



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

September 29, 2015

Via U.S. Mail/Facsimile

Dr. A Katrise Perera
Isle of White County Schools
820 Main Street
Smithfield, Virginia 23430

Re: OCR Complaint No. 11-15-1204
Letter of Findings

Dear Dr. Perera:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the above-referenced complaint filed on April 13, 2015, against Isle of White County Schools (the Division). The complaint was filed on behalf of a student (the Student) at XXXX School (the School). The complaint alleges that the Division is discriminating against the Student based on disability XXXX. Specifically, the complaint alleges that:

1. The Division failed to implement the Student's Section 504 plan during the 2014-2015 school year on multiple occasions, including by failing to provide her with a XXXX bus for field trips in November 2014 and March 2015 and by permitting snacks that are not XXXX to be distributed in the Student's classroom during the Christmas and Valentine's Day parties;
2. The Division failed to ensure that all teachers who serve the Student are trained on and aware of their responsibility to be familiar with and fully implement the Student's Section 504 plan; and
3. The Division has failed to provide adequate notice of procedural rights under Section 504.

OCR investigated the complaint pursuant to its authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In the course of the investigation, OCR reviewed documentation submitted by the Division and by the Complainants. Before OCR had completed its investigation, the Division expressed an interest in resolving Allegation 1, and, pursuant to Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the Division. On September 24, 2015, the Division signed a resolution agreement (copy enclosed), which, when fully implemented, will resolve Allegation 1. OCR will monitor implementation of this agreement. OCR completed its investigation of Allegations 2 and 3 and determined based on careful review of the documentation and information gathered through interviews with two of the Student's teachers that there is insufficient evidence to support a finding that the Division violated Section 504 as alleged in Allegations 2 and 3. A discussion of our findings and conclusions follows.

Background

The Student was enrolled in the fourth grade at the School for the 2014-2015 school year. She has been diagnosed with a XXXX, as well as various environmental allergies. She has a Section 504 plan, which has the following provisions: that she be permitted to eat lunch in a XXXX zone in the cafeteria; other students (particularly those with XXXX items in their lunch) will be asked to wash hands following lunch; the Student's book bag and other personal items will be placed away from other students' belongings to avoid possible contamination; a sign will be placed on the classroom door warning that students in the class have XXXX; the nurse will provide a "survival kit" including necessary medications to the teacher for field trips; items brought from home for classroom celebrations/activities will be pre-screened by the school nurse; and the nurse will instruct cafeteria staff regarding necessary precautions needed regarding the Student's allergy. The Student's current Section 504 plan contains no provisions regarding transportation for field trips. It also says nothing about ensuring accessibility of the Student's Epi pen during the school day. At the time of the complaint, the Division had met with the Complainants several times in an effort to revise the Student's Section 504 plan, but the parties had been unable to reach agreement on the terms of the plan.

Allegation 1

The Complainants alleged that the Division discriminated against the Student based on her disability XXXX by failing to implement her Section 504 plan during the 2014-2015 school year. The Complainants alleged that the School failed to implement the Student's Section 504 plan on multiple occasions during the school year, including by failing to provide her with a XXXX bus for field trips in November 2014 and March 2015 and by permitting snacks that are not peanut-free to be distributed in the Student's classroom during the Christmas and Valentine's Day parties. The Complainants also alleged that the Student's teacher, who they assert is supposed to carry the Student's Epi pen during recess left the Epi pen unattended on an outside table where students leave their belongings on multiple occasions and that the Student had to go

outside after recess had ended to retrieve it. The Complainants withdrew the Student from school shortly after filing the complaint because they feared the School was not ensuring a safe environment for the Student.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

In addition, 34 C.F.R. § 104.4(a) provides that no person, on the basis of disability, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives Federal financial assistance. The regulation implementing Title II contains a similar provision at 28 C.F.R. §35.130(a). The regulation implementing Title II, at 28 C.F.R. §35.130(b)(7), also requires a school division to make reasonable modifications in policies, procedures or practices when necessary to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity. OCR interprets these provisions to require that public school divisions take those steps necessary to ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities.

While the Division's position here is that the School fully implemented the Student's Section 504 plan, particularly with regard to the provisions pertaining to her XXXX, the Division acknowledges several occasions when snacks containing peanuts entered the Student's classroom. The first occasion was during the Christmas party. According to the Division, the Student's teacher had sent a note home to parents asking that they send an ingredient list with any snacks brought to be shared during the party, so that snacks could be pre-screened by the school nurse. One parent neglected to send an ingredient list and sent in Chex Mix, which contained ingredients possibly contaminated by XXXX. The Division explained that the teacher noticed the possible allergen before the Student ate the Chex Mix and advised her that she could not eat it. The Division did not clarify whether the Chex Mix, or any of the other snacks parents brought for the Christmas party, was pre-screened by the School nurse.

