

**RESOLUTION AGREEMENT**  
**Medway Public Schools**  
Complaint No. 01-18-1285

The Medway Public Schools (the District) voluntarily enters into this resolution agreement (Agreement) with the Office for Civil Rights (OCR) to resolve the allegations of OCR Complaint No. 01-18-1285. Implementation of the following commitments will resolve all issues in the complaint. The Student is enrolled at the District's High School (the School).

Before OCR completed its investigation, the District voluntarily agreed to resolve this complaint. OCR has not made any findings of fact or law or issued a final determination with respect to the complaint.

This agreement does not constitute an admission of wrongdoing or liability with respect to any allegation in the Complaint.

**A. Student**

1. The District will evaluate the Student for his food allergy pursuant to its Section 504/Title II obligations by convening a team of persons knowledgeable about the Student, the evaluation data, and the placement options, to determine: (1) whether the Student, because of his allergy, has an impairment that substantially impairs one or more major life activities, and (2) if so, what regular or special education and related aids and services are needed to meet his individual educational needs as adequately as the needs of students without disabilities are met.<sup>1</sup> In making its determinations, the team will: (a) draw upon a variety of sources in evaluating the Student's allergy and disability related needs, including if applicable recommendations of the Student's physician and/or allergist if parents will provide consent to the district to share information with these providers; (b) document and carefully consider the information obtained from all sources, including all available medical information regarding the Student's food allergies, the nature and severity of the Student's food allergies, and the types of exposure that can result in the Student having a food allergy-related reaction (e.g., whether such reactions are most likely to occur due to ingestion or topical or airborne exposure); and, if the Student is found eligible, (c) devise a plan to address the Student's individualized needs (the Plan).

The District will reflect the Plan in the Student's IEP. The District will not be required to create a separate 504 plan. The Plan will include, at a minimum and as appropriate, the following provisions:

- a. Adequate procedures and practices governing food allergy risk management for the Student in each type of District program and activity in which the Student participates, including the Student's classrooms and common use rooms (e.g., the cafeteria, library, computer labs, gymnasium, and art and music rooms), bus transportation, field trips, and extracurricular, District-sponsored activities

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<sup>1</sup> The District will provide the Student's parents with a meaningful opportunity to provide input into these determinations, notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree.

(including school-sponsored overnight trips). These procedures will include a means to ensure continuity of access to epinephrine. The District will address the Student's self-administration of epinephrine in accordance with department of public health regulations concerning students' self-administration of prescription medications and will give the parents prior written notice, absent exigent circumstances, if a situation arises where the Student will not be allowed to carry his own epinephrine.

- b. Sufficient emergency response procedures and practices covering all District programs and activities in which the Student participates, including non-academic and extracurricular activities, to address instances in which the Student may have a food allergy-related reaction. These procedures will address the proper handling and administration of epinephrine in the event of an anaphylactic or other serious allergy-related reaction, and will identify the staff responsible for emergency responses.
- c. The food allergy-related responsibilities of the District and the Student's parents, including a process for alerting the Student's parents of the need for them to provide meals or snacks for the Student to participate in school events or activities with reasonable notice.

**REPORTING REQUIREMENT:** The District shall conduct this meeting as soon as practicable, but no later than **December 21, 2018**. Within **ten (10) school days** of this Team Meeting, the District will submit the following to OCR for review and approval: 1) evaluative information considered, including information provided by the complainant, 2) a copy of any notices of procedural safeguards provided to complainant, and when provided, 3) a sign-in sheet with the date of the IEP meeting signed by each team member and 4) a copy of the District's Notice of Proposed Action (N1) and the IEP that includes the Plan.

2. After receiving written consent from the Student's parent, the District will develop and distribute to all teachers, substitute teachers, coaches, activity supervisors, and/or any district staff who provide classroom instruction or any supervision for the Student, a packet of information that includes: his schedule; his current signed and accepted Plan; instructions concerning food-related curriculum and/or activities; any information about current extracurricular activities; and whom to contact with any questions regarding the Plan. The packet will be provided to any additional staff assigned to work with the Student over the course of the school year, as all as to any coaches/staff who supervise any extracurricular activities in which the Student chooses to participate during the school year.

**REPORTING REQUIREMENT:** The District will develop and distribute the packet by **January 15, 2019**. Within **10 school days** of distributing the above packet, the District will submit to OCR the packet and documentation of its distribution, including the list of personnel, with name and title, who received it.

3. The District will invite the Student and his parent(s) to meet with the Superintendent or designee, Director of Special Education Services and High School Principal to discuss steps that District has taken, and will take, to ensure that the Student will be included and safe for District programs and activities for the remainder of his time in the District. This

meeting will include designation of a trusted staff person whom the Student can see if he has any allergy-related concerns; how anticipated activities will be made inclusive and safe for him, such as prom, senior activities, award ceremonies, and/or other District receptions, etc.; and how food will be addressed in any of his classes. The District will maintain a sign-in sheet and written minutes of this meeting.

**REPORTING REQUIREMENT:** The District will convene this meeting by **December 21, 2018**. Within **10 school days** of holding the above meeting, the District shall submit to OCR the written meeting minutes, including the designation of a trusted staff person, and sign-in sheet that includes the titles of attendees.

