



U.S. Department of Justice

*United States Attorney
District of Connecticut*

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June 5, 2020

Via Electronic and United States Mail

Mr. Jeffrey Newton
Superintendent of Schools
East Lyme Public Schools
165 Boston Post Road
P.O. Box 220
East Lyme, CT 06333

**Re: Closure of Investigation of East Lyme Public Schools
DJ # 204-14-237**

Dear Superintendent Newton:

As you know, this office recently was made aware of allegations that the East Lyme Public Schools were not operating in compliance with Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12131, *et seq.*, and the Department of Justice’s implementing regulation, 28 C.F.R. Part 35. Upon receipt of these allegations, this office made informal inquiries about the allegations to counsel for the East Lyme Public Schools. Following these informal inquiries, the East Lyme Public Schools provided all requested information to our office in an effort to resolve this matter expeditiously. This office appreciates the cooperation of the school district and its counsel in taking swift action to coordinate a voluntary resolution to this matter.

The allegations shared with this office were as follows: The complainants’ child, who has Type 1 diabetes, attends the Flanders School, an elementary school within the East Lyme Public Schools, and uses a continuous glucose monitor prescribed by her physician to monitor her blood glucose levels. The complainants allege that, citing an unidentified school district policy, the school nurse refused to monitor alerts transmitted by the child’s prescribed continuous glucose monitor during the school day and during school-sponsored activities. They further allege that the school nurse informed the complainants that she does not have time to check the continuous glucose monitor and that monitoring the readings of the continuous glucose monitor would create potential legal liability for her and the school district. Additionally, in

denying the use of the continuous glucose monitor, the school nurse cited a policy of the Visiting Nurse Association. The complainants claim that the school nurse also stated that she would continue to force the complainants' child to undergo finger stick blood tests even if their child wore her continuous glucose monitor because the school nurse stated that she does not trust readings from the continuous glucose monitor.

Due to the East Lyme Public Schools' alleged refusal to monitor the continuous glucose monitor of their child, the complainants claim that they have been required to leave work on multiple occasions to provide information regarding glucose readings that could have easily been derived from monitoring by school personnel. In addition, they allege that their child has been forced to miss significant classroom instructional time because of unnecessary trips to the school nurse's office where she has had to undergo redundant and unpleasant finger stick testing.

As mentioned above, all parties would like to bring this matter to a voluntary resolution. We understand that the East Lyme Public School district has voluntarily taken steps and/or intends to take steps to resolve this matter, including the following:

1. Consistent with the requirements of the ADA, the East Lyme Public School district shall continue to ensure that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the East Lyme Public Schools, or be subjected to discrimination by the East Lyme Public Schools. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a)
2. Consistent with the requirements of the ADA, the East Lyme Public School district shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the East Lyme Public School district can demonstrate that making the modifications would fundamentally alter the nature of the East Lyme Public School district's services, programs, or activities. 28 C.F.R. § 35.130(b)(7)(i).
3. Consistent with the requirements of the ADA, the East Lyme Public School district shall not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the ADA. 28 C.F.R. § 35.130(f).
4. Consistent with the requirements of the ADA, the East Lyme Public School district shall take the following actions within 90 days of the date of this letter:
 - a. The East Lyme Public School district shall modify its policies, practices and/or procedures to permit the use of continuous blood glucose monitors by children diagnosed with Type 1 diabetes who are

prescribed such devices by a physician or an advanced practice provider.

- b. As long as a child with Type 1 diabetes is using a continuous glucose monitor approved by the Food and Drug Administration for use without finger stick verification, the East Lyme Public School district shall not require that a child undergo finger stick verification of blood glucose readings from a continuous glucose monitor on a routine basis. Finger stick testing of a child using a continuous glucose monitor so approved by the Food and Drug Administration shall only be conducted (1) as ordered by the child's physician or advanced practice provider, (2) if it appears that the continuous glucose monitor is malfunctioning, or (3) in an urgent medical situation.
- c. The East Lyme Public School district shall modify its policies, practices and/or procedures to ensure that school nurses and other appropriate trained staff members monitor blood glucose alerts transmitted by the continuous glucose monitor of a child with Type 1 diabetes to a dedicated receiver, tablet/smartphone application, or other appropriate technology during the school day and during school-sponsored activities.
- d. The East Lyme Public School district shall purchase or use existing equipment owned by the school district to monitor blood glucose alerts transmitted from continuous glucose monitors of children with Type 1 diabetes to dedicated receivers, smartphone/tablet applications, or other appropriate technology on such equipment. The East Lyme Public School district shall not charge a surcharge to parents of children with Type 1 diabetes for the purchase of such equipment, nor shall the East Lyme Public School district require parents of children with Type 1 diabetes to provide such equipment for use by school personnel.
- e. The East Lyme Public School district shall, using a trainer approved by the U.S. Attorney's Office for the District of Connecticut, train nurses, and other appropriate personnel as necessary (i.e., administrators, specific classroom teachers and paraeducators), regarding Type 1 diabetes, the use of continuous glucose monitors, appropriate monitoring of information transmitted by continuous glucose monitors to a dedicated receiver, tablet/smartphone application, or other appropriate technology, and the administration of glucagon.

- f. The East Lyme Public School district shall, using a trainer approved by the U.S. Attorney's Office for the District of Connecticut, train its school nursing staff and administrators regarding the requirements of Title II of the ADA.

Once the East Lyme Public School district provides us with a detailed description in writing of its compliance with the above steps and a list of the dates, times, and attendees for all required trainings, we will consider this matter resolved. We will take no further action on this matter unless we become aware of new information suggesting that the East Lyme Public School district is not complying with the terms outlined above or is otherwise not complying with its obligations under federal law.

By undertaking the steps described above, we understand that the East Lyme Public School district does not admit to having violated the ADA, regulations promulgated thereunder, or any other law. We also understand that the East Lyme Public School district does not admit to the accuracy or truthfulness of the allegations set forth above.

We thank you for your expeditious response to our inquiries and appreciate the cooperation of the East Lyme Public School district in taking voluntary actions to resolve this matter.

Very truly yours,

JOHN H. DURHAM
UNITED STATES ATTORNEY



JESSICA H. SOUFER
ASSISTANT U.S. ATTORNEY

Cc: Leander Dolphin, Esq., Shipman & Goodwin LLP