State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 17163-24
AGENCY DKT. NO. 2025-38413

T.G. ON BEHALF OF N.F.,
Petitioners,
v.
WINSLOW TOWNSHIP BOARD OF EDUCATION,
Respondent.

Sarah E. Zuba, Esq., for petitioners (Reisman, Gran, Zuba, LLP, attorneys)

Daniel H. Long, Esq. for respondent (Wade, Long, Wood & Long, LLC, attorneys)

Record Closed: June 30, 2025 Decided: July 18, 2025

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner T.G. seeks a safe, appropriate educational placement that will provide reasonable accommodations for her daughter N.F.'s severe peanut allergy from their home school district, respondent Winslow Township Board of Education (Board). Petitioner maintains that the Board on behalf of the Winslow Township School District

(Winslow) violated N.F.'s educational access under Section 504 of the Rehabilitation Act of 1973 (Section 504)[1], and its federal and state implementing regulations.

The parties stipulate that N.F. has a qualifying disability that entitles her to the protection of Section 504 and was otherwise qualified to participate in Winslow's program for pre-kindergarten students.

The issue in this matter is whether Winslow excluded N.F. from attending school by offering accommodations under a 504 Plan that failed to limit her accidental exposure to peanuts, thereby denying her safe and meaningful access to her classroom.

PROCEDURAL HISTORY

On December 4, 2024, the Office of Special Education (OSE) received a request for a due process petition from T.G., on behalf of her daughter N.F., seeking a 504 Plan and an Independent Emergency Health Plan (IEHP) to address N.F.'s severe peanut allergy.

The Department of Education, OSE, transmitted the request for a due process hearing to the Office of Administrative Law (OAL) on December 9, 2024.

At the prehearing telephone conference on December 12, 2024, I scheduled the hearing for December 17, 2024. After the parties informed me that witnesses were not available, I rescheduled the hearing for January 7, 2025. On January 6, 2025, I held another status telephone conference because petitioner obtained legal counsel. The parties, through a joint request, adjourned the hearing scheduled for January 7, 2025, to discuss settlement. At the parties' request, the hearing was scheduled for February 7, 2025, and February 11, 2025.

[1] N.J.A.C. 6A:14-2.7(w) allows for a due process hearing with respect to issues concerning Section 504. Petitioners also seek relief under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131, et seq. and the New Jersey Law Against Discrimination. As these claims are outside this tribunal's jurisdiction, they will not be addressed.

By joint request, the hearing dates were adjourned so the parties could engage in further settlement discussions with a settlement judge. The Honorable Rebecca C. Lafferty, ALJ, conducted settlement conferences with the parties at their request on two separate days.

On February 18, 2025, petitioners, through their attorney filed an amended petition, with consent of respondent.

On February 28, 2025, the file was returned to me to schedule a hearing. The parties jointly requested that the hearing be held on April 8, 2025. After the one day hearing, the parties requested additional time to obtain a written transcript and submit written closing summations. Upon receipt of the last summation brief on June 30, 2025, I closed the record.

FINDINGS OF FACT AND FACTUAL DISCUSSION

Based on the uncontroverted testimony presented at the hearing, my assessment of its credibility and weight, the documents admitted in evidence, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

On March 13, 2024, T.G. began the registration process to enroll her daughter, N.F., for the 2024-2025 school year in the pre-kindergarten program offered by Winslow for four year old students. As part of the registration process, T.G. submitted a completed Student Health Questionnaire Medical Alert, Annual Update (J-6), wherein she advised the school of her daughter's allergies to peanuts, eggs, and shellfish and her prescribed EpiPen. She also provided Winslow with the Universal Child Health Record (health record) completed by N.F.'s pediatrician, Clarissa Chu, M.D., on January 29, 2023. After N.F.'s physical examination on July 26, 2024, T.G. provided an updated health record. (J-18.) Dr. Chu noted that she prescribed an epinephrine autoinjector to be used by N.F., as needed, for her food allergies. She listed N.F.'s allergies to eggs, peanuts, and shellfish. Ibid.

The Guidelines for the Management of Life-Threatening Food Allergies in Schools (Guidelines) recognize that school districts have a responsibility to develop appropriate health plans for students with food allergies which detail emergency treatment while proactively addressing conditions to prevent exposure to specific allergens. (J-1.) A critical component under the policy was the development and implementation of an Individualized Healthcare Plan (IHP) and an Individualized Emergency Healthcare Plan (IEHP) for each student at risk for a life threatening allergic reaction. As required by N.J.S.A. 18A:40-12.5, a student's prescribed epinephrine shall be placed in a secure but unlocked location easily accessible by the school nurse and designees, who are trained to administer epinephrine when needed, to ensure prompt availability in the event of an allergic emergency. The location of the epinephrine shall be indicated on the student's IEHP.

