



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

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ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
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TENNESSEE

October 28, 2016

Mr. Jason Manuel  
Superintendent  
Germantown Municipal School District  
6685 Poplar Ave.  
Germantown, Tennessee 38138

Re: OCR Complaint #04-16-1397

Dear Mr. Manuel:

On April 19, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against the Germantown Municipal School District (District) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District discriminated against the Student by failing to properly evaluate her during the 2015-2016 school year and subsequently determining that she was ineligible for a Section 504 Plan.

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; therefore, it is subject to Section 504 and Title II.

OCR initiated an investigation of whether the District discriminated against the Student during the 2015-2016 school year by failing to properly evaluate her or provide procedural safeguards, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.35(a) & 104.36 and the Title II implementing regulation at 28 C.F.R. § 35.130.

### Legal Standards

Under Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.104, respectively, a student is “disabled,” and therefore entitled to individually prescribed special education or related aids and services, if the student has a physical or mental impairment that substantially limits a major life activity. Under Section 504 and Title II, at 34 C.F.R. §

104.35(a)-(b) and 28 C.F.R. § 35.130, respectively, a recipient must evaluate any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the student's initial educational placement and any subsequent significant change in that placement.

The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires a recipient to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Title II and its implementing regulations are interpreted consistent with these Section 504 regulations.

### **Background**

The Student, who is six years old and enrolled in Riverdale Elementary School (School), has severe peanut and tree allergies. On August 7, 2015, the District created a Severe Allergy Plan (Plan) for the Student. The Plan indicates, in part, that the Student is at risk for anaphylaxis and requires use of an Epi Pen for severe reactions.

### **Investigation to Date**

Upon the receipt of this complaint, the District provided OCR with its Section 504 procedures, the Student's Severe Allergy Plan, the Student's Individual Health Plan (IHP), Section 504 meeting minutes, 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 School implemented a "Severe Allergy Plan" for the Student on August 7, 2015, after concluding that the Student has a nut (peanut, cashew, pistachio) allergy, is at risk for anaphylaxis, and requires administration of oral antihistamine and an Epi Pen, if necessary. The Student's Severe Allergy Plan was implemented automatically upon the School's receipt of a request by the Student's physician.

On January 25, 2016, the Complainant requested the District implement a Section 504 Plan for the Student. On February 8, 2016, the District referred the Student for evaluation under Section

504. On February 16, 2016, the District determined the Student was eligible for a Section 504 Plan. The Complainant received and signed the Notice of Parent and Student Rights and Responsibilities under Section 504 on April 7, 2016. On April 19, 2016, a Section 504 meeting was held and an Individual Health Plan (IHP) was created for the Student on April 22, 2016. The Section 504 team determined that the Student did not require a Section 504 Plan.

Prior to the conclusion of the investigation, which would require interviews with School and District staff, the District expressed an interest in engaging in resolution negotiations on August 12, 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**

On October 26, 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) revise its Section 504 Procedures to include timeframes for evaluation and placement, and provisions regarding food allergies; (2) notify appropriate District staff about the revisions to the Section 504 procedures; (3) provide training to District staff regarding compliance with Section 504 and Title II; and (4) schedule a 504 meeting with the Complainant and School Staff involved with the care of the Student to discuss the Agreement and receive an update on the Student's medical needs.

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. The Complainant 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) 974-9356.

Sincerely,

Wendy Gatlin  
Compliance Team Leader

Enclosure