

December 14, 2018

Christopher Garlin  
Chief Executive Officer  
Dr. Lena Edwards Academic Charter School  
509 Bramhall Avenue  
Jersey City, New Jersey 07304

Re: Case No. 02-18-1380  
Dr. Lena Edwards Academic Charter School

Dear Mr. Garlin:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Dr. Lena Edwards Academic Charter School (the School). The complainants alleged that the School discriminated against their son (the Student), on the basis of his disability, by failing to implement the following provisions of the Student's Section 504 plan, from December 2017 through June 2018: (a) use of a stretch-band, (b) breaks between work sessions, and (c) bi-weekly discussions between the parent and teacher (Allegation 1). The complainants further alleged that the School retaliated for their disability-related advocacy, by (a) requesting their identification when they visited the School; (b) not immediately responding to their telephone calls, electronic mail messages (emails), and requests for meetings, beginning in April 2017 and continuing throughout school year 2017-2018; (c) having School staff follow them during parent-teacher night on April 19, 2018; and, (d) making a report to the New Jersey Department of Children Protection and Permanency (DCPP), on or about XXXX XX, 2017 (Allegation 2).

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

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), at 34 C.F.R. §

100.7(e), which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR reviewed documents the complainants and the School submitted. OCR also interviewed the complainants and School staff members.

OCR determined that the Student was a XXXXXX student at the School during school year 2017-2018.<sup>1</sup> The Student was diagnosed with XXXXXXXXXX, and had a Section 504 plan, dated XXXX XX, 2017, which was effective from the beginning of school year 2017-2018 until XXXX XX, 2018 (the XXXX 2017 plan). On XXXX XX, 2018, the School developed a new Section 504 plan for the Student (the XXXX 2018 plan), which was effective from that date through the end of school year 2017-2018.

With respect to Allegation 1, the complainants alleged that the School discriminated against the Student, on the basis of his disability, by failing to implement the following provisions of the Student's Section 504 plan, from December 2017 through June 2018: (a) use of a stretch-band, (b) breaks between work sessions, and (c) bi-weekly discussions between the parent and teacher. OCR determined that the XXXX 2017 plan provided that the Student would "use a Theraband on his chair"; that the School would "[p]rovide frequent short breaks between each work session"; and, that "Mom will discuss with teacher, on a bi-weekly basis, [the Student's] academic and behavioral progress. (A communication notebook between Mom and teachers)." The XXXX 2018 plan maintained the provisions for short breaks between work sessions, and bi-weekly discussions between the parent and the Student's teacher (the teacher) regarding the Student's academic and behavioral progress, but eliminated the provision for use of the Theraband.<sup>2</sup>

Section 504 and the ADA prohibit individuals, on the basis of disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities, respectively. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free 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 regulation implementing Section 504, at 34 C.F.R. § 104.33(b)(1)(i), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. Implementation of a Section 504 plan is one means of meeting this requirement.

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<sup>1</sup> The Student transferred out of the School at the end of school year 2017-2018, and enrolled in a new school for school year 2018-2019.

<sup>2</sup> The School stated that the 504 team removed the provision regarding the stretch-band because the Student's teachers believed that it was no longer needed and proved to be a distraction for the Student during fall 2017.

With respect to Allegation 1(a), the complainants alleged that in or around January 2018, the Student broke the stretch band; and although School staff promised to replace it, they never did. The School's XXXX (the XXXX) stated that during school year 2017-2018, until XXXX XX, 2018, she provided stretch bands for the Student's chair, including supplying replacements when the band broke. She acknowledged that there may have been a period between XXXX XX, 2017, and XXXX XX, 2018, when the band broke and was not immediately replaced and available for the Student's use.

With respect to Allegation 1(b), the complainants stated that the teacher was supposed to give the Student five-minute breaks to stand up and stretch; however, she did not allow him to take breaks, would not acknowledge the Student when he raised his hand to take a break, or "cursed" at him when he requested to take a break. The complainants did not provide any specific information to OCR regarding this allegation, such as dates when this allegedly occurred or witnesses who could support their allegation. The School asserted that the Student was provided breaks between work sessions, as needed. The XXXX stated that throughout school year 2017-2018, she periodically reviewed the Student's Section 504 plan with his teachers, who consistently confirmed that they were providing breaks and agreed that the breaks were effective. The XXXX stated that to implement the plan regarding breaks, the Student was sometimes permitted to read independently for a few minutes; given a task such as making a delivery to the office; or allowed to take a walk. The XXXX stated that she did not receive any complaints from the complainants that the Student was not receiving breaks.