Prior to the start of school, T.G. contacted her daughter's teacher to ask what arrangements were in place to manage her daughter's peanut allergy[2]. The teacher told T.G. that she would contact the nurse.

When N.F. started school on September 3, 2024, T.G. had no information about how Winslow planned to prevent N.F.'s exposure to peanuts, the accessibility of N.F.'s EpiPen, if needed, and protocols in place for when the nurse was not readily available.

On September 4, 2024, when T.G. picked her daughter up from school, she noticed hives on the right side of N.F.'s face, near her eye. N.F. had never had hives before. T.G. immediately called the nurse, who did not have any information about N.F.'s hives but assured T.G. she would check to see if peanut butter was being consumed in N.F.'s classroom. The nurse did not mention whether N.F. had a health plan in place.

N.F. had a severe allergic reaction after eating peanut butter at age one. T.G. immediately brought her daughter to the Emergency Room. N.F. was given epinephrine for her anaphylaxis allergic reaction. Since that time, N.F. has been prescribed an

[2] T.G. was not concerned about N.F.'s other food allergies because N.F. is able to eat eggs that are cooked, and it was unlikely that N.F. would be exposed to shellfish while at school.

EpiPen. T.G. maintains a peanut free home and prior to Winslow, sent her daughter to a peanut free day care and school program through HeadStart. Those precautions had kept her daughter from having any type of allergic reaction until her second day at Winslow.

On September 10, 2024, T.G. spoke with the nurse and the principal, Lori Kelly, (Kelly), about her daughter's severe food allergies. After their conversation, T.G. put her concerns in writing, which she emailed to Kelly. (J-14.) T.G. listed five topics of concern. In her response, dated September 13, 2024, Kelly informed T.G. that N.F. is not isolated, rather she is seated at a separate table within the classroom with one other classmate when food is present. Kelly attempted to address each of the five topics.

1. Food Allergy Protocol: Kelly attached a copy of Policy 5331 – Management of Life-Threatening Allergies in Schools. (J-3.) The Policy required the development of an IHP and an IEHP for every student at risk for a life-threatening allergic reaction. Kelly did not inform T.G. whether such a plan had been developed for N.F.

2. Teacher Training: Kelly informed T.G. that the school nurse was in the process of seeking volunteers. She failed to inform T.G. that Policy 5331 and N.J.S.A. 18A:40-12 required the school districts to recruit and train designees who volunteer to administer epinephrine during school. Nor did Kelly inform T.G. whether there were designees in place at the start of the school year. Kelly, herself, was trained in Epi-Pen administration for the 2024-2025 school year, but never told T.G. (J-6.)

3. Student Handbook: Kelly never mentioned anything about measures specifically relating to N.F.'s classroom but only referred T.G. to Policy 5331.

4. Menu and Allergic Reactions: Kelly responded that the "nurse has an anaphylaxis plan on file for **pertinent** students." (emphasis mine.) Kelly did not inform T.G. whether the nurse had a plan on file for N.F.

5. Education Efforts: Kelly reverted to her general response – Policy 5331.

In closing, Kelly informed T.G. that her request to remove peanut butter from the school menu was unreasonable.

Kelly only provided T.G. with the publicly accessible Policy 5331; she did not provide T.G. with the accompanying Regulation 5331. (J-4.) Preventive measures for managing life threatening allergies in the classroom under the regulation include "prohibiting the use or consumption of allergen-containing foods in the classroom." (J-4, at C.2.(a).) Under the regulation, the nurse was required to work collaboratively with the classroom teacher to develop safeguards for the protection of the food-allergic pupil and to initiate the pupil's IEHP, as necessary.

On September 16, 2024, N.F. was sent to the nurse in the afternoon because her face was itchy and she had hives. The nurse administered Benadryl and telephoned T.G. to pick up her daughter early from school. It was not until this second incident that a letter was sent to the parents of N.F.'s classmates informing them that a student in the class had a peanut allergy[3].

The very next day, September 17, 2024, T.G. received another telephone call from the nurse to pick up N.F. for the same reason. The nurse had to administer Benadryl because N.F. had facial hives and itching. T.G. provided a letter to the nurse from N.F.'s pediatrician which stated:

> [N.F.] . . . is a patient of our practice. [N] had a documented allergy to peanuts, shell fish, and egg. She is at risk for having a severe allergic reaction if she is exposed to the allergies previously noted. Please make every effort to avoid exposure to these allergens as it poses a risk to her safety.
>
> [J-10.]

[3] This letter was not produced so I have no indication of how Winslow referenced N.F.'s peanut allergy.

On September 17, 2024, T.G. sent an email to Dr. Poteat, Winslow's superintendent and copied Kelly and Assistant Superintendent Dorothy Carcamo, among others. (J-14.) After her daughter's third allergic reaction, T.G. still had no information whether any safeguards had been developed to protect her daughter. She still did not know whether there were staff members other than the nurse who could administer epinephrin in the event of anaphylaxis. In this letter, T.G. requested a meeting to discuss the implementation of a 504 Plan and the development of an IHP for N.F.

