXXXXX until XXXXXXXXXXXX after testing is completed. The Complainant acknowledged that this had happened and indicated that it would “be a learning experience for [Student].”

Two days later, on XXXXXX, 2017, Complainant e-mailed the Director of Special Education noting that she wanted the Director “to be aware of a conversation that came up today . . . [that] there is some concern for XXXXXXXXXXXXXXXXXXXX while he manages his diabetes in XXXXXXXXXXXXXXXXXXXX.” In that e-mail, Complainant further explained that she understands that everyone’s XXXXXX is important, but that XXXXXXXXXXXXXXXXXXXXXXX XXXXXXX. Complainant further indicated that she and the District were “all in agreement to [location of testing] aside from XXXXXXXXXXXXXXX because those are times staff has mentioned wanting [Student] to be discreet, and/or go to nurse’s office.” Finally, Complainant suggested that XXX.

### ***III. XXXXX 2017 Team Meeting***

On XXXXXX, 2017, the District reconvened the 504 Team to “follow up” from the initial meeting. The meeting included: the 504 Coordinator; Teacher; Guidance Counselor/Case Manager; Vice Principal; School Nurse; Principal; XXXXXXXXXXXXXXXXXXXXXXX; and Complainant. Overall, the Team reviewed additional logistical and medical-care-related plans. Specifically, the minutes reflect the following:

- since the XXXXXX, 2017 Team meeting, several staff members had undergone training,
- Complainant “fe[lt] things [were] going well, but still had concerns,”
- a full-time nurse would be at school, and Complainant could administer Student’s medication at school as needed,
- “[i]n the event that the school nurse is out, the parent will be notified and she can decide whether to send [Student] to school,”
- updates to Student’s medical care since the last meeting,
- discussion of how the Student has been “handling” the medical care “overall,” and
- Complainant’s request that the Student “have the option to test himself or have someone else help him.”

The Team meeting minutes do not reflect a Team discussion of the incident that occurred on XXXXXX, the Teacher’s response, or the Complainant’s XXXXXX, 2017 email regarding XXXXXXXXXXXXXXX during his medical care. Also, as with the XXXXX 2017 Team meeting, neither the minutes nor other materials provided by the parties indicate any Team

determination as to where the Student should be tested XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

#### ***IV. Implementation of 504 Plan***

OCR’s investigation into the implementation of the 504 Plan terms indicates the following:

##### *(a) 504 Plan: Access to Nurse*

Complainant alleges that she had to come into school on “many occasions” to provide medical care to the Student because the School Nurse was out. Additionally, the Complainant alleges that when she asked what the plan would be when the School Nurse was out, she was told that she “could keep [the Student] home on those days” or that the District would “XXXX.”<sup>3</sup> According to the District, the School Nurse took leave for only three-and-a-half school days in XXXX 2017: XXXXXXXXXXXX, 2017, and during the afternoon of XXXXXXXXXXXX. The District further represents that, on those days, other District school nurses “were on call for the Student” and “[o]ther staff who had been trained in diabetes management were also on hand.” The District also notes that the Complainant “XXXXXXXXXXXXXXXX, eliminating the need for other nurses to attend to the Student during [the School Nurse’s] absence.”

##### *(b) 504 Plan and IHP: Medical Kit*

Complainant alleges that the Student’s medical bag was not always with the Student. According to the District, “the Student’s medication kit was always accessible to him (with [the School Nurse’s] assistance).” The District notes that the Student “also tested his blood in the Nurse’s office at other set times during the day when all students were away from the classroom (for example, XXXXXXXXXXXXXXXXXXXXXXXXXXXX).”

##### *(c) 504 Plan and IHP: Staff Training*

The Complainant alleges that staff were not trained, citing instances when Student was left with untrained staff after she was told that they had been trained. Additionally, Complainant alleges that while the 504 Plan provides that three staff members would be trained, only the School Nurse was trained. According to the District, the School Nurse, the Student’s Teacher, and the Guidance Counselor attended a training at the Diabetes Center within Maine Medical Center on XXXXXXX, 2017. The Team meeting minutes from XXXXXXX, 2017 indicate that three staff members had completed training, including the Educational Technician assigned to the Student’s classroom.

##### *(d) 504 Plan: Monitoring/Health Contact Log*

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<sup>3</sup> Complainant also alleges that at the XXXXXXX, 2017 Team meeting, she was informed that the school Secretary (whose medical training was unknown) would oversee the Student’s medical needs since the nurse was not full-time at that time. The District adjusted the School Nurse’s schedule so that she was full-time for the Student’s return to school.



