



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

XXXX

*Via Email: GLittle@lexington1.net*

Dr. Greg Little  
Superintendent  
Lexington County School District One  
100 Tarrar Springs Road  
Lexington, South Carolina 29072

Re: OCR Complaint No. 11-16-1289  
Resolution Letter

Dear Dr. Little:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on XXXX, against Lexington County School District (the District). The Complainant filed the complaint on behalf of XXXX student (the Student) at XXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of disability. Specifically, the complaint alleges:

- (1) On XXXX, the School failed to implement the Student's Section 504 plan by failing to check the Student's blood sugar levels and provide her with food after she exhibited symptoms of having low blood sugar; and,
- (2) On or about XXXX, the School failed to reevaluate the Student before recommending that the Student XXXX.

OCR enforces 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, 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 District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a

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discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

**Allegation 1:**

On XXXX, the School failed to implement the Student's Section 504 plan by failing to check the Student's blood sugar levels and provide her with food after she exhibited symptoms of having low blood sugar.

**Legal Standard**

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. For students with diabetes, this means addressing the students' diabetes-related needs and ensuring a medically safe environment for them. Implementation of Section 504 Plan developed in accordance with the procedural requirements of the Section 504 regulation is one means of meeting this standard.

**Background**

The Student was XXXX at the School during the XXXX school year. She has XXXX and had a Section 504 plan in place during the time of the allegations. Her Section 504 plan indicated that the Student would self-medicate and self-monitor her blood sugar levels. The Plan also said she could have snacks or use the restroom at any time, would visit the nurse if her blood sugar levels were not appropriate, and would check her blood sugar before tests. If her blood sugar was too high or too low, she could not take the test that day. The Section 504 plan did not include any information regarding what to do if there was an emergency situation related to the Student's diabetes and she was unable to self-medicate. The Complainant, who is the Student's parent, filed this complaint on the Student's behalf alleging that the School did not properly implement the Student's Section 504 plan after an incident that occurred on XXXX, as discussed below.

On XXXX, the Student informed her XXXX teacher that she was nauseous. The teacher asked if the Student needed to stop participating or check her blood sugar. The Student declined but laid down XXXX shortly after speaking to the teacher. The teacher went to speak to the Student again and, according to the teacher, the Student informed her that she XXXX. At that time, the teacher escorted the Student to the nurse's office. The nurse did not have a working blood sugar monitor or snacks for the Student in her office, so the teacher returned to XXXX to collect the Student's bag, which contained a working monitor, while the nurse called the Complainant. XXXX SENTENCE REDACTED XXXX. At no time was the Student's blood sugar level checked.

**Analysis**

The Complainant alleged that the School failed to implement the Student's Section 504 plan on XXXX, when the Student experienced an emergency situation regarding her diabetes and School staff did not check the Student's blood sugar or provide her with snacks or water. As discussed above, OCR reviewed the Student's Section 504 plan and found that there was no provision to address emergency situations regarding the Student's diabetes while she was at school. When OCR asked the nurse and the Student's XXXX teacher what action should be taken in an emergency situation related to the Student's diabetes, they reiterated that the Student was to self-monitor and self-medicate. The nurse also noted that it is the Student's responsibility to provide working blood sugar monitors and snacks. The nurse informed OCR that at the time of the XXXX, incident described above, she did not have a working monitor or snacks for the Student in the nurse's office. XXXX SENTENCE REDACTED XXXX. The XXXX teacher confirmed that she saw the Student looking for snacks or juice in the nurse's office, but none were provided to the Student.

XXXX 2 PARAGRAPHS REDACTED XXXX.

XXXX 3 SENTENCES REDACTED XXXX. OCR is concerned that even though the Student frequently experienced blood sugar issues while at the School, School staff made assumptions about the Student's XXXX, did not identify this incident as potentially related to the Student's diabetes, and were unprepared to respond to a diabetic emergency.

XXXX PARAGRAPH REDACTED XXXX.

As stated above, a school district is obligated to provide students with disabilities with a free appropriate public education (FAPE), that is, regular or special education and related aids and services that are designed to meet their needs as adequately as the district meets the needs of students without disabilities by addressing their diabetes-related needs and ensuring a medically safe environment for them. In analyzing these cases, OCR looks at the nature and severity of the diabetes and the likelihood, nature and severity of the harm that could result from the district's failure to provide FAPE. Ordinarily, OCR does not review or second-guess the result of individual evaluation, placement, and other educational decisions, including the content of Section 504 plans, as long as the District follows the "process" requirements of Section 504 (concerning identification and location, evaluation, placement, and procedural safeguards). However, OCR has concluded that diabetes cases involve "extraordinary circumstances" such that OCR looks beyond the procedural requirements of Section 504 because a district's failure to make appropriate decisions or take adequate precautions could make it difficult or impossible for a student with diabetes to attend school safely, possibly even resulting in coma or death.

As such, the absence of appropriate diabetes aids and services could result in the exclusion of students with diabetes from education programs or activities or a denial of an equal opportunity for such students to participate in programs or activities.

In this case, the School attempted to provide the Student with FAPE by creating a Section 504 plan to address the Student's diabetes-related needs. The Section 504 plan noted that the Student would self-monitor and self-medicate. Based on the Section 504 plan as written, OCR found that the School may have implemented the existing plan, although School staff did not provide the

Student water or snacks, or check her blood sugar levels. However, because the Section 504 plan did not address who would provide these services in an emergency situation, OCR is unable to determine if the School implemented the plan. Despite this, OCR is concerned that the Section 504 plan was not sufficient to ensure that the Student would not be denied a FAPE and access to the District's programs and activities. In particular, OCR is concerned that the Student's Section 504 plan lacked a process for addressing emergency situations that may arise, during which the Student could not self-monitor or self-medicate, such as the incident on XXXX. As written, the plan would have left the Student vulnerable in life-threatening situations of low or high blood sugar.

Prior to completing this investigation, the District agreed to resolve this allegation through the proposed resolution agreement.

**Allegation 2:**

On or about XXXX, the School failed to reevaluate the Student before XXXX.

**Legal Standard**

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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. Additionally, the Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a school district to periodically reevaluate a student who has been provided special education or related services. Also, when there is information suggesting that a student's educational program is not meeting the student's individual needs, such as a significant decline in the student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's Section 504 Plan or placement are necessary.

**Background**

The Complainant also alleged that the School and failed to reevaluate the Student XXXX.

XXXX PARAGRAPH REDACTED XXXX

On XXXX, the Student's Section 504 team conducted a manifestation determination meeting. The Complainant and the Student did not attend this meeting and, according to the School, no documentation was provided regarding the Student's XXXX. According to the District's

Director of School Counseling (the Director), who served as the LEA during the XXXX meeting, the team focused primarily on XXXX, though the team was provided with a description of the XXXX. XXXX SENTENCE REDACTED XXXX. The team members also informed OCR that they discussed the Complainant's statement that the Student had been diagnosed with XXXX, but because they were not provided with any documentation, they could not make a determination regarding whether or not the Student's XXXX.

XXXX PARAGRAPH REDACTED XXXX

#### Analysis

XXXX PARAGRAPH REDACTED XXXX.

As stated above, the Complainant alleged that the District failed to reevaluate the Student prior to changing her educational placement, in violation of the Section 504 regulations. Section 504 requires a school district to conduct a re-evaluation prior to a significant change of placement of a student with a disability. Prior to implementing such a change, a school district must conduct a reevaluation of the student (often called a manifestation determination) to determine whether the XXXX was caused by the student's disability, whether the Student's special education program or related aids and services were implemented and, if so, whether the student's current educational placement is appropriate (reevaluation procedures that comply with the Individuals with Disabilities Education Act (IDEA) fulfill the requirements of Section 504 and Title II). Here, at the time of the manifestation determination, the disability information available to the School included the Student's diagnosis of XXXX, as well as a notification by the Complainant that the Student was recently diagnosed with XXXX. Although information about the recent diagnosis was requested by School staff, it was not provided and the Student's team conducted the manifestation determination based on the information available to them. Although the Complainant was invited to the meeting, she did not attend. OCR did not identify any other procedural violation of the Section 504 regulation regarding the meeting. Based on the facts of this complaint, OCR does not find sufficient evidence that the School violated the placement procedures of Section 504 regarding the Student's XXXX.

#### Additional Concern

While the District met its obligation to hold a manifestation determination prior to changing the Student's placement regarding the Student's XXXX, based on the information above, during the course of the investigation, OCR identified information that may have triggered a responsibility by the District to reevaluate the Student based on the additional information School staff received regarding the Student, including diagnostic information from the Complainant and information about the impact of the Student's disabilities on her education from the District's XXXX. OCR acknowledges that, during this time, the District did conduct a special education evaluation of the Student. However, OCR was unable to confirm that the District conducted a separate eligibility determination under Section 504. Prior to the conclusion of OCR investigation of this matter, District agreed to resolve this issue via the enclosed Resolution Agreement.

## **Conclusion**

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on March 7, 2018, which, when fully implemented, will resolve the allegations raised in this complaint as well as the additional concern identified by OCR. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District 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.

This concludes OCR's investigation of the complaint. This letter 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 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Katie Teigen, the OCR attorney assigned to this complaint, at 202-453-5564 or [Katie.Teigen@ed.gov](mailto:Katie.Teigen@ed.gov).

Sincerely,

/s/

Kristi R. Harris  
Team Leader, Team IV  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Mr. Dave Duff – Counsel for the District