



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV**

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REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

March 7, 2016

Alberto M. Carvalho
Superintendent
Miami-Dade Public Schools
1450 Northeast 2nd Avenue
Suite 912
Miami, FL 33132

Re: Complaint #04-15-1532

Dear Mr. Carvalho:

On September 11, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint against the Miami-Dade County School District (District) alleging disability discrimination.

The Complainant alleged that the District discriminated against her son (Student) by failing to implement the Student's Section 504 Plan, on April 7, 2015.

Specifically, on April 7, 2015, the School held the "Bridge for Peace" event, an annual event sponsored by the School's honor society (Event) and, School and District officials refused to take steps detailed in the Student's 504 Plan to make certain that nuts and lentil products were not present at the Event, notwithstanding receiving advanced notice from Complainant that the Student planned to attend the Event. Because of the presence of nut and/or lentil products, the Student could not safely attend the Event, denying the Student the opportunity to attend the Event.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the District is a recipient of Federal financial assistance from the Department and is a public entity, it is subject to the above statutes. Accordingly, OCR has jurisdiction over this complaint. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR initiated an investigation of whether the District discriminated against the Student on the basis of disability by not complying with the Student's 504 Plan on or about April 7, 2015, which effectively prohibited the Student from attending the Event, in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.34(b) and Title II and its implementing regulation at 28 C.F.R. § 35.130.

Legal Standards

34 C.F.R. §104.4 (a) provides: “[n]o qualified handicapped person shall, on the basis or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The regulations, at 34 C.F.R. §104.4(b), further states: “[a] recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap: (1) [d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service. . .”

The Title II implementing regulation is interpreted consistent with the foregoing standard with respect to the complaint allegation.

Summary of Investigation

Upon the receipt of this complaint, the District provided OCR with the Student's records, including the Student's Section 504 Plan and requested to voluntarily resolve this complaint under Section 302 of OCR's *Case Processing Manual*. Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

Based upon information provided by the District, OCR learned that the Student's 504 plan includes various accommodations for his peanut and lentil allergy such as administration of medication as needed by the school nurse, accompaniment by a school nurse during school hours and a provision to make certain that the Student is provided with an equal opportunity to participate in the District's extra-curricular activities. OCR believes that the Event was a District extra-curricular activity, and was therefore subject to the District's Section 504 Policies and Procedures.

Resolution Agreement

On March 2, 2016, the District signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegation in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to 1) conduct a system review of its policy and procedures to assess what the District current needs are to meet its responsibilities to students who are allergic to peanuts, 2) identify in writing the related aids and services in place to allow each District student identified as having a peanut allergy (Students) to receive reasonable accommodations consistent with Section 504/Title II to

participate in extracurricular activities, 3) after providing proper written notification to the Student's parent (s), a group of knowledgeable persons, including the parent/guardian, will determine whether additional services or accommodations are needed for the Student to participate in the District's extracurricular activities, 4) provide the Student's parent/guardian notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing, and 5) provide training to relevant staff regarding the District's responsibilities under Section 504 and Title II, including the District's responsibility for providing related aids and services to allow Students to participate fully in the District's extra-curricular activities.

OCR will monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

Please 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. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Mr. G. Anthony Brown, General Attorney, at (404) 974-9374 or me at 404-974-9408.

Sincerely,

April England-Albright, Esq.
Acting Compliance Team Leader

Enclosure