



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 21, 2020

Sent via email only to: bstiles@goldendoor.org

Brian Stiles
Chief Academic Officer
Golden Door Charter School
3040 Kennedy Boulevard
Jersey City, New Jersey 07306

Re: Case No. 02-19-1110
Golden Door Charter School

Dear Mr. Stiles:

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 Golden Door Charter School (the School). The Complainant alleged that the School discriminated against his daughter (the Student), on the basis of her disability, by frequently requiring the Complainant to pick up the Student early from the School, in September and October 2018 (Allegation 1); and failing to evaluate the Student for a suspected disability and requiring him to obtain a private evaluation in October 2018 (Allegation 2). The Complainant also alleged that the School discriminated against the Student, on the basis of her disability, by failing to provide the Complainant with notice of his procedural rights under Section 504 as a parent of a child with a disability, in November 2018 (Allegation 3). Additionally, the Complainant alleged that the School discriminated against the Student, on the basis of her disability, by dismissing the Student from the after-school program held at the School, in December 2018 (Allegation 4).

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 charter school. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

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The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(ii), (iv), (v) and (vii), provides that a recipient, in providing any aid, benefit, or service, may not, directly or through a contractual, licensing, or other arrangements, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide different or separate aid, benefits, or services to qualified individuals with disabilities unless such action is necessary to provide the qualified individual with a disability with aid, benefits, or services that are as effective as those provided to others; aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity; or otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(ii), (iv), (v), and (vii), contains similar prohibitions pertaining to public entities.

Further, the regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation of any person who, because of a disability,¹ needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The regulation implementing Section 504, at 34 C.F.R. § 104.36, provides that a recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, 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.

In its investigation, OCR interviewed the Complainant and School staff. OCR also reviewed documentation that the Complainant and the School submitted. OCR made the following determinations.

With respect to Allegations 1, 2, and 3, the Complainant alleged that the School discriminated against the Student, on the basis of her disability, by frequently requiring the Complainant to pick up the Student early from the School, in September and October 2018; failing to evaluate the Student for a suspected disability and requiring the Complainant to obtain a private evaluation, in October 2018; and failing to provide the Complainant with notice of his procedural rights under Section 504 as a parent of a child with a disability, in November 2018. The Complainant stated

¹ In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.3(j), an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The regulation implementing the ADA has a similar definition at 28 C.F.R. § 35.104.

that in September 2018, after starting at the School, the Student began experiencing daily tantrums at the School. The Complainant stated that the Student's teacher called him and/or the Student's mother three to four times per week to pick up the Student. The Complainant stated that when he and the School's Assistant Director met to discuss the Student's behavior, the Assistant Director recommended that the Complainant pay to have a psychiatrist with whom the School was familiar evaluate the Student. The Complainant stated that within a week of receiving the psychiatrist's report, the School recommended placing the Student at a full-day therapeutic nursery program at XXXXX XXXX XXXXXXXX XXXXXX (the therapeutic program), instead of the School. The Complainant stated that, thereafter, the Student began attending the therapeutic program through his health insurance plan. The Complainant stated that the School did not complete an evaluation of the Student prior to placing her at the therapeutic nursery program. The Complainant also stated that despite the School's recommending that he have the Student evaluated and placing the Student at the therapeutic program, the School failed to provide him with notice of his procedural rights under Section 504.

OCR determined that the School has a procedure for the location, identification, and referral for an evaluation of preschool age students suspected of having a disability (the evaluation procedure). If a parent of a preschool age student suspected of having a disability requests a Child Study Team (CST) evaluation by telephone, the parent will be advised to submit a written request for an evaluation to the Director of Special Education (the Director). The evaluation procedure requires the School to respond to the referral of preschoolers according to New Jersey state law.² Upon receipt of a parent request for an evaluation, the School is to open a file, which initiates the state-mandated 20-day timeline for conducting the referral/identification meeting and completion of any forms used to open a case. The Director will convene a referral/identification meeting within 20 calendar days of the date the School received the parent request, and will send a "notice of a Referral/Identification Meeting" and a "Parental Rights in Special Education" (PRISE) booklet. The evaluation procedure requires the CST, including a speech language specialist, the parent(s), and a teacher who is knowledgeable about the school's program, to attend the referral/identification meeting. The program must be in place no later than 90 calendar days from the date of parental consent.

OCR determined that during school year 2018-2019, the Student was XXXX years old and enrolled in the School's pre-kindergarten program. The School reported to OCR that from the start of school year 2018-2019, the Student presented with severe behavioral issues, including temper tantrums of a violent nature; refusal; kicking; and screaming. On September 21, 2018, the Student's teacher sought assistance in dealing with the Student's behavior from the School's Assistant Director. The Assistant Director stated that she recommended that the teacher use techniques that School staff typically used with pre-K or kindergarten students experiencing difficulty with transition to the school environment,³ but the techniques were unsuccessful in dealing with the Student's behavior. The Assistant Director stated that the School did not initiate an evaluation of the Student at that time, because while School staff had concerns about the intensity of the Student's behaviors and they were not sure if the behaviors were disability-related or due to transition issues.

² N.J.A.C. 6A:14-3.3(e).

³ The Assistant Director explained that these techniques include patience, distractions, positive praise, 1:1 attention, and documenting the things that trigger the student's behavior.

On September 28, 2018, during a conference between the Student's mother and the Student's teacher to discuss the Student's behavior, the Student's mother orally requested that the School evaluate the Student for a disability. The School reported to OCR that on October 2, 2018, the Student's mother made a written request for the School to conduct an evaluation of the Student.

