



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 1, 2015

IN RESPONSE, PLEASE REFER TO: 03151240

Mr. Phil Orend
President
Lincoln Park Performing Arts Charter School
1 Lincoln Park
Midland, PA 15059

Dear Mr. Orend:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Lincoln Park Performing Arts Charter School (the School). The Complainant, XXXXXX, alleged that the School lacks a procedure for resolving grievances alleging discrimination on the basis of disability.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities.

Because the District receives Federal financial assistance from the Department, and is a public entity, the District is subject to these laws and their implementing regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Legal Standards

The regulation implementing Section 504 at Section 104.7(b) requires that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions. Likewise the regulation implementing Title II at 28 C.F.R. Section 35.107(b) requires

that a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the part. Pursuant to OCR policy, there are certain minimum elements that are necessary to meet the standard for a prompt and equitable grievance procedure under Section 504:

- notice to students and employees of the procedure, including how and where to file a complaint;
- application of the procedure to complaints alleging disability discrimination carried out by students, employees, or third parties;
- adequate, reliable, and impartial investigation, including the opportunity for both parties to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint; and
- an assurance that the recipient will take steps to prevent the recurrence of any prohibited actions and to correct its effects on the complainant and others, if appropriate.

34 C.F.R. Section 104.7(a) and 28 C.F.R. Section 35.107(a) require that recipients designate compliance coordinators; however, the fuller ADA regulation requires that a public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to the regulation.

34 C.F.R. Section 104.8 and 28 C.F.R. Section 35.106 require that recipients take steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504 and the ADA, respectively.

Factual Background

At this stage of the investigation, the School has provided some of its publications and procedures which reflect that its Principal and Chief Executive Officer are the persons responsible for coordinating the School's compliance with Section 504. The School also provided copies of some of its publicized non-discrimination notices, which were acceptable, but OCR has not done an exhaustive review of all notices. The School's non-discrimination policies reviewed by OCR contain some, but not all, of the elements required under OCR policy. However, OCR has not interviewed the Section 504 coordinator to ensure that they do not have a specific grievance procedure for complaints alleging discrimination on the basis of disability, nor conducted an exhaustive review of all policies and notices.

The School requested to resolve the complaint voluntarily, before OCR could verify whether the documents provided reflected the School's actual policies and practices.

Conclusion

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the

resolution agreement must be aligned with the complaint allegations, the information obtained during the investigation, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the School, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the District requested to resolve the complaint through a Voluntary Resolution Agreement (the Agreement). On November 18, 2015, the School signed an Agreement to address the allegations in this complaint. As is our standard practice, OCR will monitor the School's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the allegation as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the School's compliance with Section 504 and Title II, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

Please be advised that Federal regulations prohibit recipients of Federal financial assistance from taking actions that intimidate, threaten, coerce, interfere, or discriminate against any individuals who exercise their statutory rights under the laws that OCR enforces, including filing a complaint with our office or taking part in the complaint resolution process.

If you have any questions, please contact Josh Galiotto, investigator, at (215) 656-8587 or by email at joshua.galiotto@ed.gov.

Sincerely,

/s/

Judith A. O'Boyle
Acting Team Leader

Enclosure