



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 3, 2015

Mr. Dan Hurley
Director
Woodbury Leadership Academy
600 Wier Drive
Woodbury, Minnesota 55125

Re: OCR# 05-15-1159

Dear Mr. Hurley:

This is to notify you of the disposition of the referenced complaint you filed with the U.S. Department of Education, Office for Civil Rights (OCR), on February 19, 2015, against the Woodbury Leadership Academy (School). The complaint alleged that the School discriminated against a student (Student A) based on his disability (attention deficit hyperactivity disorder or ADHD) when, on November 8, 2014, and February 11, 2015, the School failed to implement his Section 504 Plan, resulting in two out-of-school suspensions.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance and Title II prohibits discrimination on the basis of disability by public entities. These regulations also prohibit retaliation. As a recipient of Federal financial assistance from the Department, the School is subject to Section 504 and Title II.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides, in part, that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department. The Section 504 regulation, at 34 C.F.R. § 104.33(a), states that a recipient is required to provide a free and appropriate public education (FAPE) to all qualified students with disabilities in its jurisdiction.

The Section 504 implementing regulation provides that implementation of an Individualized Education Plan (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of providing FAPE. The IDEA implementing regulation at 34 C.F.R. § 300.323(d) states that recipients must ensure that IEPs are accessible to each

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regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; that each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP; and that the specific accommodations, modifications, and supports set forth in the IEP must be provided for the child.

The School is a charter elementary and middle school serving 204 students in grades K-6. According to the School's Director, the 2014-15 school year is the School's first year in operation. Of the School's 204 students, 28 (14%) are identified students with disabilities. Of the 28 disabled students, 26 (13%) have Individualized Education Plans (IEP's) and 2 (1%) students, including Student A, have Section 504 Plans. For the 2014-15 school year, the School issued 15 in-school and out-of-school suspensions to 11 different students. Of these students, Student A has a Section 504 Plan and 2 are students with IEP's. The remaining 8 students are non-disabled students.

The September 30, 2014 Section 504 Plan (Plan)

On September 30, 2014, Student A's Section 504 team, which consisted of the School Director (Director), Student A's General Education Teacher (Teacher A), the School's Special Education Administrator (SEA) and Student A's parents, met to draft a Section 504 Plan for Student A's upcoming 3rd grade school year (Plan). The Plan provided Student A with the certain accommodations, aids, and services in the general education environment, including a behavior management plan (BMP). Specifically for behavior management, the Plan required staff to provide Student A with breaks and opportunities for movement as needed to help with self-regulation and attending issues, a daily picture schedule to assist in telling Student A what will be happening next and when activities are to be finished. The BMP also required Student A to follow the behavior management system set in place by the classroom teacher.

OCR interviewed the Director and the SEA regarding the creation of the Plan. Both indicated that the Plan was based primarily on a document created by the Complainant and drafted solely by the Complainant. The Director stated that in hindsight, that he had some concern about the language of the Plan regarding the behavioral provisions, like the lack of identified triggers, specific behaviors, durations and intensity of behaviors, and means to measure compliance. The Director admitted that he did not express these concerns at the September 30th meeting. According to the Director, he let the SEA run the meeting.

The Director and the SEA both stated that Student A's parents were adamant about Student A not receiving special education services under IDEA and stated at the meeting that they would not consent to an evaluation for special education services. No evaluations were

conducted by the School, and the provisions of the Plan were discussed and edited by the parties at the September meeting. Other than physician medication orders, there were no other evaluative materials upon which the Plan was created. Based on the documentation provided by the School in response to OCR's data request, no procedural rights were provided to the Complainants.

According to staff and administrator interviews conducted by OCR, the School utilizes a general disciplinary method of classroom administration called "responsive classroom." The responsive classroom method addresses disciplinary issues with pre-emptive responses like allowing students to take a break when they get frustrated in the classroom setting. According to staff and administrators, the School has an open classroom floor plan; the hallways and common areas are marked by carpet color changes and structural columns as opposed to walls and doors. As a result, teachers and staff can see which students take breaks and can observe them from their respective classrooms. In some cases, students can go to other classrooms with teachers with whom they feel comfortable to take breaks. In some cases, a teacher may tell a student to take a break outside in order to de-escalate a situation. Staff members asserted to OCR that Student A's Plan seemed to be incorporated into the scheme the School already had in place, so it was easy to remember and execute. The daily picture schedule, according to staff, was provided and had no effect regarding Student A's behaviors.

