



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10  
ATLANTA, GA 30303-8927

REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

April 20, 2017

Mr. Scott O'Prey  
Principal  
Cherokee Charter Academy  
2126 Sixes Rd.  
Canton, GA 30114

**Re: Complaint # 04-17-1098**

Dear Mr. O'Prey:

On November 14, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint filed against the Cherokee Charter Academy (Academy) alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the Academy discriminated against her daughter, the Student, on the basis of disability, by failing to provide her with a Section 504 Plan in a timely manner, thereby denying her a free appropriate public education (FAPE), for the 2015-2016 Academy year.

OCR enforces 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 by recipients of Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit 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 and Title II.

Based on the allegations, OCR investigated the following issue:

- Whether the Academy failed to timely evaluate the Student during the 2015-2016 school year in noncompliance with the Section 504 implementing regulations at 34 C.F.R. §104.35 and the Title II implementing regulation at 28 C.F.R. §35.130.

Before OCR completed its investigation, the Academy offered, and OCR agreed, to resolve the allegations by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the Academy.

## **Legal Standards**

### **Free Appropriate Public Education**

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) and (b) requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the student's disability. A FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36, regarding educational setting, evaluation and placement, and procedural safeguards.

Further, pursuant to 34 C.F.R. § 104.35(a), a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of that section 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 requires that a timely evaluation be conducted and provides that compliance with the Individuals with Disabilities Education Act (IDEA) is one means of complying with the provisions of Section 504. IDEA requires recipients to conduct an evaluation within 60 calendar days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301. Thus, OCR considers the 60-day standard in assessing the reasonableness of a recipient's evaluation.

The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the FAPE allegation in this complaint.

### **Summary of Investigation**

The Student entered the Academy in August 2014 as a Kindergarten student, and remained there through the completion of first grade during the 2015-16 school year. The Complainant withdrew her from Academy before the beginning of the 2016-17 school year.

On August 11, 2015, the Complainant emailed the 504 Coordinator inquiring about a 504 Plan, based on the Student's Teacher's recommendation. The Complainant's email stated, "Hey! I had a meeting with [the Teacher], yesterday and she suggested I contact you to find out about the process to get a 504 started for the [Student] hopefully to have it in place before testing begins. What do you think? What do you need from me to get the ball rolling?" The 504 Coordinator replied that same day, "We would need a diagnosis from someone who is licensed."

On August 30, 2015, the Complainant notified the Student's teacher of the Student's ADHD diagnosis and medication. On December 7, 2015, the Complainant emailed the 504 Coordinator for the form to give the Student's doctor to confirm diagnosis. The Complainant also mentioned the Teacher recommended small group testing for the Student. On January 7, 2016, the Complainant provided the diagnosis to the Academy on the form. On January 14, 2016, the

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

[www.ed.gov](http://www.ed.gov)

Academy provided an eligibility form signed by the 504 Coordinator indicating that the Student is eligible for services under 504, and that Student's disability affects the major life activity of concentrating. On January 28, 2016, the 504 Coordinator and Student's Teacher email regarding the Student's 504 Plan, and on March 4, 2016, the 504 Coordinator and Student's Teacher meet to discuss accommodations for the Student. On March 7, 2017, the Student's Section 504 Plan was created and signed by parent, providing her accommodations for ADHD. This is approximately seven months and well beyond the 60 day guideline set by IDEA and the GA Department of Education.

OCR did not complete the investigation to determine whether the Academy failed to timely evaluate the Student for a Section 504 plan, in noncompliance with Section 504 and Title II, prior to receiving the request from the Academy to resolve this matter.

### **Resolution Agreement**

To remedy the allegations raised by the complaint, the Academy agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the Academy will convene a 504 meeting for the Student, including the Student's parent(s), to determine what compensatory education or other remedial services the Student requires and develop a written plan for providing the Student with the compensatory education or other remedial services deemed necessary.

The Agreement is aligned with the complaint allegations and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the Academy's implementation of the Agreement to ensure that it is fully implemented. If the Academy fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

This concludes OCR's investigation of the complaint and 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 file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

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

Finally, OCR reminds the Academy that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

privilege secured by the laws OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Ms. Lorraine Irier, the assigned attorney, at (404) 974-9349, or, me, at (404) 974-9376.

Sincerely,

Arthur Manigault, Esq.  
Compliance Team Leader

CC: [JChancey@deflaw.com](mailto:JChancey@deflaw.com)