



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

REGION IX

CALIFORNIA

August 1, 2016

Stan Dobbs
Superintendent
Hayward Unified School District
24411 Amador Street
Hayward, California 94544

(In reply, please refer to case no. 09-16-1003.)

Dear Superintendent Dobbs:

The U.S. Department of Education, Office for Civil Rights (OCR), has reached a resolution in the above-referenced complaint of disability discrimination against Hayward Unified School District (District). The Complainant alleged that the District discriminated against her son (the Student),¹ on the basis of disability (peanut allergy), when it denied him a free appropriate public education (FAPE). Specifically, the issue OCR opened for investigation was whether the District failed to implement a provision of the Student's Section 504 plan when a District employee failed to administer medication to him after he ate food containing peanuts and developed hives and respiratory problems.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in education programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended (Title II), and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. Because the District receives funds from the Department and is a public education system, it is subject to Section 504, Title II, and their implementing regulations.

OCR gathered preliminary evidence through a review of student records, and interviews with the Complainant and a District administrator of student placement. Under OCR's complaint processing procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Case Processing Manual § 302. During the course of OCR's investigation process, the District expressed an interest in resolving the complaint. On

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

July 27, 2016, the District submitted a Resolution Agreement which, when implemented, is intended to resolve OCR's compliance concerns in this investigation. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Section 504 and Title II, or their implementing regulations.

The applicable legal standards, the facts considered during the preliminary investigation, and the reasons for our determination are summarized below.

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. 34 C.F.R. §104.33(b)(2). 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.

Facts Considered

- The Student has been enrolled in the District since the fall of 2014. During the 2014-2015 school year (the time of the events in this case), the Student was a kindergartner. The District has been aware of the Student's peanut allergy at least since September X, 2014, when the Student's medical provider sent information about his allergy to the school.
- A 504 meeting took place on December X, 2014, and a 504 plan was adopted. That plan required, among other things, that the "[o]ffice staff/teacher ... keep an 'EpiPen' to use in case of emergency, [. . .] call 911 and administer medication." The plan noted that an allergic reaction could produce swelling and nausea, as well as other symptoms.
- On Monday, April XX, 2015, after lunch, during the recess that occurs before students return to class, the Student ate something brought to school by one of his peers. Soon after, a member of the school staff called the Complainant to tell her that the Student looked ill and was trembling.
- The Student complained to his classroom teacher that he did not feel well. He was asked by the teacher if he had eaten anything with peanuts and he responded in the negative. His classroom teacher sent the Student to the front office.

- The Complainant was then called to the school by a member of the front office staff. The front office staff also asked the Student, XX XXXXXXXX XXX XXXXXXXX, if he had eaten anything with peanuts, to which he again said “no.”
- The Complainant informed OCR that, when she arrived at the school, she noticed that the Student was having an allergic reaction, as his face was swollen. The Complainant stated that she asked the front office staff for the EpiPen that is kept in that location. A member of the front office staff told her that the nurse was not on-site that day and that she was the only person who had access to them.
- Complainant drove her son to the emergency room, where he was admitted for an anaphylactic reaction and treated. The medical staff told her to keep her son home the rest of the week, resulting in the Student missing three additional days of school.

Analysis

Section 504 requires school districts to provide a FAPE to students with disabilities. In this case, the Student’s December X, 2014 Section 504 Plan is the document that identifies the related accommodations, aids and services to which the Student is entitled to be able to access a FAPE. The Section 504 Plan, although lacking in detail, required that office staff and the teacher would have an EpiPen to use for the Student in the case of an emergency. The Complainant’s account of the events surrounding the Student’s allergic reaction on April XX, 2015, raises concerns that school staff may not have been able to implement the Student’s Section 504 plan in light of their apparent lack of access to the EpiPens on that day, as well as their alleged failure to recognize the symptoms of an allergic reaction. OCR recognizes that several members of the school staff asked the Student if he had ingested any peanuts and that each time he responded that he had not. However, in light of the Student’s age and the physical manifestations that the Section 504 plan notes will accompany an allergic reaction, it is concerning that the school staff seemed to require self-reporting as a precursor to administration of the EpiPen.

Prior to the conclusion of the investigation, the District expressed an interest in voluntarily resolving the concerns identified by OCR in this case. To complete its investigation and make a finding in this case, OCR would have conducted interviews with school site staff, including the classroom teacher, the front office staff and the school nurse to confirm the Complainant’s account and events of that day, including whether the student manifested a reaction. However, on July 27, 2016, the District submitted a Resolution Agreement in which the District agreed to 1) convene 504 meeting at which the participants will determine: (a) sufficient emergency response policies and procedures in the event of anaphylactic or other serious food allergy-related reactions, and will specifically identify the District staff responsible for emergency responses; (b) the individuals who will be responsible for administering epinephrine or any other necessary medication to Student, such that there are at least two School staff member with sufficient training and access to the epinephrine at all times the Student is on-site or participating at a District-sponsored activity; and (c)

whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide appropriate regular and/or special education or related services. If so, within one week of its determination, the group will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond January 1, 2017; and (2) provide comprehensive training on food allergies and the implementation of the Student's Section 504 and related plans to all District staff responsible for the immediate custodial supervision or care of Student. The training will include, among other things, identifying when students need to be administered epinephrine.

When fully implemented, the Resolution Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the agreement until the District is in compliance with Section 504, Title II, and their implementing regulations. Therefore, OCR is closing this case as of the date of this letter, and notifying the Complainant concurrently.

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. 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 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 or Student 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, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank your staff, especially XXX XXXXXX, for their cooperation and courtesy in resolving this matter. If you have any questions regarding this letter, please contact Araceli Martínez-Olguín, Civil Rights Attorney, at (415) 486-5589 or amartinez-olguin@ed.gov.

Sincerely,

/S/

Katherine Riggs
Acting Team Leader

Enclosure: Resolution Agreement

cc: XXX XXXXXX, District Administrator of Student Placement
[via email]