According to Student A's disciplinary records, the Student was involved in five documented incidents of behaviors during which teachers and staff escorted Student A out of the classroom. Two incidents resulted in the student being sent home. Two incidents resulted in formal discipline (one in-school and one out-of-school suspension), and one incident resulted in the student being separated from other students in the cafeteria and made to eat lunch in a separate room under the supervision of two instructors.

Regarding the handling of each of these incidents, Student A's teachers and administrative staff asserted that they were familiar with the Plan and they attempted to follow it when Student A would go off task. According to School staff, the Complainant expressed concerns regarding the manner in which staff touched and redirected Student A during incidents of misbehavior. According to school records, the Complainant did not file a formal complaint of disability discrimination with the School.

Conclusion

During OCR's investigation, the School offered to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. The resolution agreement is aligned with the complaint allegation and the information obtained during the investigation, and is consistent with applicable regulations.

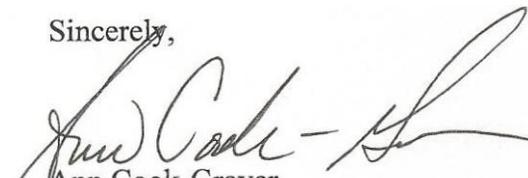
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Please be advised that the School may not harass, coerce, intimidate or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another 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 any questions, please contact Miguel Figueras, Regional Civil Rights Attorney, or me by telephone at (312) 730-1560.

Sincerely,



Ann Cook-Graver
Supervisory Attorney

Enclosure

**Resolution Agreement
Woodbury Leadership Academy
OCR Docket #05-15-1159**

Woodbury Leadership Academy (WLA) submits the following agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), in resolution of OCR complaint 05-15-1159. WLA submits this agreement to ensure its compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104.

By entering into this Resolution Agreement, WLA does not admit any violation of Section 504 of the Rehabilitation Act of 1973 with regard to the allegations in the complaint. Nothing contained in this Resolution Agreement shall be construed, or used as an admission of wrongdoing, liability, statutory or regulatory violation, or any other illegal or improper act, by WLA.

WLA agrees to complete the following as a means to resolve the instant Complaint:

Individual Remedies

Section 504 Plan

- I. By August 7, 2015, WLA will send a letter to the parents of Student A, informing them that if they choose to re-enroll Student A at WLA for the 2015-16 school year, WLA will, upon the parents' or a parent's written request, convene a Section 504 meeting to determine if Student A experienced a loss of educational services at WLA during the 2014-2015 school year as a result of the Section 504 Plan. The Section 504 team meeting shall include a group of knowledgeable persons, including Student A's parents, to determine whether Student A needs compensatory educational, remedial and/or counseling services as a result of WLA's failure to provide appropriate regular and/or special education or related services during the 2014-2015 school year.
 - a. If the Section 504 team concludes that Student A needs compensatory educational, remedial and/or counseling services as a result of WLA's failure to provide appropriate regular and/or special education or related services during the 2014-2015 school year, then within one week of its determination, the group will develop a plan for providing timely compensatory educational, remedial and/or counseling services with a completion date not to extend beyond October 31, 2015. WLA will provide Student A's parents with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

REPORTING REQUIREMENT:

By August 7, 2015, WLA will provide OCR with a copy of the letter it sent to Student A's parents described in Item 10. If Student A is not re-enrolled in WLA for the 2015-2016 school year, WLA will notify OCR in writing by September 11, 2015.

2. Within 2 weeks of the decision as to whether compensatory educational, remedial and/or counseling services are needed, WLA will submit to OCR documents supporting the group's decision. The documentation submitted shall include documentation showing the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing any compensatory educational, remedial and/or counseling services (if any) to Student A. OCR will, prior to approving WLA's decision and plan for providing the proposed services, review the documentation to ensure that WLA met the procedural requirements of the regulation implementing Section 504, at 34 C.P.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

REPORTING REQUIREMENT: By November 6, 2015, WLA will provide documentation to OCR of the dates, times and locations that compensatory educational, remedial and/or counseling services were provided, a description of what was provided, and the name(s) of the service provider(s).