Complainant alleges that the District was “[n]ot monitoring [Student’s] food/drink intake and allowing carbs to be given without insulin to counteract it [and] not logging this information in his log book.” The District represents that the School Nurse “maintained logs and notes regarding her monitoring of the Student’s blood sugar levels, her responses, and her communications with the parent and medical providers.” The data response includes a Blood Glucose Log that shows that the School Nurse tracked—on a daily basis—the Student’s blood sugar, grams of carbohydrates, insulin for carbohydrates, insulin to correct, and includes notes about snacks provided to Student. In addition to maintaining the daily Blood Glucose Log required by the 504 Plan, the District’s data response also includes handwritten notes and a Health Contact Log indicating that the School Nurse called Complainant ten times between XXXXX and XXXXX to inform her about Student’s blood sugar levels, whether a snack was given, and/or to discuss next steps for that day based on the Student’s levels.

*(e) Location of Student’s Testing*

The Complainant alleges that in addition to the incident on XXXXXXX, 2017 and the information Complainant described in her XXXXXX, 2017 email to the District, above, the school “made [Student] leave [the classroom] any/all times he needed anything [diabetes] related. The teacher refused to let him treat even emergency needs in the classroom” and he “had to do it in the nurse’s office . . . even though it is in our 504 that this be allowed.” The District represented that “testing in the classroom was not specified in the 504 Plan” but that “the School agreed that Nurse would join the Student in the classroom for morning testing.”

**V. *Events Leading up to 2017-2018 School Year***

Complainant alleges that when the 504 Team met in XXXXX 2017 to discuss the plan for the upcoming school year, the Director of Special Education “said they ‘cleaned up’ the Student’s plan and removed all medical aspects of it” and placed the medical aspects exclusively in the IHP. According to the Complainant, the District removed the medical information from the 504 Plan, which she considered a legal document; and placed it in the IHP, which she considered a non-legal document.

The District represents that the Director of Special Education convened the XXXXXXX, 2017 Team meeting “to review the Student’s needs for the coming year and assess whether any changes to the 504 plan were warranted.” The District also notes that, “the School . . . recognized that the prior plan detailed, in several places, medical information about the Student that was addressed in the Student’s IHP. Because the IHP was a component of and explicitly referenced in the 504 Plan[,]” “the Team determined that it [was] appropriate to move the redundant medical data in the 504 Plan to IHP only.” The District further represents that “the resulting 504 plan, as before, noted that the Student’s IHP [w]as an attachment to the 504 plan and the District understood that the medical plan had to be implemented as part of the delivery of services under Section 504, which it was.” The evidence shows that the Team meeting minutes from XXXXXXX, 2017 begin by noting that “[s]ome adjustments have been made to the 504 to clean it up and put the medical information in the medical plan and the 504 needs in the 504 plan.”

On XXXXXXXX, 2017, Complainant e-mailed the Principal to advise that:

XX  
XX  
XX  
XX  
XX  
XXXXXX.

From the Student's XXXXXX, 2017 diagnosis to Complainant's XXXXXXXX, 2017 e-mail removing Student from the District, OCR notes that there were numerous communications between the District and Complainant regarding Student's safety, wellbeing, and medical care at school. These communications include e-mail messages, ClassDojo messages, and text messages, in which the Teacher spoke about the Student in a very supportive manner.

**Resolution Prior to Compliance Determination**

OCR identified issues with Allegation 1 that require further investigation in order to make a compliance determination as to whether the District failed to implement the 504 Plan terms addressing (a) access to a School Nurse, (b) medical kit, and (c) staff training, and if so, whether this failure constituted a denial of FAPE.

As to (a), the 504 Plan provides that “[a] school nurse or medical personnel will be in the building at all times when [the Student] is in school.” Additionally, the Student's 504 Plan provides that: The school will “[c]ontact the parent when the school nurse is absent, leaving his school attendance up to the parent on those days.” The Complainant alleges that there were numerous instances when the nurse and/or other trained medical personnel were not available.<sup>4</sup> Information from the District indicates that the School Nurse was not in the building from “XXXXXXXXXXXX, 2017, and during the afternoon of XXXXXXXXXXXX,” but that other District school nurses “were on call for the Student,” “other staff who had been trained in diabetes management were in place at School,” and the “Complainant herself remained at the School XXXX, eliminating the need for other nurses to attend to the Student during [the School Nurse's] absence.” OCR has not resolved whether the District complied with the 504 Plan's requirement that “[a] school nurse or medical personnel will be in the building at all times when [the Student] is in school,” as it remains unclear whether “staff . . . trained in diabetes management” qualify as “medical personnel” under the 504 Plan. Moreover, if the District did not comply with the Student's 504 plan, OCR has not resolved whether this constituted a denial of FAPE. Similarly, OCR has not resolved whether the Complainant's degree of involvement in the Student's medical care at school was inconsistent with Section 504 obligations.

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<sup>4</sup> Additionally, Complainant alleges that at the XXXXXX, 2017 Team meeting, she was informed the school Secretary, whose medical training was unknown, would oversee the Student's medical needs since the School Nurse did not work full-time at that time. The evidence shows the School Nurse's schedule was adjusted to be full-time for the Student's return to school.

As to (b), the 504 Plan states that the Student “will have a [medical] kit accessible at all times” with “backup” supplies “kept in the nurse’s office.” The 504 Plan further provides that the Student “must have his testing kit . . . with him at all times during the school day . . .” The IHP provides that the supplies will “travel with” the Student “to his specials and to lunch/recess.” Furthermore, the IHP provides that the emergency kit “[w]ill be kept with [Student] at all times.” The Complainant alleges that the medical kit was not always with the Student. The District asserts that “the Student’s medication kit was always accessible to him (with [the School Nurse’s] assistance).” The District further asserts that the Student “also tested his XXXXX in the Nurse’s office at other set times during the day when all students were away from the classroom (for example, XXXXXXXXXXXXXXXX).” OCR has not resolved whether the medical kit being “accessible to” the Student in this manner was consistent with the 504 Team’s determination or, if not, whether this constituted a denial of FAPE.

As to (c), the 504 Plan provides that two staff, in addition to the School Nurse, would be trained “in the administration of medication, blood glucose testing, and testing for ketones when necessary,” and includes further details on this required training. The information in the investigation to date indicates that several staff received training on XXXXXX, 2017, and that the District conveyed this information to the Complainant at the XXXXXX, 2017 504 Team meeting noting that the Student’s Teacher, School Nurse, Guidance Counselor, and the Educational Technician assigned to the Student’s classroom had been trained. The Complainant disputes that staff were trained, citing instances when Student was left with untrained staff after she was told that they had been trained. Additionally, Complainant alleges that the 504 Plan provides that three staff members would be trained, but that only the nurse was trained. OCR has not resolved whether the specific training required by the 504 Plan was completed by necessary staff, and if not, whether this constituted a denial of FAPE.

Prior to the conclusion of OCR’s investigation of the items above, and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving parts (a), (b) and (c) of this allegation and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address this allegation. OCR will monitor the District’s implementation of the Agreement.

**Analysis: Insufficient Evidence Determination**

For the reasons explained below, OCR found insufficient evidence that the District denied the Student a FAPE as to the implementation of the 504 Plan terms addressing the (d) monitoring/health contact log and (e) location of Student’s testing (Allegation 1), and the other allegations in this case

As to (d), the Complainant alleges that the School Nurse was not properly monitoring the Student’s food and drink intake and was not logging information in the Student’s “log book.” The data response includes a Blood Glucose Log that shows that the School Nurse tracked, on a daily basis, the Student’s blood sugar, grams of carbohydrates, insulin for carbohydrates, insulin to correct, and includes notes about snacks provided to Student and physical activity.

Additionally, the data response includes a Health Contact Log that shows that the School Nurse, on numerous occasions, relayed information to Complainant about Student's blood sugar levels, whether a snack with given, and/or to discuss next steps for that day based on the Student's levels. Based on a careful review of the data, OCR finds insufficient evidence to support a conclusion of noncompliance as to this allegation. The preponderance of the evidence does not support a conclusion that the School Nurse was not monitoring the Student's food and drink intake and not logging information. Therefore, OCR will take no further action on this allegation.

As to (e), the Complainant alleges that the Student was required to leave class for his diabetes testing even though the 504 Plan provided that classroom testing was allowed. Based on a careful review of the evidence, including the contents of the Student's 504 Plan, IHP, and minutes of the 504 Team meetings that took place in XXXXXX and XXXXXX 2017, OCR did not identify information indicating a Team decision that testing must occur in the classroom. While the evidence indicates internal disagreement by staff on this topic, and discussions between the School and the Complainant to identify a compromise to resolve concerns, OCR has insufficient evidence to conclude that requiring the Student to go to the nurse's office for testing constituted a failure to implement his 504 Plan, or a denial of FAPE. Accordingly, OCR finds insufficient evidence to support this allegation and will take no further action on it.

### **Allegation 2: Team Process**

OCR has found insufficient evidence to support Complainant's allegations that the District did not follow a Team process in developing the Student's 504 Plan. Specifically, Complainant alleges that the Team said they did not have to follow the doctor's notes, that the Director of Special Education read a generic 504 Plan that was used for all diabetic students, and the District restricted the Complainant's input at the Team meetings.

