



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

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

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July 15, 2016

Paul T. Brooksher, Ph.D.
Superintendent
Bryan County Schools
8810 Highway 280
Black Creek, Georgia 31308

Re: OCR Complaint #04-16-1176

Dear Dr. Brooksher:

On January 19, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed by XXXXX (Complainant) on behalf of her son, XXXXX (Student) against the Bryan County School District (District), Bryan County, Georgia, alleging discrimination on the basis of disability. Specially, the Complainant alleges that the District discriminated against the Student by failing to implement his Section 504 Plan during the 2015-2016 school year. This letter is to confirm that the District has voluntarily submitted a Resolution Agreement (Agreement) to resolve this complaint.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (FFA); and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities. The District receives Federal financial assistance from the Department, and it is a public entity. 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>.

Based upon the above allegations, OCR investigated whether the District discriminated against the Student on the basis of disability by failing to implement his Section 504 Plan during the 2015-2016 school year, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33 and the Title II implementing regulation at 28 C.F.R. § 35.130.

Applicable Regulations:

The Section 504 regulation at 34 C.F.R. § 104.33(a) and (b) requires a recipient to provide each qualified person with a disability within its jurisdiction a FAPE regardless of the nature or

severity of the handicap. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Improvement Act is one means of meeting the standards established by the regulation for provision of a FAPE. The Title II implementing regulation is interpreted consistently with the standards set forth in the regulation implementing Section 504 in this regard.

The School's failure to implement aids, services, accommodations, or modifications identified in the IEP of a student with a disability may deny the student a FAPE and, thus, violate Section 504 and Title II. Yet, not every failure to implement an aid, service or accommodation/modification in an IEP automatically constitutes a denial of an appropriate education. OCR takes into consideration the frequency of the failure to implement and what impact the failure had on the student's ability to participate in or benefit from a school School's services, programs and activities.

Summary of the Investigation

Upon the receipt of this complaint, the District provided OCR with its Section 504 procedures, the Student's 504 Plan, Section 504 meeting minutes, the Student's school medication and treatment log, staff training information, and correspondence between the Complainant and the District staff. Prior to the conclusion of the investigation, 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 recognized the Student as a student with a qualifying disability on July 28, 2015 in a 504 meeting, which was convened to determine whether the Student was eligible to receive related aids and services pursuant to Section 504. OCR also learned that the District created a 504 Plan, which required the School to provide multiple snacks as necessary, blood sugar checks as necessary, restroom trips as necessary, and an available water bottle. The information provided by the District also showed that the Student's 504 plan was amended on August 6, 2015 to permit the Student to give his own insulin shot with assistance, and to require certain School Staff, such as the nurse and the bus driver who was responsible for the Student's bus route, to know the student's health treatment plan and to provide assistance to the Student if needed. Finally, the information obtained thus far included medical treatment logs and email communication between the School's staff and the Complainant regarding incidents involving implementation of the Student's 504 Health Plan, the need for staff, including the Student's bus driver, to be aware of the treatment requirements of the Student's Health Plan, and concern regarding the School's response to several health incidents involving the Student.

Prior to the conclusion of the investigation, the District expressed an interest in engaging in resolution negotiations on June 23, 2016 and pursuant to OCR CPM § 302, OCR accepted the District's request to resolve this complaint and the District entered into the enclosed Resolution Agreement.

Resolution Agreement

The District submitted a signed Agreement (copy enclosed) on July 15, 2016, that, when fully implemented, will resolve the issue in the complaint. The Agreement requires the District to:

1. Revise the District's Section 504 Procedures to include provisions regarding diabetes¹.
2. Communicate the District's revisions to its Section 504 Procedures regarding diabetes to all administrators, board members, officials, and employees.
3. Provide training to District staff on the subjects of:
 - a) The identification of the District's Section 504 and Title II coordinator, including required contact information, and an explanation of the responsibilities of the coordinator(s).
 - b) A discussion of the general anti-discrimination 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
 - c) A discussion and distribution to trainees of the District's notice of nondiscrimination and anti-discrimination policies and procedures, including the District's grievance procedures for complaints of discrimination and how to file a complaint of discrimination.
 - d) An explanation of diabetes and a discussion and distribution to trainees of the District's revised Section 504 Handbook, and an explanation that decisions regarding diabetic and emergency care for qualified students with disabilities must be made on an individualized basis, and parents or non-District employees cannot be required to provide necessary diabetic care or supervision to students

¹ For more information regarding the implementation of diabetes procedures in the school setting, see the April 14, 2005 guidance letter to Chief State School Officers regarding providing services to students with diabetes (posted at <http://www2.ed.gov/about/offices/list/ocr/letters/chief-state-school-ofcrs-2005.pdf>), and *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (available at http://ndep.nih.gov/media/NDEP61_SchoolGuide_4c_508.pdf).

² See, 28 C.F.R. § 35.130(b)(1)(i), (ii) and (vii) (Title II) and 34 C.F.R. § 104.4(b)(1)(i), (ii) and (vii) (Section 504).

with diabetes while they are attending school, including school field trips and activities.

- e) An explanation of what constitutes disability discrimination, and a review of proper Section 504 and Title II procedures, including procedures for:
 - i) evaluating and serving students with disabilities, including diabetes.
 - ii) properly implementing Section 504/Title II plans, including the provision of diabetic care and emergency diabetic care.
 - f) A discussion of proper training requirements for District staff who educate, serve, supervise, or transport students with diabetes, including but not limited to, nurses, teachers, aides, paraprofessionals, bus drivers and staff supervising students on field trips or other off-campus locations, for the diabetic care and emergency care of students with diabetes. Substitute paraprofessionals, teachers, and bus drivers will be trained regarding care and treatment of diabetic students pursuant to District protocol for substitute staff.
4. Schedule a 504 meeting with the Complainants and School Staff involved with the care of the Student to discuss the Resolution Agreement and receive an update on the Student's medical needs.

Please consult the Agreement for further details.

OCR considers the allegation of this complaint resolved effective the date of this letter and will monitor the District's implementation of the Agreement. When OCR concludes the District has fully implemented the terms of the Agreement, OCR will close the complaint. If the District fails to carry out the Agreement, OCR may resume the investigation.

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. You 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 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.

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OCR is committed to prompt and effective service. If you have any questions, please contact Jessica Baker, General Attorney, at 404-974-9422, or me at 404-974-9408.

Sincerely,

/s/

April England-Albright
Acting Compliance Team Leader

Enclosure