While waiting for Winslow to convene an IEP meeting, T.G. did not send N.F. to school. N.F. had three incidents of facial hives in the eleven days she attended.

On September 19, 2024, T.G. sent an email to Dr. Poteat and reiterated her request for a 504 Plan. She also provided him with a copy of the letter from N.F.'s pediatrician provided to the nurse on September 17, 2024. T.G. requested that N.F.'s classroom be peanut free for her safety. (J-14.) In her email, T.G. suggested that Winslow's physician speak with N.F.'s pediatrician to gain a better understanding of N.F.'s allergy.

On September 19, 2024, Dr. Stephanie Doyle, the physician for Winslow, wrote to Assistant Superintendent Carcamo, and confirmed that the school did not have anaphylaxis (life threatening reactions) noted on N.F.'s medical chart. The only information was that N.F. was a candidate for a strong reaction. Dr. Doyle noted the accommodations in place as follows:

1. Strict handwashing pre and post meals/snacks
2. The student sits at a peanut free lunch table
3. IHP
4. Epipen delegates as well as all teaching staff trained in Epipen use
5. Cafeteria staff is well aware of the peanut allergy in this student and have general training to spot/report allergic reactions

6. Nurse available in the building during all hours student is in the building

7. Adequate access to EMS is available

[J-14.]

On September 23, 2024, T.G. sent a reminder email about her request for a 504 meeting. Dr. Poteat responded by stating that the "matter is now in the hands of our medical professionals." (J-14.) Dr. Poteat attached the response received from Dr. Doyle, wherein she provided Winslow with a copy of the Guidelines. (J-14 and J-1.) In her email, Dr. Doyle wrote that she was "unaware of anything we are failing to do." (J-14.) She also stated that she would speak with the student's physician.

T.G. sent Dr. Doyle an email to inform her that N.F. had three incidents of hives in her first eleven days of school. T.G. informed Dr. Doyle that she was requesting that N.F.'s classroom be peanut free because despite the assurance that the students were washing their hands and N.F. was sitting at a separate table, she still had three allergic reactions to the peanut butter being consumed within her classroom. (J-7.)

On September 25, 2024, Dr. Doyle provided an email to Winslow's administrative staff after her conversation with Dr. Chu, N.F.'s primary care provider. Dr. Doyle provided information received about N.F.'s incident of anaphylaxis from ingesting peanut butter. Dr. Doyle informed Dr. Chu that no food was brought into the classroom and stated that the cafeteria staff was aware of N.F.'s allergy. (J-7.) After speaking with Dr. Chu, Dr. Doyle intended to speak with N.F.'s allergist, Dr. Erin C. Toller-Artis.

On September 27, 2024, Dr. Doyle in an email to Winslow's administration, acknowledged that she had been under the misconception that no food was being consumed in N.F.'s classroom. (J-14.)

On September 29, 2024, T.G. provided Winslow with N.F.'s most recent test results performed by LabCorp at the request of N.F.'s allergist, Dr. Toller-Artis. (J-13.) The results showed a very high sensitivity to peanut. (J-8.)

On October 1, 2024, Dr. Toller-Artis in an email confirmed her conversation with Dr. Doyle and stated her recommendation that Winslow reconsider a peanut free room for N.F. (R-11.) The basis for Dr. Toller-Artis's recommendation was as follows:

> Mom has told me that she has been coming home with hives on several occasions and the suspicion is that she is having contact with peanut protein. While this typically can cause a localized reaction, I did discuss that if the protein comes in contact with the eyes or inside the mouth, this could lead to an anaphylactic reaction. We discussed accommodations, such as ensuring that the children's hands are washed and the surfaces are cleaned with soap and water after meals, but I realize this can be a difficult task with 3 and 4 year old children. My concern is how well the surfaces are being cleaned and the possibility that the students hands have [sic] are not being washed long enough with soap and water to remove all of the protein. With these unknowns in the preschool age group, I would recommend reconsidering the possibility of having a peanut free room solely based on these factors.
>
> [J-11.]

On October 9, 2024, Winslow convened an initial 504 Plan meeting and proposed a section 504 Plan. (J-14.) The plan proposed three types of accommodation: preferential seating during mealtimes; N.F. will wash her hands immediately after meal times; and immediate access to medical care as needed. Ibid.

