

115 LRP 17584

**West Genesee (NY) Central School
District**

**Office for Civil Rights, Eastern Division,
New York (New York)**

02-14-1479

March 9, 2015

Related Index Numbers

405.076 Section 504 Plans

**310. MEDICAL SERVICES/MEDICALLY
FRAGILE STUDENTS**

415.030 Medical Services

405.087 Transportation

405.030 Discrimination

10.028 Diabetes

405.028 Diabetes

405.043 FAPE

Judge / Administrative Officer

Timothy C.J. Blanchard

Case Summary

A New York district's failure to deliver a student's diabetes plan to his bus drivers at the beginning of the year constituted a Section 504 violation. The sixth-grader's 504 plan required that all staff review his emergency care plan and diabetes plan when the school year began. His parents alleged in an OCR complaint that as of the second day of school, no one had reviewed the student's plans with his bus drivers or informed them of the student's condition. OCR noted that a district must provide students with disabilities with FAPE, or regular or special education and related services that are designed to meet their individual needs as adequately as the needs of non-disabled students are met. OCR observed that the district had no written policy specifying the procedure for disseminating students' plans and reviewing them with drivers. The district reviewed policies and procedures with drivers twice a year, but this didn't include a review of students' specific plans, OCR remarked. Furthermore, a staff

member admitted that she waited until after school started to revise the child's plans and contact the transportation department. OCR learned that each bus driver had a binder containing students' 504 plans and health plans. The student's drivers had his current emergency care plan and 504 plan in their binders, continued OCR, but they only had the previous school year's diabetes plan. Because it was the student's first year in middle school, the emergency contact information was out of date, OCR explained. It concluded that the district didn't adequately implement the middle schooler's 504 plan. The district agreed to develop a written policy to ensure the necessary review of health plans by staff at the beginning of each school year. It also agreed to ensure that up-to-date health care and diabetes plans would be furnished to all staff, including drivers, before the first day of the 2015-16 school year.

Full Text

Appearances:

Dear Dr. Brown:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the West Genesee Central School District. The complainants alleged that the District discriminated against their son (the Student), on the basis of his disability, by failing to review the Student's Diabetes Medical Management Plan (DMMP) and Emergency Care Plan (ECP) with the Student's school bus driver from West Genesee Middle School (the School) at the beginning of school year 2014-2015, as required by the Student's Section 504 Plan (Allegation 1). The complainants also alleged that [] discriminated against the Student, on the basis of his disability, by refusing to confirm that the Student's blood glucose levels were safe before the Student boarded the school bus at the end of each school day, as required by the Student's Section 504 Plan for school year 2014-2015 (Allegation 2).

OCR is responsible for enforcing Section 504 of

the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires a recipient to provide a free, appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction. The provision of a FAPE is the provision of regular or special education and related services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met. Further, the regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(iii), states that a public entity may not, on the basis of disability, provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as that provided to others.

In its investigation, OCR interviewed the complainants and District staff. OCR also reviewed documentation that the complainants and the District submitted. OCR made the following determinations.

The Student was enrolled in the 6th grade at the School during school year 2014-2015; and, had a Section 504 Plan, dated October 29, 2013, requiring the provision of related aids and services for his

disability (Type 1 diabetes). The first day of school for students enrolled in the District for school year 2014-2015 was September 2, 2014.

With respect to Allegation 1, the complainants alleged that the District discriminated against the Student, on the basis of his disability, by failing to review the Student's DMMP and ECP with the Student's school bus driver at the beginning of school year 2014-2015, as required by the Student's Section 504 Plan. The complainants asserted that as of September 3, 2014, the second day of school, the Student's bus driver was not aware that the Student had diabetes and did not have a copy of the Student's DMMP or ECP.

The Student's DMMP is an eight-page document completed by the Student's physician that includes contact information, recommendations for hypoglycemia and hyperglycemia treatment, and insulin therapy. The Student's ECP is a four-page document that includes contact information, hypoglycemia and hyperglycemia symptoms, and treatment recommendations. The Student's Section 504 Plan for school year 2014-2015 states: "The [Student's] DMMP and [ECP] will be reviewed with all staff at the beginning of each year or at any time when new staff is working with [the Student] on a regular basis."

The District does not have a written policy or procedure outlining the process by which the District is to provide students' DMMPs and ECPs to the Transportation Department or review these with bus drivers. The District's Assistant Superintendent for Human Resources (the Assistant Superintendent) sent an electronic mail message (email) to District nurses, [] dated September 3, 2014, in which she reminded the nurses that ECPs must be reviewed annually and forwarded to the Transportation Department for placement on the school buses. The email further states that the District would like to have ECPs on the buses prior to the start of the school year so that bus drivers are fully aware of any medical conditions for their students. The Assistant Superintendent noted that some of this information had not been provided

to the Transportation Department as of September 3, 2014; and, reminded the nurses that the District provides 10 days during the summer for nurses to collect ECPs to have them ready for the opening of school.

The Principal stated that it is the [] responsibility to collect and review students' ECPs and DMMPs with parents; and, to provide copies of the ECPs and DMMPs to the District's Transportation Department prior to the first day of school. OCR determined that there is no policy or procedure in place for reviewing ECPs and DMMPs with the Transportation Department or with staff. At the end of each school year, the District elementary schools forward ECPs to [] for those students enrolling in the School for the next school year.

The [] acknowledged to OCR that she had no contact with the Transportation Department prior to the start of the school year. She stated that she does not send an ECP to the Transportation Department until after she has reviewed it with a student's parent/guardian to determine if there are any changes to be made on the ECP; and, this typically does not take place until the start of the school year. The [] stated that after reviewing the Student's ECP with the complainants during a meeting on September 3, 2014, she faxed the Student's ECP for school year 2014-2015 to the Transportation Department; she could not recall if she also forwarded the Student's DMMP. Following the meeting on September 3, 2014, the Principal confirmed that the Transportation Department had received the ECP from the [] that day. The Principal did not recall inquiring about the Student's DMMP, because it is typically attached to the ECP. The District did not provide any information to indicate that the [] or any other staff reviewed the ECP or DMMP with the bus driver.

Bus drivers in the District attend a "refresher" every August and January to review policies, procedures and practices related to student safety, discipline, and medical emergencies. At that time, a nurse is available to generally discuss allergies, diabetes, and other potential medical emergencies, but

specific students' ECPs are not reviewed with the bus drivers at this time. Bus drivers also maintain "bus binders" that include documentation pertaining to students on their routes, including ECPs that the Transportation Department receives at the beginning of the school year. The Student's bus drivers informed OCR that they review the information in their binders, but no one from the District specifically reviews students' ECPs with them; if they have questions regarding a student's ECP, the driver can contact a supervisor or the nurse. OCR reviewed the bus binders for the regular and late bus drivers for their respective routes for school year 2014-2105. Both included copies of the Student's ECP for school year 2014-2015, dated September 3, 2014; the Student's DMMP for school year 2013-2014, dated September 2, 2013; and the Student's Section 504 Plans for school years 2013 2014 and 2014-2015. The binders did not contain a copy of the Student's DMMP for school year 2014-2015. OCR determined that because the Student's DMMP for school year 2013-2014 was a year old, it contained outdated information; specifically, the 2013-2014 DMMP identified the Student's school as Stonehedge Elementary School, as opposed to the School, with contact information for the nurse at Stonehedge, as opposed to [] and former work telephone numbers for the complainants.¹

Based on the foregoing, OCR determined that the District failed to review the Student's DMMP and ECP with the Student's school bus driver at the beginning of school year 2014-2015 as required by the Student's Section 504 Plan. OCR determined that the [] forwarded a copy of the Student's ECP for school year 2014-2015 to the Transportation Department on September 3, 2014, one day after the first day of school; however, OCR determined that neither the regular bus driver nor the driver of the late bus was provided a copy of the Student's DMMP for school year 2014-2015, and no staff member reviewed these documents with the bus drivers. Although the bus drivers had copies of the Student's DMMP for school year 2013-2014, it included outdated and inaccurate information.

On March 3, 2015, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in Allegation 1. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

With respect to Allegation 2, the complainants alleged that [] discriminated against the Student, on the basis of his disability, by refusing to confirm that the Student's blood glucose levels were safe before the Student boarded the school bus at the end of each school day, as required by the Student's Section 504 Plan for school year 2014-2015.

The Student's Section 504 Plan states: "Prior to getting on the school bus, [the Student] will test his glucose level and via his cell phone, will share the results with [] and his parent, at which time treatment, if any, will be determined." The Section 504 Plan further states: "Follow DMMP for glucose testing. DMMP Attachment to 504 Plan." The DMMP indicates that the Student should be treated for hypoglycemia [].

During a meeting on September 3, 2014, which the Principal, [] and the complainants attended, it was agreed that each day before dismissal, one of the complainants would call the health office to share the Student's blood glucose levels, and either give permission for the Student to board the bus or have the Student picked up by either parent. If the health office did not hear from the complainants by the end of the day, the health office would contact the complainants. If the health office was unable to reach the complainants before the bus departed, the Student would not be allowed to board the bus.

In support of their allegation, the complainants asserted that on November 18, 2014, they had not provided the health office with the Student's blood glucose levels before dismissal; and the Student boarded the bus without [] being aware of his levels. The complainants did not provide any other dates that this provision of the Student's Section 504 Plan was allegedly not followed.

[] informed OCR that she typically received a call from the complainants before dismissal with the Student's blood glucose levels; and an indication as to whether the Student was correcting with a snack and boarding the bus, staying after school and taking the late bus, or being picked up. She stated that she notated the Student's blood glucose levels on the calendar and indicated whether the Student was boarding the bus, correcting, staying late, or being picked up. [] both stated that each day before the bus departed after dismissal, [] consulted the Student's blood glucose levels on the calendar or the [] reported the Student's levels to her. The [] notes from November 18, 2014, indicate that she contacted the complainants at dismissal because they had not contacted her with the Student's blood glucose levels; and the complainants advised the [] that the Student's blood glucose level was 95 mg/dL and he had had some juice, and that the Student could take the bus home. The complainants did not provide and OCR could not find evidence to support their assertion that the Student boarded the bus at dismissal without the health office first receiving and the [] reviewing his blood glucose levels on November 18, 2014, or any other date.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the [] discriminated against the Student, on the basis of his disability, by refusing to confirm that the Student's blood glucose levels were safe before the Student boarded the school bus at the end of each school day, as required by the Student's Section 504 Plan for school year 2014-2015. Accordingly, OCR will take no further action with respect to Allegation 2.

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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that 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 complainants 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, it 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.

If you have any questions about OCR's determination, please contact Richard Anderson, Equal Opportunity Specialist, at (646) 428-3781 or richard.anderson@ed.gov.

Resolution Agreement

West Genesee Central School District

In order to resolve Case No. 02-14-1479, the West Genesee Central School District assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35.

Action Item 1

By April 15, 2015, the District will develop a written policy requiring the review, with all appropriate staff (including bus drivers) by the last business day preceding the commencement of the school year, of the Emergency Care Plan (ECP)

and/or the Diabetes Medical Management Plan (DMMP) of each student with a disability whose Section 504 Plan or Individualized Education Program (IEP) requires the review of such documents at the beginning of a school year.

Reporting Requirement

a) By April 15, 2015, the District will provide a copy of the policy to OCR for review and approval.

b) Within 30 days of OCR's approval of the policy, the District will provide documentation to OCR demonstrating that it has formally adopted the policy; updated any relevant printed publications and/or on-line publications with the newly adopted policy (inserts may be used pending reprinting of these publications); and electronically disseminated the policy to staff. This documentation will include, at a minimum (i) printouts or a link to all on-line publications containing the policy; (ii) evidence of the electronic dissemination of the policy to staff; and (iii) if not yet finalized, copies of inserts for printed publications.

c) By June 30, 2015, the District will provide to OCR copies of the printed versions of any publications disseminated to staff containing the policy.

Action Item 2

By April 15, 2015, the District will review, with all appropriate staff (including bus drivers), the ECP and/or the DMMP of each student with a disability (including the Student) whose Section 504 Plan or IEP for school year 2014-2015 required the review of such documents. This review will be in addition to any and all reviews relative to school year 2014-2015 conducted prior to the date of this agreement.

Reporting Requirement: By May 1, 2015, the District will provide documentation to OCR demonstrating that it has complied with Action Item 2; such as a log indicating the name of the student, date of the review with appropriate staff, and the names of the staff members conducting the review and receiving the review.

Action Item 3

By the last business day preceding the commencement of school year 2015-2016, the District will ensure that all appropriate staff (including bus drivers) have received copies of ECPs and DMMPs for each student with a disability whose Section 504 Plan or IEP for school year 2015-2016 require the review of such documents; and, that these documents are reviewed with these staff members. Any additional relevant staff that are newly assigned to one of these students after such date, will receive the appropriate review within ten (10) days of assignment.

Reporting Requirement

a) By September 15, 2015, the District will provide documentation to OCR demonstrating that it has complied with the portion of Action Item 3 related to the review conducted with appropriate staff by the last business day preceding the commencement of school year 2015-2016; such as a log indicating the name of the student, date of the review with appropriate staff, and the names of the staff members conducting the review and receiving the review.

b) By June 15, 2016, the District will provide documentation to OCR demonstrating that it has complied with the portion of Action Item 3 related to the review conducted with additional relevant staff assigned to one of these students after the last business day preceding the commencement of school year 2015-2016; such as a log indicating the name of the student, date of the review with appropriate staff, and the names of the staff members conducting the review and receiving the review.

The District understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33(a), and the ADA, at 28 C.F.R. § 35.130 (b)(1)(iii), which were at issue in this case. The District also understands that by signing this agreement, it agrees to provide data and other

information in a timely manner in accordance with the reporting requirements of this agreement. Further, the District understands that during the monitoring of this agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33(a), and the ADA, at 28 C.F.R. § 35.130 (b)(1)(iii), which were at issue in this case. The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceeding to enforce this agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

¹All other information in the DMMP for the school year 2013-2014 is identical to the DMMP for the school year 2014-2015.

Statutes Cited

29 USC 794
42 USC 12131

Regulations Cited

34 CFR 104.33
28 CFR 35.130(b)(1)(iii)