With respect to Complainant's allegation that the Team did not follow the doctor's notes, the "Section 504 Eligibility Determination Form" reflects that the Team members reviewed the Student's school records, medical/health information, teacher reports, and nursing assessment. In the form's "other" section, "letter from primary care doctor" is included. The 504 Plan reflects the doctor's recommendation and provides that "[a] school nurse or medical personnel will be in the building at all times when [the Student] is in school." OCR generally does not review or second-guess the result of individual evaluation, placement, and other educational decisions. Substantive disagreements over a student's evaluation, services, placement, or educational program are more appropriately addressed through a due process proceeding.

With respect to Complainant's allegation that the Team drafted a generic 504 Plan, the meeting minutes and resulting plan indicate individualized consideration. In creating the Student's plan, the Team discussed Student's current medical state, considered how diabetes was affecting this Student in particular, Complainant's recommendations and instructions on care, Complainant's concerns regarding Student's access to a nurse and medical professional, and District's responses to those individual concerns. At the "follow up" meeting on XXXXXXX, 2017, the Team continued to make individualized considerations regarding Student's 504 Plan.

With respect to Complainant’s allegation that the District restricted her input at Team meetings, the meeting minutes reflect that the Complainant articulated her concerns for the Team’s consideration, and that the District engaged them at the meeting and in subsequent correspondence (such as emails between the Complainant and staff).

Based on this evidence, while Complainant may disagree with the outcome of the 504 Team meetings, OCR finds that there is insufficient evidence that the District’s process violated Section 504 procedural requirements and will take no further action on this allegation.

**Allegation 3: Medical Information in IHP Instead of 504 Plan**

OCR found insufficient evidence that the District’s actions with the IHP violated Section 504 procedural requirements. Complainant alleges that the District violated Section 504 by removing medical information from the 504 Plan and placing the information in the IHP.

OCR’s investigation indicates that although the 504 Plan developed in XXXX 2017 did not expressly state that the IHP would be incorporated by reference, just as the previous plan had, the Student’s updated 2017-2018 504 Plan still provides that the “Medical plan will be attached to this 504 Plan.” Also, OCR did not find sufficient information inconsistent with the District’s representation that staff “understood that the medical plan had to be implemented as part of the delivery of services under Section 504.” For example, OCR did not identify any information indicating that moving medical terms from the 504 Plan to the IHP resulted in District staff failing to implement the IHP, denying the Complainant’s request for due process protections on those terms, or regarding the IHP as less binding than the 504 Plan in this case. Based on a careful review of the evidence, OCR finds that there is insufficient evidence that the District’s actions with the IHP violated Section 504 procedural requirements and will take no further action on this allegation.

**Allegation 4: Harassment Sufficiently Serious to Create Hostile Environment**

OCR found insufficient evidence that the Teacher’s conduct in this case constituted harassment in violation of Section 504 or Title II. The Complainant alleges that: (a) the Student had to leave the classroom and go to the nurse’s office for everything related to his XXXX diabetes; (b) the Teacher “said she needed to XXX  
XX constitute disability-based harassment sufficiently serious to create a hostile environment.

Based on a careful review of the evidence, OCR finds insufficient evidence to establish the existence of a hostile environment that was sufficiently severe or pervasive as to interfere with or limit the Student’s ability to participate in or benefit from the school’s programs, activities, or services. In evaluating the issue of harassment, OCR considered the totality of the circumstances from both an objective and subjective perspective and examined the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved.



**Allegation 5: Failure to Reevaluate Due to Harassment**

OCR determined that there is insufficient evidence that the District violated Section 504 when it did not conduct a reevaluation in response to the concerns of harassment addressed in Allegation 4, above. While OCR’s investigation indicated that there were concerns in implementing certain provisions of the plan in XXXXX 2017, the above information would not reasonably indicate that there was harassment resulting in different needs for the Student. OCR’s investigation also indicates that the 504 Team reconvened on XXXXXX, 2017, a few days after Student’s return to the classroom when these allegations occurred. The meeting minutes generally note that Complainant “fe[lt] things are going well, but still has concerns.” The meeting minutes then go on to reflect discussion of medical care plans, staff training, how Student is “handling” the situation so far, along with the Complainant’s requests and concerns. Other correspondence that OCR reviewed indicated ongoing discussions between the Complainant and Team members about the implementation of the Plan, without an indication that the alleged harassment had resulted in different needs. On these facts, OCR has insufficient evidence that the District failed to conduct a reevaluation when on reasonable notice that alleged harassment may have resulted in a denial of FAPE.

Accordingly, OCR finds insufficient evidence to support Allegation 5 and will take no further action on this allegation.

**Conclusion**

This concludes OCR’s investigation of the complaint. This letter 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. 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.

In regard to Allegation 1(d) and (e), and Allegations 2-5, for which OCR found insufficient evidence, 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law

enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/  
Timothy J. Mattson  
Compliance Team Leader

Enclosure

c: Allen Kropp, Esq.