On October 18, 2024, T.G. expressed her concern with the proposed 504 Plan to Winslow in an email. (J-14.) Under the section - Major Life Activity Impacted, the 504 Committee wrote – "[N.F.] was diagnosed with a peanut allergy that impacts her ability to eat." T.G disagreed with the phrasing because the issue had nothing to do with N.F.'s ability to eat, the concern was exposure to peanut products. T.G. wanted the 504 Plan to reference N.F.'s severe peanut allergy that could result in anaphylaxis. T.G.

questioned why the handwashing for all students and cleaning requirements were not in the plan. She also felt that the term "preferential seating" did not sufficiently describe this situation. In closing, T.G. requested a revised Plan, with more detailed accommodations.

On October 23, 2024, T.G. sent a follow-up request for a revised 504 Plan and also requested an IHP and an IEHP. (J-14.)

On September 23, 2024, Dr. Carcamo responded that the 504 Plan provided reasonable accommodations and refused T.G.'s request for another meeting. (J-14.)

On October 25, 2024, T.G. received three truancy notices in the mail, threatening criminal charges for T.G.'s failure to send N.F. to school. (J-18.) Under, N.J.S.A. 18A:38-25, compulsory school attendance is only required for children between the ages of six and sixteen. As a parent of a four year old student, T.G. was not required to ensure that N.F. regularly attended school.

After the third case of hives on September 17, 2024, T.G. stopped sending N.F. to school at Winslow. When Winslow refused to consider additional accommodations, T.G. attempted to return N.F. to her previous HeadStart program. When a place opened in January 2025, T.G. enrolled N.F. in the program. The HeadStart facility is peanut free.

Testimony

The following is not a verbatim recitation of the testimony, but a summary of pertinent testimony in areas of dispute.

Dr. Dorthy Carcamo has over forty-two years of educational experience working in various school districts, the last sixteen in Winslow. The last twenty-five years, she served in various administrative roles. Dr, Carcamo is currently the assistant superintendent of schools for Winslow. Overseeing and implementing 504 Plans are part of her wide variety of administrative roles.

Dr. Carcamo was familiar with N.F., who was enrolled in the preschool four-year-old program in Winslow School No. 4. There are four lower elementary schools serving students in pre-K through third grade. All preschool students eat in their classroom as per the curriculum.

Dr. Carcamo testified that she cannot mandate what parents pack their children for lunch. She believed that T.G.'s request for a peanut free classroom was unique and that removing peanut butter from the school menu would be unreasonable. Although Dr. Carcamo knew about N.F.'s allergies, she was not aware if an IHP was in place for N.F.

Dr. Carcamo forwarded the information about N.F. to Dr. Doyle. She testified that she needed to share with the physician exactly what steps Winslow was taking to see if Winslow should be doing anything additional. However, she did not provide any information to Dr. Doyle about the specifics of N.F.'s lunch situation.

According to Dr. Carcamo the purpose of the 504 meeting was to come up with a plan and put strategies in place. On October 9, 2024, Winslow offered N.F. a 504 Plan, which offered preferential seating, handwashing for N.F., and access to emergency care. Although not included in the offered 504 Plan, there were nine trained staff members, who could administer epinephrin in Winslow No. 4. Dr. Carcamo does not mandate this responsibility, the designees are volunteers. The proposed 504 Plan did not include handwashing or desk sanitation because those items were standard practice in preschool and did not strictly pertain to N.F.

There was discussion during the 504 meeting about an IHP for N.F. (J-6.) Dr. Carcamo was satisfied that the 504 Plan included reasonable accommodations and there was no need for another meeting to revise the plan.

Beginning with the first day of school, N.F. was seated at an allergy free table. Preschoolers wash their hands before and after lunch. Tables are sanitized daily. These are the standard protocols that were implemented beginning on the first day of school.

Dr. Carcamo claimed that the nurse informed her that there were three incidents when N.F. reported itching on her face. According to Dr. Carcamo, it could not be determined if the itching was caused by exposure to peanut butter. These incidents did not cause Dr. Carcamo to reconsider the 504 Plan because the nurse handled the incidents appropriately.

Stephanie Doyle, M.D. is a medical doctor, whose specialty is family medicine. She has served as the school physician for Winslow for twenty-four years.

Dr. Doyle testified that when she communicated that Winslow was doing everything right, she believed that there was no food being consumed in N.F.'s classroom. The nurse informed her that N.F. had an IHP, she did not independently verify it. Her recommendation that a peanut free classroom was not required because she understood that N.F. had to ingest peanuts to cause anaphylaxis. Based on this assumption, she believed the protocols in place were sufficient.

Expert Report

Dr. Toller-Artis is an allergist-immunologist affiliated with the Children's Regional Hospital at Cooper. She is N.F.'s treating allergist. The expert report of Erin C. Toller-Artis, D.O. was submitted in evidence by stipulation of the parties without the need for testimony from Dr. Toller-Artis. Dr. Toller-Artis interpreted N.F.'s lab results from September 29, 2024, as showing a very high sensitivity to peanut. She suggested that N.F. has a strong chance for anaphylaxis if she ingests peanuts. Dr. Toller-Artis acknowledged that if N.F. were to touch peanut protein, she would likely have a mild reaction. However, the reaction would be more severe if N.F. were to touch her eyes or mouth. If the peanut protein was present in her eye or mouth, N.F. would be at risk for anaphylaxis. (J-8.)