With respect to Allegation 1(c), the complainants asserted that the teacher did not have bi-weekly discussions with them about the Student's academic and behavioral progress. The complainants stated that, sometimes, the School attempted to communicate with them through letters given to the Student to take home in his book bag; however, this was not effective as the Student would sometimes lose the letters. The School stated that bi-weekly communications between the complainant and the teacher took place via a notebook that went back and forth between home and school; in-person check-ins; and, a website, Class Dojo, which the School stated it used to communicate with all parents. The School, however, did not provide the dates of any in-person meetings between the teacher and the complainant in fulfillment of this provision of his Section 504 plan; a copy of the notebook or any excerpts therefrom; or any records of communications between the School and the complainants via Class Dojo. OCR attempted to interview the teacher to obtain additional information; however, she declined to be interviewed XXXXXX. The XXXX stated that at a meeting with the complainants and their counsel on XXXX XX, 2018, the complainants stated that the Student was not consistently remembering the notebook and requested new login information for Class Dojo, which they previously had difficulty accessing. The School stated that it provided new login information as requested.

With respect to Allegation 2, the complainants alleged that the School retaliated for their disability-related advocacy, by (a) requesting their identification when they visited the School; (b) not immediately responding to their telephone calls, emails, and requests for meetings, beginning in April 2017 and continuing throughout school year 2017-2018; (c) having School staff follow them during parent-teacher night on April 19, 2018; and, (d) making a report to DCPP, on or about XXXX XX, 2017.

In analyzing whether retaliation occurred, OCR must first determine whether the three prima facie elements of retaliation can be established: (1) whether a recipient or other person subjected an individual to an adverse action; (2) whether the recipient or other person (a) knew that the individual engaged in a protected activity or (b) believed that the individual might engage in a protected activity in the future; and, (3) there is some evidence of a causal connection between the adverse action and protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

The complainants informed OCR that they filed a due process complaint regarding the Student's Section 504 plan with the New York State Education Department (NYSED) in XXXX 2017; and entered into a settlement agreement with the School on XXXX XX, 2017. The complainants alleged that after entering into the settlement agreement with the School, in or around XXXX 2017, School staff began to retaliate against them.

OCR determined that the complainants engaged in protected activity in or around XXXX 2017, by filing, and subsequently settling, a due process complaint against the School with the NYSED. OCR also determined that the School was aware of the complainants' protected activity.

With respect to Allegation 2(a), the complainants alleged that the School retaliated for their disability-related advocacy, by requesting their identification when they visited the School beginning in May 2017 and continuing throughout school year 2017-2018. The complainants stated that the School began requesting identification from the Student's mother beginning in or around May 2017, even though it had not done so previously and the Student had been attending the School since Kindergarten. The complainants asserted that there was no policy in the School's handbook requiring parents to provide identification.

School staff denied requesting identification from the complainants, and stated that the School does not have a policy or practice of requesting identification from parents who are known to the staff. The principal acknowledged that there may have been one occasion during school year 2017-2018, when an administrative staff person requested identification from the complainants pursuant to a policy for providing copies of student records; however, he did not know the date, was not sure of the specific staff person who may have been involved, and could not provide a copy of the policy that required the provision of identification when requesting copies of student records.

With respect to Allegation 2(b), the complainants alleged that the School retaliated for their disability-related advocacy, by not immediately responding to their telephone calls, emails, and requests for meetings, beginning in April 2017 and continuing throughout school year 2017-2018. Specifically, the complainants alleged that the principal (i) refused to meet with the Student's mother in and around April/May 2017; and, (ii) refused to meet with the complainants regarding the Student's detention after he was pushed by another Student in September 2017. Further, complainants alleged that the principal disregarded their requests (iii) to reschedule a Section 504 meeting in or around November 2017, and (iv) for a meeting with the parents of a student involved in a bullying incident in November 2017, wherein the Student was injured. The complainants also alleged that the School "shut [them] off completely" after November 2017, by

(v) not returning telephone calls and emails “for the most part, including a request for home instruction for the Student in January 2018.”

The School denied failing to respond immediately to the complainants’ telephone calls, emails, and requests for meetings, beginning in April 2017 and continuing throughout school year 2017-2018. School staff members stated, however, that once the complainants indicated that they were represented by an attorney in or around spring 2017, communications with the complainants, generally, were handled through the school’s attorney and not directly with staff.

With respect to Allegations 2(b)(i) and (ii), OCR did not obtain information specifically about the principal’s alleged refusal to meet with the complainants in April/May 2017, or regarding the Student’s detention after he was allegedly pushed by another Student in September 2017.

With respect to Allegation 2(b)(iii), the XXXXX stated that she did not receive any requests from the complainants to reschedule the Section 504 meeting; however, on December 13, 2017, the principal asked her to reschedule the meeting because he had received a request from the complainants in or around November 2017. The XXXXX stated that she contacted the complainants with potential dates, on January 2, 2018, and the meeting was ultimately held on January 31, 2018. The School did not provide reasons for the delay in responding to the request to reschedule made in November 2017.

With respect to Allegation 2(b)(iv), the principal stated that he contacted the parents of the other student involved in the alleged bullying incident in November 2017, regarding the complainants’ request for a meeting, but the parents declined to meet with the School and complainants. OCR did not determine whether, or when, the principal communicated the parents’ response to the complainants.

