



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

February 25, 2016

Mr. George Tomin  
512 SE 3<sup>rd</sup> Street  
Ocala, Florida 34471

Re: OCR Complaint# 04-15-1539

Dear Mr. Tomin:

On September 23, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against the Marion County Public School District (District) alleging disability discrimination. The Complainant alleged that District personnel discriminated against her son (Student), a disabled student with Langerhans Cell Histiocytosis/Adrenal Dysfunction, by failing to evaluate the Student for services pursuant to Section 504 before denying her request for the Student to carry his life-saving injection of the steroid Solu-Cortef on his person during the school day, and to have it available during his bus ride to and from school.

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 denied the Student a free and appropriate education (FAPE) when it failed to evaluate the Student's medical needs in noncompliance with 34 C.F.R. § 104.35, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

Legal Standards

34 C.F.R. §104.35 provides: (a) *Preplacement evaluation*. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap,

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.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

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 its Section 504 policies and procedures, the Student's records, and correspondence showing the Complainant's request that the Student be allowed to carry his medication on the bus. The District 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 District initially refused to allow the Student to carry his medication on the school campus or the bus because the District believed a Florida statute precluded it from having anyone other than a registered nurse administer needed medications to students enrolled in its schools. OCR also learned that the District offered to reimburse the Student's family for transportation of the Student to and from school as an accommodation. The District also attempted to convene a 504 meeting to discuss eligibility, an individual health plan, and transportation for the Student about a week into the new school year, but the Complainant withdrew the Student before this meeting could occur. Even though OCR had not completed its investigation when the District offered to resolve, OCR learned that there was no health plan or 504 plan in place for the Student which addresses the medical needs of the Student at the School or on District provided transportation services.

### Resolution Agreement

On February 19, 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) update its webpage and Section 504 manual to feature the information needed for parents or guardians in a more prominent and user-friendly format, 2) to require its Section 504 designees, including personnel from the transit department, to attend an OCR-led training at the beginning of the 2016-2017 school year regarding the District's requirement under Section 504 to provide a free and appropriate education, 3) to train the Student's school staff regarding the Student's disability, provided that Complainant provides the needed medical information, 4) to create an emergency plan to assure the Student's safety during bus transit and at the School, 5) to convene a 504 meeting with Complainant and relevant medical professionals, provided Complainant supplies the needed information and participates, so that the District can adequately assess the Student's medical needs during the school day and on District transit, 6) to evaluate the Student's need for compensatory educational services, provided that he returns to School, and 7) to reimburse the family for any documented added expenditures incurred due to the Student's enrollment in full time virtual school.

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, you 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 Ms. Robyn Painter, General Attorney, at (404) 974-9345 or me at 404-974-9408.

Sincerely,

April England-Albright, Esq.  
Acting Compliance Team Leader

Enclosure