In her report, Dr. Toller-Artis included the Food Allergy & Anaphylaxis Emergency Care Plan (FARE).[4] The FARE provided information when epinephrine should be immediately administered. According to the FARE, a few hives and mild itch are considered mild symptoms. However, even mild symptoms must be monitored and treated with antihistamines.

Dr. Toller-Artis noted that studies show that preschoolers are at increased risk for allergic reactions. The rate decreases with age. She also noted that the harm is not always physical. There is typically increased anxiety for both the parent and the child.

When peanut butter is present in the classroom, all surfaces potentially touched with the food allergen must be thoroughly cleaned to ensure N.F. does not come in contact with it. Touching the protein would likely cause a mild reaction. However, if N.F. would put her fingers in her mouth or rub her eyes, the reaction would be more severe.

Dr. Toller-Artis also mentioned that proper handwashing techniques within the preschool population were harder to control. The recommended time for handwashing is twenty seconds or singing Happy Birthday twice to ensure that the peanut protein is removed.

Additional Factual Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses. In determining credibility, I acknowledge Dr. Carcamo's and Dr. Doyle's impressive credentials and years of dedicated service. I am also aware that T.G. loves her daughter and is motivated to protect her from the risk of anaphylaxis. In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their

[4] T.G. testified that she included a copy of the FARE with her daughter's health records during registration but it was not included with the documents contained in her daughter's student file. (J-18.) Dr. Doyle testified that she was familiar with FARE.

demeanor, willingness, or reluctance to testify; their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

Dr. Carcamo's demeanor suggested that she did not consider N.F.'s allergy to be severe or T.G.'s requests to be reasonable. For example, T.G.'s request for teacher training to administer the EpiPen, when the nurse was unavailable, was dismissed. Dr. Carcamo testified that she could not mandate EpiPen training. While technically correct, Dr. Carcamo knew there were nine members of her staff, who had volunteered to administer an EpiPen, if needed, during the 2024-2025 school year. Her unwillingness to share such important information with a parent was unreasonable. Dr. Carcamo also claimed that she could not tell parents what they could put in their children's lunches. Her cavalier statement directly contravened the recommendations in the Guidelines and Regulation 5331, which stated "consider prohibiting the use or consumption of allergen-containing foods in the classroom." As Dr. Carcamo testified, she relied on Dr. Doyle to review what was in place for N.F. and to tell them what else could be done. Yet Dr. Carcamo did not inform Dr. Doyle that under the curriculum the students in the preschool classrooms consumed lunch and snacks in their classroom, not the cafeteria. Even more concerning, Dr. Carcamo never corrected Dr. Doyle's misunderstanding. Dr. Carcamo was aware that the nurse had administered Benadryl to N.F. on September 16, 2025, and September 17, 2025, despite the protocols in place for handwashing and sanitization of the tables. Dr. Carcamo believed the nurse handled these episodes appropriately. The nurse's actions are not the issue. The issue should have been whether it was appropriate for a student with a known peanut allergy to need Benadryl two days in a row and be sent home early from school. The persuasiveness of Dr. Carcamo's testimony that Winslow met the Guidelines and provided appropriate accommodations was undermined by her lack of collaboration with T.G. and her unwillingness to manage N.F.'s food allergy in a more proactive manner. After three incidents of facial hives and itching, Dr. Carcamo showed no flexibility or a willingness to consider that their plan was not sufficient.

As the Assistant Superintendent, Dr. Carcamo had no credible justification explaining why truancy notices and threats of criminal prosecution were sent to T.G.

I gave little weight to Dr. Doyle's testimony because she rendered her opinion based upon an inaccurate assumption. She opined that the cafeteria workers had knowledge about N.F. and her food allergy, when N.F. had never eaten in the cafeteria. There was no plausible basis for this statement. A peanut free table in a large cafeteria is not analogous to a table in a preschool classroom. Dr. Doyle never observed the classroom; she had no indication of N.F.'s proximity to classmates eating peanut butter. Dr. Doyle was informed that even with Winslow's practices, which she deemed sufficient, N.F. continued to experience hives after lunch. She simply accepted the protocol as sufficient and never considered the Guidelines' recommendations when students eat in their classrooms.

While handwashing for all preschool children was a standard protocol, there was no testimony whether handwashing was supervised to ensure that proper handwashing techniques were being utilized by all peanut consuming students. There was no indication from Winslow whether the standard handwashing technique proposed in the FARE and advocated by Dr. Toller-Artis was implemented.