The second instance of snacks containing peanuts entering the classroom was during the class Valentine's Day party. According to the Division, the teacher sent a note to parents requesting that they not bring candy or chocolate, as these items are often contaminated by XXXX. Nonetheless, many students brought these items to class that day. The Student was absent from school on the day of the party, so the teacher allowed the other students to pass out the candy and, according to the Division, wiped down the desks with Lysol after the school day. The Complainants asserted that one of the other students left a box of candy for the Student in the Student's desk, although the Division asserts that it has no independent knowledge of whether the candy was left.

The third instance of snacks containing peanuts entering the classroom was during a class party on March 17, 2015. According to the Division, a parent in the class approached the teacher about the possibility of providing rice crispy treats to the class for the party. The teacher reviewed the ingredient list with the parent and determined that the snack did not contain possible allergens. The Complainants complained that the snack gave the Student an allergic reaction and picked her up early from school the following day for symptoms they alleged were caused by the exposure. The Division acknowledges that, on this occasion, the teacher did not fully implement the Student's Section 504 plan by failing to have the rice crispy treats pre-screened by the school nurse.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on September 24, 2015, which, when fully implemented, will resolve Allegation 1. The provisions of the Agreement are aligned with the allegation and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

Allegation 2

The Complainants alleged that the Division failed to ensure that all teachers who serve the Student are trained on and aware of their responsibility to be familiar with and fully implement the Student's Section 504 plan. Specifically, the Complainants told OCR that the Student's Choir and Physical Education teachers appeared unaware that the Student has a severe peanut allergy based on conversations they had with these teachers during the year.

OCR was unable to substantiate this allegation. The Division provided documentation showing that all of the Student's teachers received and reviewed the two, different Section 504 plans in place for the Student during the 2014-2015 school year. The teachers all signed a form indicating they had received a copy of the two plans.

When OCR spoke with the Student's Choir and Physical Education teachers, they further verified that they had received a copy of the two Section 504 plans for the Student and that they had been given the opportunity to discuss and ask questions about the plan with the School's Section 504 Coordinator. The Physical Education teacher shared in detail the steps she took each time the Student was in her class to implement the plan, including placing the Student close to her to allow her to easily monitor her well-being, establishing a safe place where the Student could store her Epi pen during class time when she was running around, and allowing her to place her coat and any other belongings away from other students. The Choir teacher acknowledged that there were few occasions in his classroom when the Student's 504 plan became relevant but that he encouraged students to wash hands and use hand sanitizer kept in his classroom. The Student was only in Choir for the first half of the year, so the Choir teacher no longer taught her after January 2015.

Based on this information, OCR concludes that there is insufficient evidence to support a finding that the Division violated Section 504 as alleged in allegation 2. OCR is closing this allegation as of the date of this letter.

Allegation 3

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that a school district establish and implement, with respect to identification, evaluation, and educational placement decisions, a system of procedural safeguards that include an impartial hearing with opportunity for participation by the child's parents or guardian, representation by counsel, and a review procedure. More generally, the Section 504 regulation, at 34 C.F.R. § 104.7, requires that a school district adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging *any* action prohibited under Section 504. Further, OCR interprets these regulatory provisions to require school districts to notify parents of its system of procedural safeguards when making an evaluation or placement decision about the provision of special education or related aids and services.

The Complainants alleged that the Division's notice of procedural safeguards is inadequate because, although it states the process for filing a grievance, it does not include the contact information for the Section 504 Coordinator. The Complainants provided OCR with a copy of the notice of procedural safeguards they received from the Division, which is identical to the notice provided to OCR by the Division.

Based on a review of the notice, OCR has determined that the Division's notice of procedural safeguards satisfies the regulatory requirement. The notice provides the title, telephone number, and address for the District's Section 504 Coordinator. It also advises parents and guardians that they may contact the Section 504 Coordinator for a copy of the Division's Section 504 procedures or access them on the Division's website. Finally, it states that "all grievances and requests for impartial hearings and reviews must be in writing and submitted to the Section 504 Coordinator." OCR concludes the Division's notice of procedural safeguards complies with the Section 504 regulatory requirement and is therefore closing this allegation as of the date of this letter.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 Division may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions regarding this letter, please contact the OCR attorney assigned to your complaint: Sara Clash-Drexler at (202) 453-5906 or sara.clash-drexler@ed.gov.

Sincerely,

/S/
Alessandro Terenzoni
Supervisory Attorney, Team II
Office for Civil Rights
District of Columbia Office