



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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NORTH DAKOTA
WISCONSIN

February 13, 2015

Mr. Sedat Duman
President/CEO
Concept Charter Schools
2250 East Devon Avenue
Suite 215
Des Plaines, Illinois 60018

Re: 05141329

Dear Mr. Duman:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed with OCR against Concept Charter School (District), alleging discrimination based on disability. Specifically, the complaint alleged that the District discriminated against Student A, a former student at XXXXXXXXXXXXXXXX (School) based on his disability in that:

1. the School failed to conduct a timely evaluation of Student A during the 2013-14 school year to determine whether he is a student with a disability in need of special education and related services;
2. during the 2013-14 school year, the School repeatedly failed to provide procedural safeguards to Student A's XXXXXXXXXXXXXXXX;
3. the School changed Student A's placement on or about XXXXXXXX 2014 without ensuring that the placement decision was made in conformity with the requirements of 34 C.F.R. §§ 104.34 and 104.35;
4. the School failed to provide Student A with educational services from about XXXXXXXXXXXXXXXX; and
5. on or about XXXXXXXXXXXXXXXX, the School denied Student A admission for the 2014-15 school year.

OCR established jurisdiction under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and by public entities, respectively. The District is subject to OCR's jurisdiction.

In making its determination, OCR reviewed documentation provided by the Complainant and the District, and interviewed the Complainant as well as District and School staff. Based on a careful analysis of this information, OCR has determined that there is sufficient evidence to establish that the District and School violated Section 504 and Title II as alleged. The bases for OCR's determinations are set forth below.

Applicable Legal Standards

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

Discrimination generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides 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 a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides 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 a public entity, or be subjected to discrimination by any public entity.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) 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. The Section 504 implementing regulation further states, at 34 C.F.R. § 104.33(b), that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met, and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 – 104.36. The development and implementation of an Individualized Education Program (IEP) is one means by which FAPE may be provided.

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.35, a recipient must conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35 (b), of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement. The Section 504 regulation at 34 C.F.R. § 104.35(b) requires that a recipient establish certain standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need special education and/or related services. The Section 504 regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions, a recipient draw upon information from a variety of sources, establish procedures

to ensure that information obtained from all such sources is documented and carefully considered, and ensure that the placement decision is made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The Section 504 regulation at 34 C.F.R. § 104.36 requires a recipient to “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.” Compliance with the procedural safeguards of the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

Section 504 and its implementing regulations do not specify a time frame for evaluating a student believed to be in need of special education and related services. OCR applies a standard of reasonableness for the completion of the evaluation process. In determining whether a recipient provided a timely evaluation, OCR is informed by the regulations implementing the IDEA, as compliance with IDEA is one means of complying with Section 504. The IDEA regulations state, at 34 C.F.R. 300.301(c)(1)(i), that an evaluation must be completed within 60 days unless the state sets a different deadline. Illinois state regulations adopt the 60 day timeframe.

Different Treatment

In determining whether a recipient subjected a student to different treatment based on disability, OCR considers whether there were any apparent differences in the treatment of similarly-situated students based on disability. If this is established, OCR assesses the recipient's reason for any differences in treatment of similarly-situated students to determine whether the reasons are legitimate, non-discriminatory and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with established policies and procedures and whether there is any other evidence of discrimination based on disability.

District Policies and Procedures

The District's website does not contain any information about the District's Section 504 and Title II policies, practices and procedures, including its policies, practices and procedures for evaluating students who might be in need of special education and related services, developing IEPs or Section 504 plans or making placement decisions, or providing notice of the District's procedural safeguards (hereafter Section 504 Policies). Instead, the District's website contains links to various state agencies and the regulations and procedures followed

by those agencies.¹ The website also makes the following statement, without providing additional information:

If you have any questions about identification of a student with suspected disabilities, please contact your school director to assist you with that process! Each school director also serves as a designee for Civil Rights and, or ADA assistance/ requests.

Finally, the District’s website does not contain a nondiscrimination statement and lacks information about its formal or informal complaint procedures (hereafter Grievance Procedures) or information about how to pursue due process hearings to contest placement decisions.

Similarly, the School’s website and Student Handbook do not contain any information about the School’s Section 504 policies or Grievance Procedures. The School’s Student Handbook, which is available online,² contains a nondiscrimination statement, which states that it does not discriminate on the basis of physical, mental, emotional, or learning disabilities, among other forms of discrimination. A similar statement appears at the end of the School’s application, which notes that the School admits students “without regard to the presence of a medical condition or disability.”