Based on the testimony presented at the hearing, my assessment of its credibility and weight, the documents admitted in evidence, and my assessment of their sufficiency, I **FIND** the following additional **FACTS**:

Prior to the start of the school year, Winslow knew that N.F. had the potential for anaphylaxis from food allergies because her health records referenced her prescription for an EpiPen. An EpiPen is only administered for severe allergic reactions. Under the Guidelines, Winslow was responsible for supporting N.F. by providing a safe and healthy learning environment. There was no indication that Winslow had developed an IHP and and an IEHP for N.F. until October 9, 2024. Winslow failed to work collaboratively with T.G. Winslow never informed T.G. that there were nine designees on staff who could administer epinephrin in the nurse's absence. In response to T.G.'s written request for answers emailed to the principal on September 10, 2024, the principal provided generalizations and nothing specific about a health plan for N.F. Even after N.F.'s third

case of hives, Winslow offered no alternatives to ensure N.F. could remain safely at school. Winslow failed to consider banning the use or consumption of peanut containing food in the classroom despite the recommendation in Regulation 5331. Winslow failed to develop safeguards in the classroom for the protection of N.F. as recommended in the Guidelines and Regulation 5331. Winslow's failure to address N.F.'s needs as she encountered peanut allergens in her classroom prevented N.F. from attending school.

Further, there was no legal basis, or plausible rationale for Winslow to threaten T.G. with criminal charges. (J-15.)

LEGAL ANALYSIS AND CONCLUSIONS

A school district violates Section 504, if it denies a qualified student with a disability a reasonable accommodation that the individual needs to enjoy meaningful access to the benefits of public services.

Section 504 requires "the provision of an appropriate education" at no cost to students with disabilities. A free appropriate public education under Section 504 "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 non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of sections 104.34, 104.35, and 105.36." 34 C.F.R. 104.33(b).

Under Section 504, "[n]o otherwise qualified individual with a disability in the United States, as defined in [29 U.S.C. § 705(20)] … shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance[.]" 29 U.S.C. § 794(a).

Section 504 applies to "all of the operations of" a local school district. 29 U.S.C. § 794(b). Under the law's school-specific regulations, 34 C.F.R. §§ 104.31 to -104.39, "[a]

recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. § 104.33(a).

And, under Section 504, local educational agencies "shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure." 34 C.F.R. § 104.36.

To prevail on her Section 504 claim, T.G. must show that N.F. "(1) has a disability; (2) was otherwise qualified to participate in a school program; and (3) was denied the benefits of the program or was otherwise subject to discrimination because of [his] disability." K.N. v. Gloucester City Bd. of Educ., 379 F. Supp. 3d 334, 349 (D.N.J. 2019) (quoting Chambers v. Sch. Dist. of Phila. Bd. of Educ., 587 F.3d 176, 189 (3d Cir. 2009) (citing Nathanson v. Med. Coll. of Pa., 926 F.2d 1368, 1380 (3d Cir. 1991)). Only the third element is contested and relevant to the issues herein.

The third element is violated when a student is denied meaningful access to her program. A denial of meaningful access can be a failure to accommodate. Here, after three allergic reactions, involving hives and itchiness, under Winslow's plan, T.G. maintained that the only reasonable accommodation was a peanut-free classroom. The Board argued, without support, that its 504 Plan which mandated preferential seating, handwashing, and access to medical care was extensive and comprehensive. N.F.'s unexplained hives under the Board's policy supported T.G.'s position that the Board could not keep N.F. safe from accidental exposure. Thus, the Board failed to accommodate N.F.'s severe peanut allergy.

There is no doubt that N.F. is qualified to participate in the Board's educational programs. N.F. was enrolled and attended the program for eleven days. N.F. was denied

meaningful access to the benefits of this program through the Board's failure to provide her with a Section 504 Plan that could accommodate her disability. The U.S. Department of Education's Office of Civil Rights (OCR), which is the federal agency that enforces Section 504, has interpreted Section 504's mandates as "requir[ing] that public schools take steps that are necessary to ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities." Washington (NC) Montessori Pub. Charter Sch., 60 IDELR 79 (August 16, 2012). In the context of food allergies, OCR has explained that,

> [a]s the vast majority of students without disabilities do not face a significant possibility of experiencing serious and even life-threatening reactions to their environment while they attend school, Section 504 … require[s] that [a school] provide students with peanut and/or tree nut allergy (PTA)-related disabilities with a medically safe environment in which they do not face such a significant possibility. Indeed, without the assurance of a safe environment, students with PTA-related disabilities might even be precluded from attending school, i.e., may be denied access to the educational program.
>
> [Ibid.]

Here, N.F. faced a significant possibility of experiencing a serious reaction to the peanut protein in her classroom if she touched the protein and put her hand in her mouth or rubbed her eyes - typical four-year-old behavior. The Board did not provide a medically safe, i.e., peanut-free, environment while she attended school. N.F.'s last two exposures resulted in the nurse administering Benadryl and a shortened school day. As such, T.G. has shown that the Board has denied her daughter a FAPE under Section 504, by denying her safe access to her classroom.

