



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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January 27, 2014

IN RESPONSE, PLEASE REFER TO: 03131097

Dr. Tennell Brewington, Co-Director
Family Foundations Academy
1101 Delaware Street
New Castle, DE 19720

Dear Dr. Brewington:

This is to advise you that we have completed our investigation and reached a determination in the above-referenced complaint filed with the U. S. Department of Education (the Department), Office for Civil Rights (OCR), against the Family Foundation Academy (the Academy). The Complainant, xx xxxxxx xxxxxxxx, alleges that the Academy discriminated against xxx xxx, xxxxxx xxxxxxxx (the Student), on the basis of disability by:

1. failing to timely evaluate the Student for a 504 Plan xx xxxxxxxx xx xxx xxxxxxxxxxx xxxxxxxx xxxx xx xxxxxxxx xxxx and xxxxx xxx; xxx
2. failing to notify her of her procedural safeguards when the Academy xxxxxxx xxx xxxxxxx xxx x xxx xxxx xxxxxxx x xxxxxxx xx xxxxx xxxx.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the Academy is subject to Section 504, the ADA, and their implementing regulations.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion. If OCR receives conflicting information from the

Complainant and the Recipient regarding key elements of our legal analysis, and the differences between the two accounts cannot be reconciled by available evidence, then OCR will not be able to establish that a violation occurred.

During our investigation, we interviewed the Complainant and relevant personnel at the Academy and reviewed documents submitted by the Complainant and the Academy. OCR determined that based on the evidence gathered during our investigation, there is sufficient evidence of a violation of Section 504, the ADA, and their implementing regulations with regard to xxxxxxxxxxx x. xxxx xxxxxxxxxxxxxxxx xxxxx xxxxxxxxxxxxxxxx xxxxxxxx xx xxxxxxxxxxx x xxxxxxxxxxx xx xxxxxxxxxxx x.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.33(a) requires public school districts to provide a free appropriate public education to each qualified student with a disability in their jurisdiction. The Section 504 regulation at 34 C.F.R. § 104.35 provides that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person 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 person in regular or special education and any subsequent significant change in placement. Section 504 does not provide specific timeframes for the identification, evaluation, or placement process.

The Section 504 regulations at 34 C.F.R. § 104.36 require 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. Compliance with the procedural safeguards provision of the Individuals with Disabilities Education Act (IDEA) is sufficient to meet this requirement.

Title II of the ADA is interpreted consistently with Section 504 in each of these areas.

Summary of Facts

- During the 2012-2013 school year, the Student was enrolled in the xxx grade at the Academy. Previously, he had an Individualized Education Plan (IEP) due to a diagnosis of xxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxxxx xxxxxxxx xxxx. xx xxxxx xxxx, xx xxx xxxxxxxxxxx xxx xx xx xxxxxx xxxxxxxxxxx xxx xxxxxxx xxxxxxxxxxxxxxx xxxxxxxx.

- The Academy's notes titled "Section 504 Student History" state that on xxxxxxxx x, xxxx, the Complainant and Academy personnel (the Dean of the Academy and the Special Education Coordinator (the Coordinator)) discussed a Section 504 Plan for the Student and that Academy officials advised the Complainant that xxx xxxxxx xx xxxxxx x xxxxxxxx xxxx xxxxxxxxxxxxxxxx x xxxxxxxx xxx xxxx.
- The Coordinator sent the Complainant a "Notice of Meeting - Section 504" dated xxxxxxxx x, xxxx, inviting xxx to attend a Section 504 meeting on xxxxxxxx x, xxxx to develop a Section 504 Plan.
- A draft Section 504 Plan was developed at a xxxxxxxx x, xxxx meeting that included the Complainant, Academy administrators, and the Student's teachers. The draft Section 504 Plan states that the Student "xx xxxxxx xxxxxxxxxxxx xxxxxxxx - xxxxxxxxxxxx xxxxxxxx." At this meeting, the Complainant presented a doctor's note xxxxx xxxxxxxxxxx xx, xxxx, xxxxxxxx xxxx xxx xxxxxx xxxxx "xxxxxxxx xxxx xxxxxxxxxxxx xxxxxxxx xxxxxxxx x xxxx xxxx." The meeting minutes state: "Everyone is in the agreement of implementation of [the Student's] Section 504 plan...[The Complainant] would like to take it home and review. However would not be validated until all signatures are obtained...final draft will be implemented once team is in an agreement/finalized documentation from Dr. Office." Additionally, on the Student's Section 504 History form for this date, it is written, "Sent home the team input of the 504 plan. xxxxxxxx, xxxx xx xxxxxxxx xxx xxxx xx xxxxx xxxxxx/xxxxxxxx xxx xxxxxxx xxx." The minutes of this meeting reflect that the Complainant was given a copy of the draft Section 504 Plan, along with procedural safeguards.
- X---paragraph redacted---x.
- X---paragraph redacted---x.
- X---paragraph redacted---x.
- X---paragraph redacted---x.
- As documented on the Student's Section 504 History form, a meeting was held on X---paragraph redacted---x.
- The Student was evaluated on X---paragraph redacted---x.
- The Coordinator sent the Complainant a "Notice of Meeting - Section 504" X---paragraph redacted---x. Following the meeting, a Prior Written Notice was sent to the Complainant along with procedural safeguards, setting forth the team's determination that the Student met the criteria for special education, and agreed with the pending Section 504 Plan.

- X---paragraph redacted---x. The Student's Section 504 History form indicates that on xxxx x, xxxx, a copy of the Student's evaluation, Section 504 Plan and the associated documentation from the meeting was sent to the Complainant.
- X---paragraph redacted---x.

Policies and Procedures

The Academy's document, titled "A Guide to Section 504 of the Rehabilitation Act of 1973," provides an explanation of the rights of parents and guardians under Section 504, and specifically states that parents have the right to an impartial hearing regarding its decisions, among other rights.

Analysis - Allegation 1

Under Section 504, it is the responsibility of the recipient to evaluate the Student to determine the Student's need for services under Section 504. Although Section 504 does not provide timeframes within which referrals for an evaluation must occur, OCR has interpreted Section 504's evaluation provisions to require that a student must be evaluated within a reasonable time after a referral, allowing for any extenuating circumstances justifying any delays. X---paragraph redacted---x. Thus, we find that there is sufficient evidence that the Academy denied the Student a FAPE by xxxxxxxx xx xxxxxx xxxxxxxx xxx xxxxxxxx xxx x xxx xxxx. On January 23, 2014, the Academy signed a Resolution Agreement to address this compliance concern, and OCR will monitor the Academy's compliance with the terms of this Agreement.

Analysis - Allegation 2

In her original complaint, the Complainant stated that the Academy did not X---paragraph redacted---x.

This concludes OCR's investigation and OCR is closing its files in this case effective the date of this letter. It should not be interpreted to address the Academy's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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. This letter is not intended nor should it be construed to cover any other issues regarding the Academy's compliance with Section 504 or the ADA, which may exist and are not discussed herein.

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Please be advised that the Academy 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 may file another 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.

If you have questions or concerns about this matter, you may contact me at 215-656-8522. Thank you for your cooperation.

Sincerely,

/s/

Vicki Piel
Supervisory Attorney and Team Leader

Enclosure