## **B. Training**

The District will provide training on the subject of Section 504 and Title II compliance to District staff, including the District's Section 504 coordinator(s), school nurses, and principals and/or assistant principals (i.e., one administrative representative per building), as well as head athletic coaches and other staff who directly supervise extracurricular activities. The training will be provided by the District's legal counsel and will include: (1) the general provisions of Section 504 and Title II, including the prohibition against denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service of the District; (2) the District's FAPE obligations; and (3) the role of Section 504 with regard to students with severe allergies and/or other serious health conditions, including appropriate emergency responses.

### **REPORTING REQUIREMENTS:**

By **January 30, 2019**, the District will submit for OCR's review and approval a copy of its proposed training materials to implement Item 2. The District will conduct the training no later than **February 28, 2019**. Within **ten (10) school days** of the date the training is conducted, the District shall provide a copy of the training presentation and materials, and a copy of the completed sign-in sheet to OCR for review and approval.

### **C. Policies, Procedures, Forms**

1. *504 Policies and Procedures.* The District will submit for OCR’s review and approval, new or revised 504 Policies, Procedures, and Forms (together “504 Materials”)<sup>2</sup> that comply with Section 504’s obligations regarding the provision of a FAPE for students with disabilities. The 504 Materials will specifically address students with health related concerns such as food allergies, asthma, and diabetes and other physical or mental impairments which substantially limited major life activities. The District standards and procedures will, at a minimum, provide for the following:
  - In determining eligibility under Section 504 and Title II, the District will consider whether a student has a physical or mental impairment which substantially limits any major life activities set out in the Section 504 and Title II Regulations and the Americans With Disabilities Amendments Act of 2008 (ADAAA). If it is determined that an evaluation is required, the standards and procedures will provide procedural safeguards for the parents or guardian of the student that include notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the student’s parents or guardian and representation by counsel, and a review procedure.
  - In making placement decisions, the District shall draw upon information from a variety of sources, which may include but not be limited to 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 knowledgeable about the student, the meaning of the evaluation data, and the placement options.
  - The standards and procedures specified in the policy will be applied to all students who, because of disability, need or are believed to need, special education and related services, as identified by district staff, parents/guardians, or other individuals. The standards and procedures will state that an IHP may comply with the provisions of Section 504, provided that, where appropriate, students with IHPs, who are students with disabilities who may need related aids and services, are provided evaluation, placement, and procedural safeguards required by the Section 504 regulations.
  - If the 504 Team concludes that any evaluation, including medical, is required, it will be conducted by the District at no charge to the parents or guardian.

#### **REPORTING REQUIREMENTS:**

- a. By **December 21, 2018**, the District will submit for OCR’s review and approval new/revised 504 Materials.
- b. Within **twenty (20) school days** of obtaining OCR’s approval, the District shall post the new/revised 504 Materials on its website, and provide OCR a link to the website.

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<sup>2</sup>[https://www.medwayschools.org/UserFiles/Servers/Server\\_547022/File/Department/Student%20Services/mps\\_504\\_manual.pdf](https://www.medwayschools.org/UserFiles/Servers/Server_547022/File/Department/Student%20Services/mps_504_manual.pdf)

- c. Within **30 school days** of OCR's approval of the new/revised 504 Materials, the District will provide a copy of the materials to all parents and/or guardians of students who are currently on an Individual Health Care Plan (IHP), via email or hardcopy letter. The District will submit to OCR documentation demonstrating that it completed this dissemination by, for instance, providing a copy of the email sent to all parents/guardians which includes the email recipients, no later than **30 school days** after OCR's approval of the new/revised 504 Materials.
2. *Other Materials.* The District will review, and as needed, revise for OCR's review and approval, its other policies, procedures, and/or forms regarding its obligations under Section 504, including for students with health-related concerns. The review and revisions will ensure that to the extent these policies include discussions relating to Section 504, Title II, and/or impairments that could be disabilities under either statute (i.e., life-threatening allergies), they accurately reflect the standards and obligations of Section 504 and Title II, and that they are consistent with each other regarding definitions, standards, procedures, and staff responsibilities. Such policies, procedures, and/or forms include but are not limited to the District's: 504 Policies and Procedures; Life Threatening Allergy Policy; Life - Threatening Allergy Management administrative regulation (LTA Regulation); and its IHP and 504 Guidelines for School Nurses (IHP/504 Guidelines) (together, District Policies).

**REPORTING REQUIREMENT:**

- D.** The District will submit for OCR's review and approval new/revised District Policies. Within **twenty (20) days** of obtaining OCR's approval, the District shall disseminate the new/revised District policies to staff, parents, and students, by updating current online policies with the new/revised policies and posting a notice on the District's homepage indicating which District Policies have changed.

The District will revise its Potential Allergens Notice (Notice) in accordance with the requirements of Section 504 and Title II by removing language indicating that students with allergies or intolerances will be provided alternative venues or investigations.

**REPORTING REQUIREMENT:**

By **January 10, 2019**, the District will submit for OCR's review and approval its revised Notice.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement and is in compliance with the regulation at 34 C.F.R. §§ 104.4, 104.33, 104.35, which were at issue in this case.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement and that all actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. Further, District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District at mutually agreed upon times, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing the regulation at 34 C.F.R. §§ 104.4, 104.33, 104.35, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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Dr. Armand Pires, Superintendent

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Date