District and School staff were not familiar with the District’s or School’s Section 504 Policies or Grievance Procedures and could not identify the District’s or School’s Section 504 Coordinator(s). Neither the School’s Dean of Students (Dean) nor the School’s Principal could describe the District’s Section 504 Policies. The Dean and the District’s Director of Specialized Services (Director) were not aware of any Grievance Procedures, and the Principal acknowledged that the District and School did not have any formal Grievance Procedures. Finally, the Dean told OCR that he was unaware of the District’s or School’s Section 504 Coordinator, while the Principal told OCR that the School’s Case Manager served as the School’s Section 504 Manager and the Director told OCR that the School’s Instructional Coordinator (Assistant Principal) served as each School’s Section 504 Coordinator. The Principal and Director acknowledged that this information was not included on the School’s website.

Facts

XXXXXXXXXXXXX Student A’s mother enrolled him at the School for the 2013-14 school year. During the enrollment process, Student A’s mother informed staff at the School that she was concerned about Student A’s XXXXXXXXXXXX and would like a special education evaluation. The District disputes that Student A’s mother requested a special education evaluation during the enrollment process, but none of the District staff could recall who processed Student A’s enrollment or spoke to Student A’s mother during the process. Information in Student A’s enrollment materials is consistent with Student A’s mother’s

¹ <http://specialeducation.conceptschools.org/compliance>

² XXXXXXXXXXXXXXXXXXXXXXXX

Further, the Dean, Principal, and Director did not identify any steps the School took (e.g., contacting XXXXXXXXXXXXXXXXXXXX to obtain consent, providing procedural safeguards, scheduling an appointment with the XXXXXXXXXXXXXXXXXXXX) to commence an evaluation.

Student A returned to School on January 10, 2014. XXXXXXXXXXXXXXXXXXXXXXXXXXXX The School created a misconduct report in which it again noted that Student A’s mother requested that Student A be evaluated for special education and related services. According to the January 10 misconduct report, Student A threw objects in class, overturned desks XX.

On January 22, 2014, XXXXXXXXXXXXXXXXXXXXXXXXXXXX the School held a meeting to discuss his educational needs and created a Section 504 plan. The School did not provide any documentation of the notice it provided about this meeting or whether it provided procedural safeguards to Student A’s mother. Student A’s mother, Teacher A, the School’s Case Manager (Case Manager), the Dean, the Assistant Principal, Psychologist, Nurse, and Social Worker attended the meeting. XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

The Section 504 plan identifies Student A’s diagnoses as XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX The Section 504 plan does not identify any evaluation data that was reviewed, instead asserting generally “see attached anecdotal.” However, the Section 504 plan does not attach any anecdotal information. Instead the only documentation attached to the plan includes a list of bullet points titled “Things to Remember with Daily Progress Reports” and a purported positive behavior intervention system (PBIS).⁶ The Dean explained to OCR that the “attached anecdotal” likely refer to Student A’s disciplinary record or Teacher A’s notes about Student A’s behavior.

The Section 504 plan identifies four accommodations: (1) Student A will be greeted by staff and encouraged to have a good day; (2) Student A will be seated close to his teachers XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX; (3) Student A will stand near the front of lines; and (4) XX.

In addition, the School obtained Student A’s mother’s consent for an evaluation for special education and related services. Although the signed consent form indicates, in its boilerplate, that the School provided Student A’s mother with a copy of its procedural safeguards, no copy of the procedural safeguards is attached to the form. Neither the Dean nor the Principal could recall whether procedural safeguards were provided to Student A’s mother at the January 22, 2014 meeting. Student A’s mother denied receiving notice of procedural safeguards at this time.

⁶ The PBIS in Student A’s plan includes a chart on which Student A can earn “points” for completing assignments, good listening, and staying in his seat, and a list of potential rewards he can “purchase” with his points.

waiting list. The Dean also acknowledged that several students from the waiting list were admitted during the 2014-15 school year and that on January 15, 2015, there were 47 students enrolled in the XXXXXXXXXXXXXXXXXXXX grade.

The District provided enrollment information for all students enrolled in the XXXXXXXXXXXX grade for the 2014-15 school year. The information indicates that the District enrolled students in the XXXXXXXXXXXX grade whose applications were signed and dated September 1, 3, 18, 22, 23 and 25. Each of the September enrollment applications indicates that the applicant did not have a Section 504 plan or IEP.

Analysis and Conclusion

Allegation 1

The complaint asserts that the District discriminated against Student A on the basis of his disability in that the School failed to conduct a timely evaluation of Student A during the 2013-14 school year to determine whether he is a student with a disability in need of special education and related services.

