



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

December 2, 2019

Dr. Christina Melton
Superintendent
Lexington/Richland School District 5
1020 Dutch Fork Road
Irmo, SC 29063

RE: OCR Complaint No. 11-19-1384
Resolution Letter

Dear Dr. Melton:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on June 5, 2019 against Lexington/Richland School District 5 (the District). The complaint alleges that the District discriminated against the Student when, in the Spring of 2019, it failed to provide the Student with a medically safe environment for her disability (peanut allergy).

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.

During the investigation to date, OCR reviewed information provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the District expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

During the 2018-2019 academic year, the Student had an Individualized Education Program (IEP) for a speech language impairment and an Individual Health Care Plan (Health Plan). OCR

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determined that the Health Plan addressed, in part, “allergic responses to Nuts, Eggs, Dairy, Strawberries.” The Complainant alleges that the District failed to provide the Student with a medically safe learning environment when peanut butter sandwiches were served as the sole lunch option on a school sanctioned field trip in or around March 2019. The Complainant also alleged that the District’s failure to ensure a safe learning environment for the Student led to the Student developing anxiety related to a fear of having an allergic reaction at school, requiring XXXX. XXXX.

The District confirmed to OCR that on April 11, 2019, the School served peanut butter sandwiches for lunch during Field Day at the School. It added that ham and cheese sandwiches were served as an alternative for students with nut allergies.

OCR found that XXXX, the Student’s Physician noted that he was recommending XXXX instruction due to “anxiety regarding exposure” to allergens. XXXX.

Allegation 1: The District discriminated against the Student when, in the Spring of 2019, it failed to provide the Student with a medically safe environment for her disability (peanut allergy).

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. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard.

In addition to the requirement to provide FAPE, the Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a school district’s programs or activities on the basis of disability. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a). The Title II regulation, at 28 C.F.R. § 35.130(b)(7), also requires school districts to make reasonable modifications to 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 the above provisions to require that school districts ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities. As the vast majority of students without disabilities do not face a significant possibility of experiencing serious or even life-threatening reactions to their environment while they attend school, Section 504 and Title II require that school districts provide students with serious medical conditions (including allergy-related disabilities) with a medically safe

environment in which they do not face the possibility of serious or life-threatening reactions to their environment.

To provide FAPE to a student with an allergy-related disability and meet the standards referenced above, a school district must have a plan to meet the student's individualized needs. The plan must be based on an individualized consideration of the student's needs and should take into account procedures that limit or prevent the risk of exposure to the allergens in each type of school program or activity in which the student participates, including programs taking place in classrooms and common areas, the gymnasium, the cafeteria, and hallways, and during recess, extracurricular activities, field trips, and school-related activities. The plan should also set out procedures to follow when the student is exposed to allergens. A health care plan may comply with the provisions of Section 504, provided that the school district complies with the procedural requirements of the Section 504 regulation with respect to evaluation, placement, and procedural safeguards.

Analysis

OCR determined that the Student's Health Plan acknowledged that the Student has a severe nut allergy that could be "potentially life threatening." Additionally, the Student's Health Plan indicates that steps will be taken to ensure that the cafeteria and the classroom remain allergen free environments. Specifically, parents will be notified of the need to bring alternative foods for treats and celebrations, and the teacher will make classroom modifications as necessary to ensure the Student's safety. However, OCR's review of the documentation found that there is no provision in the Student's Health Plan or elsewhere to prevent an allergic reaction when the Student is on a field trip. The only field trip specific provisions found in the Student's plans are two provisions in the Health Plan directing the Student's teacher to carry a copy of the Student's Emergency Care Plan and medications with her on any class field trips. These provisions appear to be meant to address the appropriate response should the Student have an allergic reaction requiring emergency intervention. It does not include any provisions, however, to prevent the reaction in the first place. As such, OCR is concerned that the District's failure to limit or prevent the risk of exposure to allergens on field trips, including field day on XXXX, 2019, may have deprived the Student of a medically safe environment.

On December 2, 2019, the District signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the District to offer the Student the opportunity to return to the School and participate, with the Complainant, in a meeting to determine what, if any, modifications should be made in order to provide the Student with a medically safe environment on field trips, as well as to determine whether any compensatory services are required as a result of the Student potentially developing anxiety resulting in homebound instruction during the 2018-2019 academic year. The Resolution Agreement will also require that relevant staff are trained on the District's obligation to provide students with allergies with a medically safe environment in all programs and activities. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District has fulfilled the terms of the Agreement.

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 Sebastian Amar, the OCR attorney assigned to this complaint, at 202-453-6023 or Sebastian.amar@ed.gov.

Sincerely,

David Hensel
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX