

60 IDELR 261

113 LRP 9949

**Sarasota County (FL) School District
Office for Civil Rights, Southern Division,
Atlanta (Florida)**

04-09-1571

October 1, 2012

Related Index Numbers

10.030 Discrimination

405.030 Discrimination

415.060 School Health Services

200.045 Related Services

415.020 In General

Judge / Administrative Officer

Cynthia G. Pierre, Regional Director

Case Summary

The fact that a child's neighborhood elementary school did not have a full-time registered nurse on staff did not justify a Florida district's practice of having the parent come to school each day to administer the child's insulin. Noting that Florida law allowed nonmedical personnel to administer insulin, OCR found that the district violated Section 504 and Title II. OCR noted that Florida law prohibits districts from assigning students with diabetes to particular schools based on the lack of full-time nurses or diabetes-trained personnel at the schools they would otherwise attend. It also requires districts to provide insulin-related services at the schools those students would attend if they did not have diabetes. Although the district revised its policies after the law took effect to ensure that students with diabetes could attend their neighborhood schools, OCR observed that the district still required the parent to come to school to address the child's diabetes-related needs. "[The neighborhood school's staff] was not trained to use [the child's] insulin pump, and it was necessary for the parent to be available for the administration of insulin," OCR wrote. Further investigation revealed that the district required parents of other children who were unable to self-monitor their diabetes to come to school and

administer their children's insulin. By failing to administer insulin, OCR explained, the district improperly shifted its burden to provide related services. OCR found the district could resolve the compliance concern by providing insulin-related services to students with disabilities without relying on parental involvement.

Full Text

Appearances:

Dear Ms. White:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint alleging discrimination on the basis of disability against Sarasota County School District (District).

The Advocacy Center for Persons with Disabilities, Inc., (Complainant) filed the complaint on behalf of a Parent, alleging that the District is discriminating against the Parent's son, (Student), a qualified student with a disability (diabetes) and other similarly situated students with diabetes at Tuttle Elementary (Tuttle) and Gulf Gate Elementary (Gulf Gate) Schools. Specifically, the Complainant alleged that the District has denied the Student and others a free appropriate public education (FAPE) by:

1. Failing to implement an Individualized Education Program (IEP) for the Student after he transferred into the District from Manatee County in Spring 2009;
2. Requiring the Student and other diabetic students at Tuttle to attend Gulf Gate, based on the District's policy;
3. Requiring the Student's Parent to come to Tuttle to provide the Student with necessary related aids and services pertaining to the Student's diabetes; and
4. Failing to provide the Parent with notice of her procedural safeguard rights regarding educational decisions affecting the Student.

Jurisdiction

As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. As a public entity, the District is also subject to Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability. Accordingly, OCR has jurisdiction over this complaint.

OCR's investigation of the complaint included an analysis of data provided by both parties and interviews with the Complainant and District staff. OCR also interviewed parents of other students with diabetes. After a thorough review of all of the evidence, OCR has determined that there is sufficient evidence to support a finding of noncompliance with respect to the provision of a FAPE for the Student, implementing a policy which discriminates against the Student and other students with diabetes and the failure to evaluate students with health impairments to determine if they are students with disabilities as defined by Section 504 and Title II. The factual and legal bases for our determination are set forth below.

Issues

Based on the above allegations, OCR investigated the following legal issues:

1. Whether the District denied the Student access to its preschool program in the spring of 2009 in noncompliance with 34 C.F.R. § 104.38 of the Section 504 regulation and 28 C.F.R. § 35.130(a) of the Title II regulation.¹

2. Whether the District's policy of requiring students who cannot self-manage their diabetes to attend Gulf Gate Elementary discriminates on the basis of disability in noncompliance with the Section 504 regulation at 34 C.F.R. § 104.33(a) and (b) of the Section 504 regulation and 28 C.F.R. § 35.130 of the Title II regulation.²

3. Whether the District denied the Parent her procedural safeguard rights when it placed the Student in Gulf Gate in noncompliance with the Section 504 regulation at 34 C.F.R. § 104.36 and Title II regulation at 28 C.F.R. § 35.130.

OCR's investigation of the complaint included an analysis of data provided by both parties, an on-site visit, and interviews of witnesses identified by the Complainant and the District. OCR reviewed the evidence under the preponderance of the evidence standard. Under a preponderance of the evidence standard, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. The factual and legal bases for our determination are set forth below.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.3(j)(1)(i) and (iii), which OCR interprets to include the recently expanded definitions from the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), defines a disabled person as any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The regulation implementing Section 504 at 34 C.F.R. § 104.3(j)(2)(i), which OCR interprets to include the recently expanded definitions from the ADAAA, defines physical or mental impairment as (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulation implementing Section 504 at 34 C.F.R. § 104.3(j)(2)(ii), which OCR interprets to include the

recently expanded definitions from the ADA, provides that the phrase "major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. The ADA added the following examples of major life activities to this non-exhaustive list: eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating, and functions of the immune system, normal cell growth, digestive, bowel, bladder, brain, circulatory, endocrine, reproductive, neurological, and respiratory functions.

The regulation implementing Section 504 at 34 C.F.R. § 104.33 provides (a) a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability; and (b)(1) for the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.

The regulation implementing Section 504 at 34 C.F.R. § 104.35(a-c) requires a recipient to conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any actions with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services which ensure that: tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions

provided by their producer; tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). In interpreting evaluation data and in making placement decisions, a recipient shall draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and, ensure that the placement decision is made in conformity with the regulation implementing Section 504 at 34 C.F.R. § 104.34.

The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires a recipient to establish and implement a system of procedural safeguards, which includes notice, an opportunity to inspect records and an impartial hearing pertaining to the identification, evaluation or educational placement of students who because of disability need or are believed to need special education or related services.

Pursuant to the regulation implementing Section 504 at 34 C.F.R. § 104.38, a recipient to which this subpart applies that provides preschool education or day care or adult education may not, on the basis of disability, exclude qualified disabled persons and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided.

The regulation implementing Title II at 28 C.F.R. § 35.130 is interpreted consistently with the Section 504 regulations previously cited.

Factual Findings and Analysis

1. Whether the District Denied the Student Access to Its Preschool Program in the Spring of 2009 in Noncompliance With 34 C.F.R. § 104.38 of the Section 504 Regulation and 28 C.F.R. § 35.130(a) of the Title II Regulation

The Student's family relocated from Manatee County in Florida to the District in late February 2009. The Student was in a pre-school program in his previous district. The Student's IEP from Manatee County required provision of occupational therapy (OT) and speech language services (SL) to the Student.

On March 16, 2009, District staff met with the Student's mother (Parent) and developed an IEP for implementation by the District. This IEP also provided for the Student to receive OT and SL, as a walk-in student. The District's admissions policy requires an updated immunization record and physical examination. In spite of several attempts by the Parent and the District to obtain the records from Manatee County, the District did not receive the Student's records in time for him to enroll in the preschool program prior to the end of the 2008-2009 school year.

Conclusion

Evidence shows that the District requires all incoming students to provide requisite medical records before attending a District school. In this regard, the Student was treated no differently than other District students. Additionally the regulations implementing Section 504 and Title II do not require the provision of a FAPE to students with disabilities at the preschool level. Both Section 504 and Title II require districts to provide equal access to preschool programs regardless of disability. In spite of the efforts of the District and the Parent, the Student's medical records were not obtained prior to the end of

the 2008-2009 school year. The District was prepared to enroll the Student in its preschool program and provide him the same services as he was receiving in his previous district. Only the failure to obtain the necessary medical records prevented the District from enrolling the Student in its preschool program in the spring of 2009. OCR, therefore, concludes, based on the preponderance of the evidence, that there is insufficient evidence to support a finding of noncompliance with Section 504 or Title II with regard to this issue.

2. Whether the District's Policy of Requiring Students Who Cannot Self-Manage Their Diabetes to Attend Gulf Gate Elementary School Discriminates on the Basis of Disability in Noncompliance With the Section 504 Regulation at 34 C.F.R. § 104.33(a) and (b) of the Section 504 Regulation and 28 C.F.R. § 35.130 of the Title II Regulation

At the time this complaint was filed, District policy and practice required students who are unable to manage their diabetes conditions to attend District schools with licensed registered nurses (RNs), as District policy permitted only RNs to administer insulin. Three students attending schools that did not have RNs were transported to schools with RNs, unless the parent was willing to come to school and provide diabetes-related services to them.

The District held a meeting on March 16, 2009 and developed an IEP for the Student. The IEP and an accompanying Individualized Healthcare Plan (IHP) provided for the Student to be transported to Gulf Gate where his diabetes-related service needs would be the responsibility of an RN. The Parent, however, wanted the Student to attend his zoned school, Tuttle. In August 2009, the Complainant, who is an attorney, and the District's legal counsel reached an agreement, at the Parent's request, permitting the Student to attend Tuttle with the stipulation that the Parent was to assume responsibility for injecting the Student's insulin. In order to accomplish this objective, the Parent had to visit Tuttle on a daily basis, check the

Student's glucose level and adjust the Student's insulin pump to insure that the proper dosage was dispensed. The District, however, did not provide a back-up plan to assist the Student in the event that the Parent could not perform this function on any given day.

According to the Parent and school staff, the Parent came to Tuttle on a regular basis to perform the agreed upon tasks. The Parent, however, was periodically unable to go to Tuttle to perform the diabetes-related services the Student requires to attend school safely. On those occasions the Student did not attend school resulting in the Student missing 10 days of school from the beginning of the school year through January 5, 2010.

Although the Parent actively participated in meeting the Student's diabetes-related needs, the schedule of clinic visits for the Student was much the same as that of other students with diabetes who attend Tuttle. The Student went to the health room twice daily. The Student performed his own finger stick; and the clinic aide monitored the Student, recording the glucose level. Just before lunch, the Parent arrived at Tuttle and addressed the Student's need for insulin. The three other students at Tuttle, all of whom self-manage their diabetes, followed a similar procedure: they stopped by the health room two or three times a day to monitor their blood glucose levels and self-administer their insulin, if needed. Statements provided during OCR interviews showed that these students missed no instructional time as a result of the implementation of the plan to self-manage their diabetes. However, unlike the other diabetic students at Tuttle, the District elected to address the Student's diabetes-related needs by having the Parent fulfill the role of a related service provider. The Parent's performance of these duties caused the Student to miss 10 to 15 minutes of instruction per day. Students with diabetes, who attended Gulf Gate, were scheduled to see the nurse for diabetes-related services so that no instructional time was missed. According to the Student's teacher, the Student missed 10 to 15 minutes of instruction per day due to his receipt of diabetes-related services when the

Parent provided the Student's diabetes-related services because the Parent's involvement and interaction with her child generally took longer than it would have had the Student been assisted by a District employee.

During the investigation, the Florida Legislature passed House Bill 747, which became effective on July 1, 2010. The law provides that a school district may not restrict the assignment of a student who has diabetes to a particular school on the basis that the student has diabetes, that the school does not have a full-time school nurse, or that the school does not have trained diabetes personnel.³ Initially, the District representative informed OCR that based on the new law the District has discontinued its practice of allowing only RNs to inject students with insulin, which necessitated transporting students who could not self-manage their diabetes to centralized schools.

Specifically, OCR was informed that the District no longer requires that students attend Gulf Gate if they need insulin administration but are unable to self-administer. The District stated that its new practice is that students with diabetes who need insulin but are unable to self-administer may attend their home schools and the District will have trained staff available to assist them at any school they attend.

OCR learned from the Complainant, after the beginning of the 2010-2011 school year, that the Student's Parent was still being required to come to Tuttle to address the Student's diabetes-related needs. Tuttle staff was not trained to use the Student's insulin pump and it was necessary for the parent to be available for the administration of insulin. The Student's IHP included a provision that the Parent would be called if the Student's glucose level was very high or very low.

In order to determine if the handling of the Student's need for insulin services was an aberration or if parents of other similarly situated students with diabetes are providing for their children's health care in a District school, OCR sent the District a data request on December 22, 2010. OCR asked for the names and contact information of students with diabetes who were unable to self-manage their

condition. In its response the District identified five students in addition to the Student who is the subject of this complaint. OCR was able to reach the parents of four of these students. Two of the four parents told OCR that they must go into school or arrange for someone to go in to school and address their children's diabetes-related needs. In both cases, neither of which involved students attending Tuttle, they were provided the option of permitting the District to transfer their children to a school with a full-time RN.

Analysis and Conclusion

The evidence uncovered during the investigation showed that the District failed to administer insulin to diabetic students who cannot self-manage their diabetes and attend schools that do not have an RN. In addition to the Student, OCR identified two other students with diabetes whose parents were required to be active participants in the delivery of related services to their children attending a District school. The District's practice has the effect of shifting the District's responsibility to provide this related service from itself to parents. For students who have an IEP or Section 504 Plan requiring insulin doses during the school day, insulin administration is one of the related aids and services that a district must provide as part of its FAPE obligations pursuant to the regulation implementing Section 504 at 34 C.F.R. § 104.33(a) and (b). Accordingly, the District must provide insulin administration services at the schools attended by the Student and the other two students whose parents are currently required to provide insulin administration services for their children.

Further, prior to implementation of the District practice, the Student was denied FAPE on days that he was unable to attend school because the Parent was unavailable to provide insulin administration services. Imposing the burden on the Parent to provide insulin related services to the Student is contrary to the requirement in the regulation implementing Section 504 at § 104.33(a) that recipients "provide a *free* appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction,

regardless of the nature or severity of the person's disability." (emphasis added)

OCR, therefore, concludes that, based on the preponderance of the evidence, the District is in noncompliance with the regulations implementing Section 504 and Title II.

3. Whether the District Denied the Parent Her Procedural Safeguard Rights When It Placed the Student in Gulf Gate in Noncompliance With the Section 504 Regulation at 34 C.F.R. § 104.36 and Title II Regulation at 28 C.F.R. § 35.130

As stated previously, the District initially placed the Student in Gulf Gate when the family relocated into the District. During an interview with OCR, the Complainant reported that following the initial placement meeting held on March 16, 2009, the Parent was not advised that she could appeal the District's decision to place the Student at Gulf Gate. The evidence shows that during the March 16, 2009 meeting the Parent signed a document stating that she was advised of her due process rights.

Conclusion

Based on the preponderance of the evidence, OCR concludes that the District provided the Parent a statement of her due process rights in March 2009. OCR, therefore, concludes that the evidence is insufficient to support a violation of the regulations implementing Section 504 and Title II with respect to this issue.

4. Unalleged Issue: District's Evaluation of Students With Diabetes

During the investigation, OCR reviewed the educational files of two students with diabetes at Gulf Gate and three students with diabetes at Tuttle. The three students at Tuttle all have IHPs; however, two of them do not have IEPs or Section 504 Plans. One of the two students with diabetes who attends Gulf Gate has a Section 504 Plan and the other has an IHP only. There are over 120 students with diabetes who attend District schools. Although the District's Section

504 procedures list of major life activities corresponds with that set out in the Section 504 implementing regulation, the District's practice limits the consideration of major life activity almost exclusively to learning. With respect to students with serious medical conditions like diabetes, the District's practice is to develop IHPs without the provision of evaluations and due process rights required under Section 504 and/or Title II unless the condition directly impacts the major life activity of learning.⁴

Conclusion

As noted in the legal standards, "major life activities " includes, but is not limited to, functions such as eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating, and functions of the immune system, normal cell growth, digestive, bowel, bladder, brain, circulatory, endocrine, reproductive, neurological, and respiratory functions. Based on the preponderance of the evidence, OCR has determined that the District is failing to conduct a comprehensive evaluation of students with chronic medical conditions such as diabetes, in order to determine whether their condition substantially limits major life activities other than learning. Accordingly OCR finds that the District is in noncompliance with the regulation implementing Section 504 at 34 C.F.R § 104.35(a), (b) and (c), and the regulation implementing Title II at 28 C.F.R. and § 35.130(a) with respect to this unalleged concern.

In order to resolve issue 2 and the unalleged concern, the District has voluntarily agreed to implement the enclosed Agreement. OCR will monitor the implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the terms of the Agreement, OCR will take appropriate action to ensure the District's compliance with Section 504.⁵

Pursuant to OCR procedures, we have reminded the District that no recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one

has made a complaint, or participated in any manner in connection with a complaint.

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, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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.

This concludes OCR's consideration of Issues 1 and 3, which we are closing effective the date of this letter.

OCR is committed to a high quality resolution of every case. If you have any questions or concerns regarding OCR's determination, please contact Scott R. Sausser, Esq., Compliance Team Leader, at (404) 974-9354, or via email at scott.sausser@ed.gov.

Sarasota County School District Resolution Agreement

The U.S. Department of Education, Office for Civil Rights (OCR), opened an investigation of the above-referenced complaint filed against the Sarasota County School District (District), alleging that the District discriminated against students with disabilities in noncompliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35. Upon the completion of OCR's investigation, the District agreed to enter into this Resolution Agreement

(Agreement) pursuant to Section 303 of OCR's Case Processing Manual (CPM). Accordingly, to ensure compliance with Section 504 and Title II and their implementing regulations, and to resolve the issues of this investigation, the District voluntarily agrees to take the following actions.

Policy Review and Revision

1. a) By November 30, 2012, the District will draft for OCR's review and approval revisions of its policy regarding the administration of insulin to students unable to self-manage their diabetes. The revised policy will specify that the District will provide insulin administration services to students with diabetes unable to self-manage their diabetes and state that the implementation of a diabetes management program will not rely on parental involvement; and provide that students with disabilities will not be reassigned from their home schools solely because of a need to provide insulin-administration services.

b) By December 31, 2012, or within 30 days after OCR's review and approval of the revised policy (whichever is later), the District will adopt, implement and disseminate the policy to District staff.

Reporting Requirement: By November 30, 2012, the District will provide a report to OCR which will include the District's revised insulin injection policy, as referenced above in Voluntary Action #1a. By December 31, 2012, or within 30 days after OCR's review and approval of the revised policy (whichever is later), the District will provide a report to OCR which will include documentation showing that the District has disseminated the policy to District staff.

Students' Plan Revision

2. By January 31, 2013, the District will revise the Student and all other students' Individualized Education Programs (IEPs), Individual Healthcare Plans (IHPs) and/or Section 504 Plans to insure that all diabetes related services these students cannot independently perform will be provided by the District.

Reporting Requirement: By December 31, 2012, the District will provide OCR with a copy of the all Students' revised IEPs and IHPs, as referenced above in Voluntary Action #2.

Compensatory Education for the Student

3. By November 30, 2012, the District will calculate the amount of instructional time and/or related services the Student missed during the 2009-2010 school year because: (a) his parent was not available to provide him necessary diabetes related services at Tuttle Elementary School (Tuttle), or (b) he was in the health room because of his diabetes while waiting for treatment from his parent.

Reporting Requirement: By December 31, 2012, the District will provide OCR with documentation showing the amount of instructional time and/or related services the Student missed, as referenced above in Voluntary Action #3.

4. By November 30, 2012, the District will convene a committee comprised of the Student's parent(s) and District staff knowledgeable about the Student to determine if the Student requires compensatory services as a result of the missed instructional time, and provide the Parent(s) procedural safeguards following the committee's determination in compliance with 34 C.F.R. § 104.36.

Reporting Requirement: By December 31, 2012, the District will provide OCR with minutes and a record of attendees from the meeting convened to determine if the Student requires compensatory services as a result of the missed instructional time, as referenced above in Voluntary Action #4. The minutes will document that procedural safeguard rights were provided to the Student's Parent(s), and if applicable, the reason(s) the committee determined that compensatory services were not needed.

Provision of Compensatory Education for the Student

5. a) By November 30, 2012, if the committee decides that compensatory services are needed, the District will develop a plan (Plan) for the provision of such services. The plan will include the type and

amount of any agreed upon compensatory services, including the provider and timetable for provision of the services at no cost to the Complainant, and the date when the provision of compensatory education services to the Student will be completed.

b) The District will provide compensatory services consistent with the Plan; however, the District will not provide the identified compensatory services if the Student's parent declines the offer of such services.

Reporting Requirement: a) By December 31, 2012, if the committee decides that compensatory services are needed, the District will provide OCR with Plan developed in accordance with Voluntary Action #5; b) By March 31, 2013, if applicable, the District will provide OCR with documentation showing that the compensatory services were delivered.

Staff Training

6. By December 31, 2012, and thereafter on an annual basis, the District will provide training to staff involved in the evaluation and placement of students under Section 504 regarding the requirements of the Section 504 regulations, emphasizing the fact that all major life activities must be considered in making eligibility determinations.

Reporting Requirement: By January 31, 2013, the District will provide OCR with a syllabus of the training provided to staff involved in the evaluation and placement of students, as referenced above in Voluntary Action #6, as well as a list of attendees and a copy of any handouts, powerpoint presentations or similar materials used during the training.

Eligibility Meeting for Students With IHPs

7. By December 31, 2012, applying Section 504's comprehensive definition of major life activities, which OCR interprets to include the recently expanded definitions from the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), the District will convene a Section 504 eligibility committee meeting for each of the District's

students with IHPs to determine if any of these students are eligible for special education and/or related services as students with disabilities under Section 504.

Reporting Requirement: By January 31, 2013, the District will provide OCR with minutes and a record of attendees from the Section 504 eligibility committee meetings for each of the students with IHPs, as referenced above in Voluntary Action #7.

Parental Communications

8. By November 30, 2012, the District will communicate with each parent who has elected to provide their child's healthcare related services in school for the purpose of informing the parent of the District's revised policy, which no longer requires students with diabetes to attend Gulf Gate Elementary School. These parents will be offered the option of having District staff in their children's home school implement the student's IHP, IEP, or Section 504 Plan.

Reporting Requirement: By December 31, 2012, the District will provide OCR with copies of the communications referenced above in Voluntary Action #8.

The District 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 Section 504 and its implementing regulation at 34 C.F.R. § 104.33, 104.35, and 104.36, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

The District also understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §

104.33, 104.35, and 104.36, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

¹During the course of the investigation, Issue 1 changed into an analysis of "exclusion" from the District's preschool program when OCR discovered that the alleged denial of FAPE occurred at the preschool level, because Section 504 does not require that recipients provide a FAPE in preschool programs. Instead, Section 504 prohibits "exclusion" from such programs based on disability.

²This issue encompasses allegations 2 and 3.

³Effective October 9, 2012, Florida Department of Education rules specifically prohibit assigning students to schools based solely on their insulin needs, and require the District to provide insulin related services at the Schools the students would otherwise attend if they did not have diabetes.

⁴The IHP process does not meet the process requirements contained in regulation implementing Section 504 at §§ 104.35 (evaluation) or 104.36 (due process).

⁵OCR notes that the voluntary actions to correct the District's policies regarding what constitutes a major life activity and training on major life activities is pending in the monitoring of another OCR case.

Regulations Cited

34 CFR 104.38
28 CFR 35.130(a)
34 CFR 104.33(a)
34 CFR 104.33(b)
28 CFR 35.130
34 CFR 104.36
34 CFR 104.3(j)(1)(i)
34 CFR 104.3(j)(1)(ii)
34 CFR 104.3(j)(1)(iii)
34 CFR 104.3(j)(2)(i)
34 CFR 104.3(j)(2)(ii)
34 CFR 104.33(b)(1)
34 CFR 104.35(a)
34 CFR 104.35(b)
34 CFR 104.35(c)