The evidence is undisputed that the School had notice of Student A’s mother’s request that Student A be evaluated for special education and related services no later than September 17, 2013. Further, information in Student A’s enrollment materials, which were received by the School in August 2013, indicate that Student A’s mother believed he was in need of an IEP and that Student A’s treating physician believed Student A should be evaluated for XXXXXXXXXXXX issues. Moreover, in the first two weeks he attended the School, Student A was disciplined five times for behavioral concerns.

XX
XX.

Despite this information, the evidence is also undisputed that the School took no steps to evaluate Student A for special education and related services until April 11, 2014, when it convened a domain meeting. The District asserts that it was unable to conduct an evaluation of Student A for two reasons:

XX.

XX
XX.

OCR finds that the School had knowledge that Student A’s mother requested an evaluation for special education and related services and that, based on the number of disciplinary incidents in which Student A was involved XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, the School should have been aware that Student A was a student in need of an evaluation for special education and related services. OCR finds further that the School did not attempt to evaluate Student A until April 2014, more than 7 months after Student A’s mother requested

that the School changed Student A’s placement at this meeting when it determined that it
XXX Finally, the evidence
demonstrates that the School did not document the information it considered and therefore
did not ensure that the placement decision was made by drawing upon information obtained
from a variety of sources that was carefully considered or was made by a group of persons
knowledgeable about Student A, the meaning of the evaluation data, and the placement
options.

Based on the above information, OCR found sufficient evidence to establish that the District
discriminated against Student A on the basis of his disability in violation of Section 504 and
Title II when it unilaterally altered his placement XXXXXXXXXXXXXXXXXXXXXXXX and did
not comply with the requirements of 34 C.F.R. §§ 104.34 and 104.35 in altering his
placement.

Allegation 4

The complaint asserts that the District discriminated against Student A on the basis of his
disability in that the School failed to provide Student A with educational services from
approximately XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

The undisputed evidence demonstrates that after the District determined that it would provide
Student A with
XXX
XXX.

Based on the above information, OCR found sufficient evidence to establish that the District
discriminated against Student A on the basis of his disability in violation of Section 504 and
Title II when it mandated that Student A receive its services through homebound instruction
but did not provide XX.

Allegation 5

The complaint asserts that the District discriminated against Student A on the basis of his
disability in that on or about XXXXXXXXXXXXXXXXXXXXXXXX the School denied Student A
admission for the 2014-15 school year.

The District asserts that it denied Student A admission to the School for the 2014-15 school
year because it had already reached its enrollment capacity and that, although it placed
Student A on a waiting list, it removed him from the waiting list prior to any spots becoming
available. The enrollment materials provided by the District, however, refute the School’s
assertion. The School, in fact, enrolled students in the XXXXXXXXXX grade whose
applications were signed and dated on September 1, 3, 18, 22, 23 and 25.⁷

⁷ September 1, 2014 was Labor Day and the School was not open on that day. Therefore, the
School could not have received that application prior to Student A’s mother’s effort to enroll
Student A at the School.

OCR finds that the preponderance of the evidence demonstrates that the District treated Student A differently than non-disabled students when his mother attempted to enroll him in September 2014. The preponderance of the evidence further demonstrates that the District's purported reason for treating Student A differently than other students, namely that it had reached its capacity for Student A's grade level, is pretext. In addition, as noted previously, there was other evidence of discrimination based on disability, namely that the School failed to conduct a timely evaluation of Student A during the 2013-14 school year, XXXXXXXXXXXXXXXXXXXXXXXXXXXX without complying with the requirements of 34 C.F.R. §§ 104.34-35, and it subsequently failed XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Based on the above information, OCR found sufficient evidence to establish that the District discriminated against Student A on the basis of his disability in violation of Section 504 and Title II on or about September 2, 2014 when it denied Student A admission to the School for the 2014-15 school year.

For the foregoing reasons, the District's actions violated Section 504 and its implementing regulation at regulation at 34 C.F.R. §§ 104.4(a), 104.33, 104.35, and 104.36 and Title II and its implementing regulation at 28 C.F.R. § 35.130(a). The District signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will address the issues raised in Allegations #1, #2, #3, #4, and #5. The provisions of the Agreement are consistent with applicable regulations and are aligned with the issues raised in the allegations and the information obtained during OCR's investigation. OCR will monitor the District's implementation of the Agreement. We look forward to receiving the District's first report on its implementation of the Agreement, which is due by March 31, 2015.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may file a private suit in federal court whether or not OCR found a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant or a District employee may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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OCR thanks you and your staff, especially XXXXXXXXXXXXXXXXXXXXXXX for the cooperation extended to OCR. If you have any questions regarding this letter, please contact Mark Erickson at (312) 730-1574 or mark.erickson@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXX