



**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 12, 2016

Mr. Jeff Eakins  
901 East Kennedy Blvd.  
Tampa, Florida 33601

Re: OCR Complaint# 04-16-1001

Dear Mr. Eakins:

On April 16, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received the above-referenced complaint against the Hillsborough County Public School District (District) alleging disability discrimination. The Complainant alleged that personnel in the District-run afterschool program (HOST) discriminated against her daughter (Student), a disabled student with epilepsy, by categorically refusing to administer needed medication in the event of a seizure.

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 when personnel of the HOST program excluded her from participating in the District's afterschool program by refusing to administer potentially lifesaving medicine in the event Student experienced a seizure during participation in that program, in noncompliance with Section 504 of the Rehabilitation Act and its implementing regulation at 34 C.F.R. § 104.38 and Title II of the Americans with Disabilities Act 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. . .”

In addition, 34 C.F.R. §104.38 provides: “[a] recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of handicap, exclude qualified handicapped persons and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.”

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 and an overview of the HOST afterschool program 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 administration of medication as needed by the school nurse, as well as a provision that the Student shall never be out of the sight of a staff person and escorted by staff throughout the school day. The 504 plan also includes emergency procedures for calling for help and clearing the room in the case of a severe seizure, as well as supports for extracurricular activities such as field trips. Information provided by the District also showed that when the Complainant applied for enrollment into the HOST afterschool program, she was advised that a policy precluded HOST staff from administering medications to students. OCR confirmed that the HOST program was operated and managed by the District, and was therefore subject to the District’s Section 504 Policies and Procedures.

### Resolution Agreement

On February 11, 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) provide training to HOST staff and School staff on the requirements of Section 504 to provide a free and appropriate education and the specific medical needs and requirements of the Student, 2) create an emergency plan to assure the Student’s safety during the HOST program and at the School, and 3) convene a 504 meeting with Complainant and relevant medical professionals so that the District can adequately assess the Student’s medical needs during the school day and at the HOST program.

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