The School reported to OCR that on October 4, 2018, the Assistant Director advised the Director of the request, in accordance with the School's practice. The Assistant Director provided the parents with the name of a psychiatrist that the School had used in the past. Thereafter, the Student's parents arranged for the psychiatrist to evaluate the Student at their own expense.

The psychiatrist evaluated the Student on October 27, 2018; and sent her evaluation report directly to the School. In an email to the Complainant dated November 7, 2018, the Director stated that the School recommended that the Student undergo a full evaluation and be placed on a modified (shortened) school schedule and/or on home instruction pending completion of the CST evaluation. The Complainant responded to the Director via email that same day, consenting to the full evaluation but disagreeing with the proposed alternative programs that the Director had suggested.

In an email to the Complainant dated November 14, 2018, the Director forwarded a copy of the psychiatrist's updated report,⁴ stating that the psychiatrist and County CST Supervisor both had recommended placing the Student in a therapeutic and comprehensive program to meet her behavioral needs. The Director further stated that the Student had qualified for the therapeutic program, and that the therapeutic program coordinator would contact the Complainant and the Student's mother. In an email to the Complainant and the Student's mother dated November 27, 2018, the Director stated that the Student had been cleared to start at the therapeutic program.⁵ The Director stated that she believed that in November 2018, she orally notified the Complainant of his procedural rights, but did not recall providing such notice in writing.

On November 29, 2018, the Student began attending the full-day therapeutic program, the cost of which the Complainant's insurance paid. Beginning at the end of January 2019, the Student began attending the School one day per week and the therapeutic program four days per week.

The School conducted a psychological evaluation on November 14, 2018; a speech and language evaluation on November 14, 2018; a speech and language evaluation addendum on February 27, 2019; and an educational evaluation on February 28, 2019. On March 14, 2019, the School held a CST meeting to determine the Student's eligibility for special education and related aids and services.⁶ During the meeting held on March 14, 2019, the CST determined that the Student was eligible for special education and related aids and services under the classification of

⁴ The School advised OCR that after providing a copy of the report to the School, the psychiatrist spoke with the Director, as is her usual practice, to obtain more information about the Students' school-based behaviors. The psychiatrist then revised the report and included a recommendation for the therapeutic program.

⁵ Addressing the parents' concern regarding the Student's losing her place at the School, the Director stated, "We would recommend that [the Student] receives the full day program to start and then we can work on reintegrating her back into the classroom and shifting to the half day program once she can handle it."

⁶ The IEP meeting minutes state that the parents expressed agreement with the plan, the placements, and the IEP that was developed.

“XXXXXXXXXX XXXXXXXXXX”;⁷ would attend the therapeutic program for the remainder of school year 2018-2019;⁸ and would attend a therapeutic kindergarten program in the XXXXX XXXX XXXXX XXXXXXXX for school year 2019-2020. OCR determined that, during the CST meeting held on March 14, 2018, the School provided the Complainant with written notice of his procedural rights.

With respect to Allegation 4, the Complainant alleged that the School discriminated against the Student, on the basis of her disability, by dismissing the Student from the after-school program held at the School, in December 2018. The Complainant stated that the Student enrolled in the after-school program in September 2018 and was expelled on or about December 13, 2018. The Complainant asserted that the Assistant Director told after-school program staff that the Student’s behavior was unacceptable, and that staff did not have to permit the Student to attend the after-school program.

OCR determined that there is an after-school program located at the building where the School is located, which is run by Apollo After School, an extracurricular enrichment company. OCR determined that Apollo After School is not a recipient of federal financial assistance from the Department; therefore, Apollo After School is not subject to OCR’s jurisdiction under Section 504. Apollo After School also is not a public entity over which OCR has jurisdiction under Title II of the ADA.⁹

The School advised OCR that it does not own the building in which the School operates; rather, it leases the space from St. John’s Roman Catholic Church in Jersey City, New Jersey. As a lessee, the School stated that it has no authority to lease the facilities it uses to another entity. The School advised OCR that the after-school program provides its own liability insurance and is licensed as a childcare center by the State of New Jersey. The School further advised OCR that the School does not exercise any oversight over the after-school program, and the after-school program makes its own operating decisions.

OCR determined that, on December 17, 2014, the School’s Board of Trustees approved the after-school program’s operation effective February 1, 2015, after its prior after-school program was unable to obtain the appropriate certification to operate. The School stated that it formally approved the after-school program in order to grant the program use of the facility; however, it noted that, since that time, there is no record of any subsequent approvals.

In determining whether the School provides the after-school program with significant assistance, OCR examined the following factors:

- 1) direct financial support provided by the School;
- 2) indirect financial support provided by the School;

⁷ The Student turned X years old on XXXX XX, 2019. The CST determined that effective June 14, 2019, the Student’s disability classification would change from “XXXXXXXXXX XXXXXXXXXX” to “XXXXXXXXXXXX XXXXXXXXXX.”

⁸ The Student would continue to attend the School one day per week, as appropriate.

⁹ The after-school program, as a place of public accommodation, is subject to Title III of the ADA, but is not subject to the Department’s jurisdiction under Title II of the ADA.

- 3) provision of tangible resources such as staff, facilities, and/or materials at no cost or reduced cost;
- 4) intangible benefits such as the lending of recognition and approval;
- 5) selectively providing privileges and resources to the private entity; and
- 6) whether the relationship is occasional and temporary or permanent and long-term.

On September 18, 2020, the School signed the attached resolution agreement (Agreement) to voluntarily resolve Allegations 1, 2, 3, and 4 without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the Agreement.

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 Complainant 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 the individual 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, please contact Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; Grace Kim, Compliance Team Attorney, at (646) 428-3977 or grace.d.kim@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Attachment

cc: Paul N. Barger, Esq.