With respect to Allegation 2(b)(v), the XXXXX stated that the complainants requested home instruction for the Student at the Section 504 team meeting on XXXX XX, 2018. The XXXXX stated that she explained the circumstances in which home instruction would be appropriate, and informed the complainants of the need for supporting medical documentation. The XXXXX stated that the complainants did not provide any medical documentation and there was no further discussion regarding home instruction. The principal similarly stated that the complainants did not provide the medical documentation that the School explained was necessary to process the request for home instruction. OCR determined that on XXXX XX, 2018, the complainant sent an email to the XXXX inquiring about the “next steps” for the Student to receive home instruction. The XXXXX forwarded this email to School administrators (including the School’s CEO and the principal), stating that she was “not comfortable having any further dialogue with [the Student’s mother] that is not through legal counsel.” The principal responded to the Student’s mother on that same date, stating that a meeting could not be held until counsel was available. The School provided no further information indicating that it responded to the complainants’ inquiry on XXXX XX, 2018, regarding home instruction.

With respect to Allegation 2(c), the complainants alleged that the School retaliated for their disability-related advocacy, by having School staff follow them during parent-teacher night on April 19, 2018. Specifically, the complainants alleged that the principal, assistant principal, a special education teacher, and the social worker followed them around the building when they attended parent-teacher night on April 19, 2018.

The School denied that any staff members followed the complainants during parent-teacher night on April 19, 2018. The principal stated that, on parent-teacher night, as he passed a classroom, he observed the complainants questioning one of the Student's teachers about her treatment of the Student, and he joined the meeting. He also stated that he asked the XXXXX to sit in during the complainants' meeting with a different teacher, in the event that questions or concerns arose about the Student's Section 504 plan. The principal asserted that he often sits in on parent-teacher meetings, but denied that either he or any other staff members followed the complainants during their parent-teacher conferences.

With respect to Allegation 2(d), the complainants alleged that the School retaliated for their disability-related advocacy, by making a report to DCPD, on or about XXXX XX, 2017. The complainants asserted that the School filed a "false report" with DCPD in retaliation for the complainants' taking "[the School] to court" in XXXX 2017, to intimidate them, which worked because the Student's mother was worried for three months that the School would call the police if she advocated for the Student. The complainants further asserted that on or about XXXX XX, 2017, the principal told the Student's father that he would call DCPD if the complainants "did not leave the School alone." The complainants stated that DCPD personnel came to the complainants' home on XXXX XX, 2017, as DCPD had received a report regarding a health issue or concern; however, the DCPD determined that the complaint was unfounded.

The XXXXX acknowledged making a report to DCPD regarding the complainants on XXXX XX, 2017, but denied that the report was retaliatory. She stated that she made the report independently, based on her concerns regarding the health and safety of the Student. Specifically, she stated that the Student made frequent visits to XXXXX complaining of illness or physical ailments, but XXXXXX nothing wrong. When she contacted the Student's mother XXXXX the Student was XXXXX, however, the Student would exaggerate and dramatize his symptoms. The Student also expressed XXXXX that he expected to suffer a serious illness or injury, such as losing his vision or the ability to walk, as a result of the minor ailments XXXXX. The XXXXX stated that she had observed that the complainants frequently took the Student for doctor visits and to the emergency room for minor symptoms. Additionally, the XXXXX stated that there had been occasions when the Student had initially denied being hurt or bullied, but later changed his story and stated that he had been hurt or bullied. She was concerned that the complainants were convincing the Student that he was hurt when he was not. The XXXXX stated that she felt obligated to file a report with DCPD based on her observations XXXXX.

The School stated that it does not maintain records of reports to DCPD, and the staff members OCR interviewed, including the XXXXX, stated that they did not keep their own records about reports to DCPD. The XXXXX and the XXXXX estimated that there were three or four other reports to DCPD during school year 2017-2018, but they could not identify who made the other reports, the bases for the reports, or the students involved. The XXXXX stated that she encountered a similar situation on one other occasion in her career, more than a decade ago when she was employed elsewhere, and on that occasion she also made a referral to DCPD.

Prior to OCR's completing the investigation of Allegations 1 and 2, on December 14, 2018, the School signed the enclosed agreement to resolve these allegations without further investigation pursuant to Section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the resolution agreement. If the School fails to comply with the terms of the

resolution agreement, OCR will resume its investigation. Upon the School's satisfaction of the commitments made under the resolution agreement, OCR will close the case.

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

Please be advised that the School 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 individual 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, it 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.

If you have any questions regarding OCR's determination, please contact Andy Artz, Compliance Team Attorney, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov); R. Colin Power, Compliance Team Attorney, at (646) 428-3832 or [r.colin.power@ed.gov](mailto:r.colin.power@ed.gov); or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or [anna.moretto.cramer@ed.gov](mailto:anna.moretto.cramer@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Cherie L. Adams, Esq. (via email)