



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

October 26, 2015

Timothy Baird, Ed.D.
Superintendent
Encinitas Union School District
101 S. Rancho Santa Fe Road
Encinitas, California 92024-4349

(In reply, please refer to case no. 09-14-1351.)

Dear Superintendent Baird:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against the Encinitas Union School District (District). The Complainants¹ alleged that the District discriminated against their son (Student) on the basis of his disability. The issue OCR investigated was whether the District denied the Student a free appropriate public education (FAPE) when it failed to implement accommodations in his Section 504 plan.

OCR has jurisdiction over this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (Title II), and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability in certain public entities. The District is subject to the requirements of Section 504, Title II and their implementing regulations because the District receives Federal funds and is a public education system.

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the allegation through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

¹ OCR notified the District of the identity the Complainants and the Student when the investigation began. We are withholding their names from this letter to protect their privacy.

Legal standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Factual Background

- The Student is seven years old and currently attends the second grade at a District elementary school. The Student has severe allergies to peanuts and other foods (tree nuts, eggs, strawberries).
- The Complainants informed OCR that they currently have the following three concerns regarding the Student's safety at school:
 - Rainy Days: The Student's Section 504 Plan dated August 17, 2015 states, "On rainy days when the students eat inside the classroom, teacher will have all students eating nuts or peanut butter at a designated table with a different classroom, and wash their hands prior to re-entry." OCR learned that at the Student's elementary school, when the students eat inside the classroom on rainy days, eight staff members rotate around each of the classrooms to supervise the students. Since the staff members are rotating through the classes, there are times when a staff member may not be present in the classroom for a brief time. The Complainants informed OCR that there was an incident this school year when the Student's classmates, who had nuts in their lunches, returned to the classroom without washing their hands while a staff member was not present in the classroom.
 - Substitute teachers: The Complainants also informed OCR that the Student has had substitute teachers who were not trained on administering the Epi Pen in prior school years. The District, however, informed OCR that the District nurse trained all of the staff members at the Student's school on how to administer the Epi Pen and that these staff members are available to assist the Student if the substitute teacher does not know how to use the Epi Pen.
 - Walking to the Nurse's office: The Complainants further told OCR that they are concerned that Student could have an anaphylaxis reaction during the time it takes for him to walk to the nurse's office for assistance.

Resolution

The District, without admitting any violation of federal law, has voluntarily agreed to enter into the enclosed Agreement with OCR to resolve the complaint. Under the terms of the Agreement, the District will convene a Section 504 meeting by November 11, 2015 to update the Student's Section 504 Plan so that it addresses the three concerns raised by the Complainants. The Section 504 Plan will include the specific steps the teacher will take on rainy days to ensure that students, who have foods in their lunches that the Student is allergic to, eat in a different classroom and that these students wash their hands or use a hand wipe prior to re-entering the classroom. The teacher will also inform the substitute teacher of what needs to be done during lunch on rainy days.

The Plan will also state that the teacher will include in the Substitute Teacher Plan instructions for the substitute teacher to contact the office if the Student has an allergic reaction so that a staff member trained on administering the Epi Pen can go to the Student's classroom to assist the Student. In addition, the Section 504 Plan will state that the teacher and substitute teacher will have the nurse or health tech come to the classroom, if there is any possibility that the Student is having an allergic reaction, instead of having the Student walk to the nurse's office.

Finally, because OCR did not receive any documentation from the District to ensure that the District nurse consistently trained the staff on how to administer the Epi Pen, the Agreement includes a provision stating that all school staff will be trained at least annually on addressing allergic reactions for students with disabilities to food, including how to use an Epi Pen.

OCR has determined that, once implemented, the agreement will resolve the issue in this complaint. Therefore, OCR is closing the investigative phase of this complaint as of the date of this letter. OCR will continue to monitor the implementation of the enclosed Agreement until the recipient is in compliance with the statutes and regulations at issue in this case. OCR is notifying the Complainant of the closure of this complaint concurrently.

This concludes OCR's resolution of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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.

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

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR thanks you for your assistance in resolving this case. If you have any questions about this letter, please contact Minako Sakurai at (415) 486-5552 or me at (415) 486-5566.

Sincerely,

/s/

James M. Wood
Team Leader

cc: XXXXX XXXXXX
Director of Pupil Personnel Services