



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

XXXXXX xx, xxxx

Kathryn Perrico, Esq.
Walter Haverfield LLP
The Tower at Erieview
1301 East 9th Street, Suite 3500
Cleveland, Ohio 44114-1821

Re: OCR Docket No. 15-17-1269

Dear Ms. Perrico:

This letter is to notify you of the disposition of the above-referenced complaint filed February 14, 2017, against Boardman Local Schools (the District) with the U.S. Department of Education (the Department), Office for Civil Rights (OCR). The complaint alleged that the District discriminated against the Complainant's son (the Student) on the basis of disability (food allergies). Specifically, the complaint alleged that the District failed to implement the Student's Section 504 plan by giving the students in the Student's XXXX classroom Snickers bars and other snacks that were not on the Student's safe snack list on February 14, 2017.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department and as a public school system, the District is subject to Section 504 and Title II. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issue(s):

- Whether the District denied a student with a disability a free and appropriate public education by failing to fully implement his Section 504 plan in violation of Section 504's implementing regulation at 34 C.F.R. § 104.33.

To conduct its investigation, OCR interviewed the Complainant and relevant District staff. OCR also reviewed documentation provided by the Complainant and the District. Prior to the completion of OCR's investigation, the District asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). The District signed the enclosed Resolution Agreement (the Agreement), which, once implemented, will fully address

any compliance issues raised by the complaint allegation. OCR sets forth below a summary of its investigation to date.

OCR's Investigation to Date

The Student was enrolled in the XXXXX grade at XXXXX XXXXX XXXXXX during the 2016-2017 school year. The Student was on a Section 504 plan due to his allergies to peanuts, tree nuts and shellfish. OCR reviewed the Section 504 plan in effect in February 2017, which provided, in part, that there would be no peanuts, tree nuts or XXXXX allowed in the Student's general education classroom unless these items were in a closed lunch bag. The Section 504 plan further provided that "...all classroom snacks/treats will come from the safe snack list for all students within the general education classroom."

On February 14, 2017, the Student's class had a Valentine's Day party. The Complainant stated that everyone in the Student's class received a bag of candy that included Snickers bars and other items that are not on the Student's safe snack list. The Complainant said that the teacher told the students to only eat Skittles and to not open any other candy. However, the Complainant stated that she was in the school that day to pick up the Student and she personally observed students from the Student's classroom walking down the hall with open Snickers bars. The Complainant stated that the Student's bag was the same as everyone else's and contained the Snickers bar and other items not on the safe snack list. The Complainant did not allege that the Student had an allergic reaction.

OCR interviewed the Student's teacher, who stated that on the day of the party, students brought in treats to share with the class. He stated that he went through the treats to make sure they were on the safe snack list. He stated that he has about 20 students, so it was a lot, but he did his best to go through everyone's treats. He stated that everything was sealed and ok to be in the room from what he saw. He stated that prior to the party, he had a fellow teacher help him double check the treats. He acknowledged, however, that certain items not on the safe snack list were passed out to the students. However, he stated that he wrote on the board and told the students verbally that they were only allowed to open certain treats that were on the safe snack list. He said that the other treats remained sealed. He stated that he could not say whether the Student was given any treats not on the safe snack list. OCR also interviewed the teacher who assisted the classroom teacher in checking the candy, who confirmed that he they reviewed the treats to ensure they were on the safe snack list. He also stated that the Student's classroom teacher told students not to open the treats in the classroom.

Applicable Legal Standard

The Section 504 implementing regulation at 34 C.F.R. § 104.33 requires recipients of federal financial assistance to provide qualified students with disabilities with a free appropriate public education (FAPE). The Section 504 implementing regulation at 34 C.F.R. § 104.33 (b)(1) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students who have a disability as adequately as the needs of students who do not have disabilities are met.

As Title II offers no greater protections in this instance than Section 504, OCR applied Section 504 in analyzing the allegation of denial of FAPE in the instant case.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a student's Section 504 team determined were necessary to provide the student with FAPE. OCR then determines whether the recipient provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

Voluntary Resolution and Conclusion

The evidence obtained by OCR to date is enough to cause concern that the Student was denied a FAPE. The Student's Section 504 plan states that snacks in the Student's classroom were to be from the safe snack list and that no peanuts, tree nuts or XXXXX were allowed in the Student's general education classroom unless these items were in a closed lunch bag. The Student's teacher acknowledged that items not on the safe snack list were distributed in the Student's classroom during the Valentine's day party but asserted that these items were sealed and not opened in the classroom. However, the Student's mother indicated that the Student himself was given multiple items not on the safe snack list, and she observed students in the hallway with open Snickers bars. The teacher himself could not say whether the Student was given items not on the safe snack list. This evidence raises a concern that the Student's Section 504 plan was not being followed and that he was potentially denied a FAPE.

As noted above, prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of the CPM. To complete its investigation, OCR would need to conduct more interviews, including with parents who were volunteering during the party. On June 24, 2019, the District signed the enclosed Agreement, which, when fully implemented, will address the compliance concerns OCR identified. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation 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 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.

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 individual 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, OCR 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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the District's first monitoring report by August 1, 2019. For questions about implementation of the Agreement, please contact Mr. David Schwark. Mr. Schwark will be overseeing the monitoring and can be reached by telephone at (216) 522-7629 or by e-mail at David.Schwark@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

/s/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure