



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

December 18, 2018

Armand Pires
Superintendent
Medway Public Schools
apires@medwayschools.org

Re: Complaint No. 01-18-1285
Medway Public Schools

Dear Superintendent Pires:

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 Medway Public Schools (the District). The complaint alleged that the District did not evaluate a student (Student) for Section 504 eligibility despite his life threatening food allergy to XXXX. Additionally, the complaint alleged that, because of his disability, the Student was excluded from his XXXXXXXX class from November XX, 20XX through December X, 20XX while the rest of the class conducted a three-day "XXXXXXX." As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

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. Therefore, OCR has jurisdiction over the District because it is an educational public entity that receives federal financial assistance.

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 students with disabilities. An appropriate education consists of the 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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to

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

require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

For all disabilities defined by Section 504/Title II¹, the District must provide identification, evaluation, placement, and procedural safeguards that are consistent with the requirements of Section 504/Title II. Regarding evaluation, the Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services² due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education (including identifying whether related services are needed), and before any subsequent significant change in placement. If a student has a disability as defined by IDEA along with a disability that only meets the definition of a disability under Section 504/Title II³, the District may either address all disabilities in an IEP, or develop an IEP for IDEA-eligible disabilities while addressing non-IDEA-eligible disabilities in accordance with the requirements of the Section 504 regulation at 34 C.F.R. §§ 104.33 – 104.36. A health care plan may comply with the provisions of Section 504, but only if the school district complies with Section 504's procedural requirements.

In addition to the requirement to provide FAPE, the Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district's programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation, at 28 C.F.R. § 35.130(b)(7), also requires school districts to make reasonable modifications to 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 the above provisions to require that school districts ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities. As the vast majority of students without disabilities do not face a significant possibility of experiencing serious or even life-threatening reactions to their environment while they attend school, Section 504 and Title II require that school districts provide students with serious medical conditions (including allergy-related disabilities) with a medically safe environment in which they do not face the possibility of serious or life-threatening reactions to their environment.

To provide FAPE to a student with an allergy-related disability and meet the standards referenced above, a school district must have a plan to meet the student's individualized needs. The plan must be based on an individualized consideration of the student's needs and should take into account procedures that limit or prevent the risk of exposure to the allergens in each type of school program or activity in which the student participates, including programs taking place in classrooms and common areas, the gymnasium, the cafeteria, and hallways, and during recess, extracurricular activities, field trips, and school-related activities. The plan should also set out

¹ A physical or mental impairment which substantially limits one or more major life activities. 34 C.F.R. § 104.3(j)(1)(i), 28 C.F.R. § 35.108(a)(1)(i).

² "Related Services" may include, e.g., school health services and school nurse services, social work services in schools, and parent counseling and training. A school district's obligation to provide FAPE extends to students with disabilities who do not need special education but require a related service.

³ E.g., life-threatening allergies, asthma, diabetes, etc.

procedures to follow when the student is exposed to allergens. A health care plan may comply with the provisions of Section 504, provided that the school district complies with the procedural requirements of the Section 504 regulation with respect to evaluation, placement, and procedural safeguards.

Summary of Investigation

OCR reviewed documents provided by each party, including: a Food and Insect Allergy Plan (Allergy Plan), Individual Healthcare Plan (IHP) and Individual Education Program (IEP) for the Student; correspondence between the parties and among District staff regarding the November XXXX XXX XXX in XXXXXXXX; and, relevant policies and procedures from the District, including its 504 Policies and Procedures, Wellness Policy, IHP and 504 Guidelines for School Nurses, and newly-adopted policies regarding life-threatening allergies (LTAs).

OCR determined that the Student has an LTA to XXXX (both contact and ingestion). He was in XXXX grade in the District's High School (School) during the 2017-2018 school year and had an IEP detailing academic and social support services to address a XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX. Additionally, the Student had an Allergy Plan, completed by his doctor, on file with the school, and an unsigned IHP which appears to have been created by the school nurse. He did not have a 504 plan.

The District acknowledged that the Student was exposed to XXXXXXX during XXXXXXX, as alleged, in part because the school nurse had not informed the Student's teachers of his allergy. The District provided OCR with documents demonstrating that it also took both immediate and long terms steps to address issues that arose as a result of this incident. Regarding the Student, the District immediately removed the Student from the classroom to the library for his safety, where he completed an online module for the XXXXXXX over three days; his peers finished the XXXXXXX in class. Thereafter, the District implemented extensive cleaning of the XXXXXXXXXXX where the incident occurred.

OCR would need to conduct further investigation, specifically interviews of the Student and District staff, to determine how the XXX exposure and different XXX experience, along with the District's policies and practices regarding allergies, impacted him as a result of his severe XXX allergy. Prior to OCR conducting such interviews, however, the District agreed to resolve the allegations of the complaint. The Agreement includes additional steps the District will take to ensure the Student's safety, provide him FAPE, and ensure that he has an equal opportunity to participate in all of the District's programs and activities.

In response to this incident, the District also revised several policies, including its 504 Policies and Procedures, which now read: "Reference to [IHPs] should be included in 504 [sic] or IEP as appropriate." Additionally, on March 1, 2018, the District adopted allergy-specific policies and procedures, i.e., #101 Life Threatening Allergy Policy (LTA Policy) and accompanying Life - Threatening Allergy Management administrative regulation (LTA Regulation).

While OCR acknowledges the steps the District has taken in response to this incident, the evidence obtained to date indicates that the District's policies and procedures would benefit from further revision to fully comply with Section 504/Title II. For instance, the 504 Policies and Procedures and the LTA Policy inaccurately suggest that the District may provide IHPs without

adhering to the procedural requirements of Section 504/Title II for students with life-threatening allergies. In order to complete its investigation, OCR would need to conduct interviews of District staff, to determine how these policies/procedures are used in practice, as well as to determine the impact of the changes the District made. The Agreement addresses these preliminary concerns regarding the District's revised policies and procedures, and includes provisions concerning staff and administrator training, in addition to notice to students and parents about the District's policies and procedures relating to Section 504 and Title II.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint 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 all of the allegations raised in the complaint. OCR will monitor the District's implementation of the Agreement.

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.

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.

If you have any questions, you may contact Civil Rights Attorney Meighan McCrea at (617) 289-0052 or by e-mail at meighan.mccrea@ed.gov.

Sincerely,

Emma Kim
Acting Compliance Team Leader

Enclosure

cc: Joshua Coleman, Esq., via email at jcoleman@mlmlawfirm.com