Claims alleging failure to accommodate under [Section 504] involve the same tripartite inquiry as those under the ADA: (1) whether the requested accommodation is reasonable; (2) whether it is necessary; and (3) whether it would fundamentally alter the nature of the program. K.N. v. Gloucester City Bd. of Educ., 379 F. Supp. 3d at 26,27, quoting, Berardelli v. Allied Servs. Inst. of Rehab. Med., 900 F.3d 104, 123 (3d Cir. 2018).

The Third Circuit in K.N., generally determined that whether an accommodation is reasonable "depends on the individual circumstances of each case, and requires a fact-specific, individualized analysis of the disabled individual's circumstances and the accommodations that might allow him to" enjoy meaningful access. Id., quoting, Mark H. v. Hamamoto, 620 F.3d 1090, 1098 (9th Cir. 2010) (quoting Vinson v. Thomas, 288 F.3d 1145, 1154 (9th Cir. 2002)). The accommodation requested was a peanut free classroom because Winslow's standard practices were not sufficient in the preschool population to protect N.F. from the risk of accidental exposure. Banning peanut butter would not fundamentally or substantially alter any of the programs offered to the class, but it would have allowed N.F. to attend school like her classmates.

Of particular interest, the Third Circuit in K.N. opined that a parent does not have the right to any particular accommodation, if a reasonable accommodation was offered that provided meaningful access. 379 F. Supp. at 350. The testimony and documents showed that Winslow believed T.G.'s request was unreasonable. However, Winslow's failure to act collaboratively with T.G. and Winslow's failure to make any adjustments after three incidents of hives in eleven days defeated any claim by respondent that its plan was reasonable and offered meaningful access.

Finally, as the Third Circuit stated in K.M., "any requested accommodation must first be deemed necessary to ensure an individual with disabilities has 'meaningful access' to the benefit in question." 379 F. Supp. at 350, quoting, A.M. ex rel. J.M., 840 F. Supp. 2d at 680 (citing Southeastern Cmty. Coll. v. Davis, 442 U.S. 397, 410, 99 S. Ct. 2361, 60 L. Ed. 2d 980 (1979)). As supported in the record, a peanut free classroom was necessary because Winslow's plan did not prevent N.F.'s accidental exposure to the peanut protein in her classroom. The nurse's need to administer Benadryl to N.F., on two consecutive days, showed that N.F. was being exposed to peanut in her classroom. N.F. successfully attended HeadStart, in a peanut-free environment.

It is petitioner's burden to prove her proposed accommodation of a peanut free classroom was reasonable. Dr. Toller-Artis' expert report (J-8) explained why handwashing and cleaning surfaces were not sufficient in the preschool population.

Under Winslow's plan, N.F. contracted hives on three occasions in eleven days. Petitioner has met her burden of showing why her requested accommodation was reasonable.

Winslow provided no evidence that the accommodation of a peanut free classroom would be an undue burden. From the testimony and the documents submitted, it was clear that this accommodation was not considered under the circumstances presented. Thus, Winslow has provided no defense that a peanut free classroom would constitute an undue burden. Moreover, it is a recommended consideration under Winslow's Regulation 5331. (J-4.)

Accordingly, I **CONCLUDE** that respondent violated Section 504 by not providing N.F. with meaningful access to attend Winslow's preschool program.

Petitioner is seeking an award of compensatory education for Winslow's violations of Section 504 FAPE and its failure to provide N.F. with reasonable accommodations for her peanut allergy. The purpose of compensatory education is to remedy past deprivations of a FAPE. Lester H. v. Gilhool, 916 F.2d 865, 872 (3d Cir. 1990). It "serves to 'replace [] educational services the child should have received in the first place' and . . . such awards 'should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.'" Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 717–18 (3d Cir. 2010) (quoting Reid ex rel. Reid v. D.C., 401 F.3d 516, 518 (D.C. Cir. 2005)). The authority of a court to remedy a deprivation of FAPE is "a profound responsibility, with the power to change the trajectory of a child's life." Thus, the "courts, in the exercise of their broad discretion, may award [compensatory education] to whatever extent necessary to make up for the child's lost progress and to restore the child to the educational path he or she would have traveled but for the deprivation." Upper Darby Sch. Dist. v. K.W., 2023 U.S. Dist. LEXIS 129803, *35–36 (E.D. Pa. 2023) (quoting G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 625 (3d Cir. 2015)).

A child who has been deprived of a FAPE is "entitled to compensatory education for a period equal to the period of deprivation, excluding only the time reasonably required

for the school district to rectify the problem." D.K. v. Abington Sch. Dist., 696 F.3d 233, 249 (3d. Cir. 2012) (quoting P.P. v. West Chester Area Sch. Dist., 585 F.3d 727 (3d. Cir. 2009)).

Accordingly, I **CONCLUDE** that N.F. is entitled to relief in the form of compensatory education.

The amount and form of compensatory education must be determined. In Lauren P. v. Wissahickon Sch. Dist., 310 Fed. Appx. 552 (3d Cir. 2009), the Third Circuit affirmed the district court's finding that the school district "(1) knew or should have known that [the student's] behavioral problems were impeding her education, (2) recognized that the IEP was inadequate, and (3) addressed [the student's] behavior in a piecemeal fashion rather than through a consistent behavior management plan." 310 Fed. Appx. at **5–6. In addition, when the student's problems worsened, the District should have known that the program it was providing was not effective. Instead, the District blamed the student for behaving like a student with a disability. Id. at *18–19. In Lauren P., the Third Circuit agreed that compensatory education was required for the number of school days during the years at issue in that case.

Lauren P. serves as a guide here. N.F. was an excited preschool student who wanted to attend her local school. This program was intended to prepare N.F. to enter kindergarten. Instead, she only attended eleven days because Winslow refused to accommodate her peanut allergy. N.F. should be provided compensatory education sufficient to permit her to achieve the education and the experiences she missed when Winslow denied her access to the program. I do not accept that T.G.'s enrollment of N.F., out of necessity, in the HeadStart program provided N.F. with a comparable experience.

N.F. was denied the education and educational experience of attending her local school with her peers. The pre-K, four-year-old program was intended to prepare N.F. to continue her education at Winslow. Public school preparation for kindergarten offered by Winslow during a critical year cannot be recovered. N.F. was denied the readiness skills and familiarity with school routines available to her classmates. Under the circumstances

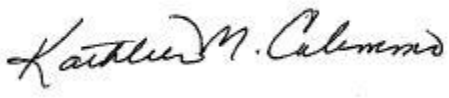
here, the most appropriate form of compensatory education relief is the establishment of a fund to be expended for services to benefit N.F. and provide her with the opportunities she should have received under Winslow's program. I agree with petitioners' argument that Winslow's failure to provide a 504 Plan to adequately address N.F.'s severe peanut allergy, despite every opportunity to do so, resulted in N.F. being denied complete access for 169 days of the 2024-2025 school year. Therefore, I **CONCLUDE** that N.F. is entitled to compensatory education for six hours of meaningful educational access per day, for 169 days, or 1,014 hours. I also accept as reasonable, petitioners' alternative argument that compensatory education should be valued at per pupil expenditure for Winslow School No. 4. According to public available data the cost was $17,667. As N.F. was unable to access 94% of the school year (180 days), I **CONCLUDE** that the appropriate total amount to be placed in a fund is $16,430. I further accept as reasonable petitioners' proposal that the fund be used by T.G., in her sole discretion, for the benefit of N.F., for supplementary instruction, tutoring, fine or performing art lessons, enrichment programs, extracurricular programs, or camp programs. Payment shall be made through invoices sent directly to the school district for such programs. This trust shall be available to petitioners for the next five years.

ORDER

For the foregoing reasons, it is **ORDERED** that petitioners' request for relief pursuant to Section 504 is **GRANTED**, and the respondent is **ORDERED** to place $16,430 in a compensatory education fund to be used as outlined above.

It is further **ORDERED** that respondent shall convene a Section 504 meeting by no later that August 15, 2025, to plan for appropriate accommodations consistent with this decision, and as stated in the Guidelines and Regulation 5331, to ensure N.F.'s safe access to kindergarten for the 2025-2026 school year.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2025) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.



July 18, 2025
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency

Date Mailed to Parties:

KMC/tat

APPENDIX

List of Witnesses

For Petitioners:

T.G.

For Respondent:

Dr. Dorothy Carcamo
Dr. Stephanie Doyle

Exhibits

Joint

J-1 Guidelines
J-2 Section 504 Protection – U.S. Dept. of Education
J-3 Policy 5331
J-4 Regulation 5331
J-5 Proposed Section 504 draft plan
J-6 Proposed IHP
J-7 Emails from Dr. Doyle to Winslow
J-8 Report of Dr. Toller-Artis
J-9 Report of Dr. Doyle
J-10 Letter from Dr. Wardlow, dated September 17, 2024
J-11 Letter from Dr. Toller-Artis, dated October 1, 2024
J-12 Education and experience of Dr. Toller-Artis
J-13 Labcorp patient report, dated September 29, 2024
J-14 Emails between T.G. and Winslow, dated September 10, 2024, through October 23, 2024
J-15 Letter and Notice from principal of Winslow School #4 to T.G.
J-16 2024-2025 school calendar

J-17 New Jersey public school district nut free classrooms

J-18 Student file - N.F.