Section 504 Plans Policies and Procedures

3. By September 1, 2015, WLA will review, and revise if necessary, its policies and procedures to ensure they comply with Section 504 of the Rehabilitation Act of 1973. The policies and procedures shall incorporate, but not be limited to, the following provisions:
 - a. Free Appropriate Public Education (34 C.F.R. § 104.33 *et seq.*). WLA shall provide a free and appropriate education to transfer students with disabilities who have existing Section 504 plans or Individualized Education Programs.
 - b. Evaluation and Placement (34 C.F.R. § 104.35 *et seq.*). WLA shall adhere to the identification, evaluation and procedures if it has reason to believe a student may have a disability.
 - c. Procedural Safeguards (34 C.P.R. §104.36.) WLA shall establish and implement a special education system that includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing and an appeal procedure.

REPORTING REQUIREMENT: By September 11, 2015, WLA will submit any revised policies and procedures to OCR for review and approval.

4. Within 30 calendar days of written notification of OCR's approval of any revised policies and procedures developed in accordance with Item 3, WLA will adopt and implement the revised policies and procedures and will provide all administrators, teachers, and staff with written notice regarding the new policies and procedures. The revised policies and procedures will also be placed on WLA's website and included in the Handbook for the 2016-2017 school year.

REPORTING REQUIREMENT: No later than 30 days after OCR approves the policies and procedures developed pursuant to Item 3, WLA will provide OCR with documentation that it has implemented Item 4, including copies of the written notices issued to administrators, teachers, and staff along with an explanation as to how it was provided to them, and a link to the revised policies and procedures on WLA website.

Staff Training

5. By September 1, 2015, WLA will provide training to all administrators, teachers, and relevant staff responsible for the identification, evaluation, and placement of students with disabilities. The training shall include, but not be limited to, the following:
 - a. The requirements of Section 504 of the Rehabilitation Act of 1973;
 - b. WLA's policies and procedures developed to Item# I, herein;
 - c. An emphasis on WLA's policies and procedures regarding the evaluation of a student who is believed to be a student with a disability and the provision of a free and appropriate education to transfer students with disabilities.

REPORTING REQUIREMENT: By September 11, 2015, WLA will provide OCR with documentation that it has provided the training required in Item 5, including the dates of the training, the names and titles of the trainer(s), an outline or agenda of the training, a copy of materials used or distributed during the training, and a sign-in sheet with the names and titles of the staff who attended the training.

Anti-Discrimination and Harassment Policies and Procedures

6. By September 1, 2015, WLA agrees to update its anti-disability discrimination and anti-disability harassment policies and procedures¹ to ensure that WLA will adequately address and provide WLA sufficient options for responding promptly and appropriately to reported incidents of discrimination and/or harassment on the basis of disability. The anti-discrimination and harassment policies or procedures will include at a minimum:
 - a. A statement setting forth WLA's commitment to having a school environment free from all discrimination and/or harassment on the basis of disability. The statement must explain that WLA prohibits discrimination and/or harassment in WLA environment, including all academic, extra-curricular and WLA-sponsored activities whether on or off campus. The statement will encourage students to immediately report incidents of discrimination and/or harassment. The statement will emphasize that all employees, including faculty, staff, administrators, security officers and coaches are required to refrain from harassing students and are required to promptly report incidences of harassment. The statement will specify that WLA will investigate formal and informal complaints of discrimination and/or harassment.

¹ The District may include other bases of prohibited discrimination and harassment.

- b. Definitions with specific examples of the type of conduct and behavior that is prohibited by the policy, including examples of staff-to-student and student-to-student conduct.
 - c. Identification of the kinds of activities and sites where prohibited conduct could occur.
 - d. A notice that the procedures apply to complaints of discrimination and/or harassment raised by employees, students, or third parties;
 - e. An explanation of how to report discrimination and/or harassment and/or file a complaint (formally or informally).
 - f. A description of WLA's informal and formal complaint procedures, including a Complaint Form, designated prompt timeframes for WLA's investigation of a complaint and a requirement that written notice of the outcome be provided to the parties.
 - g. Specific information as to the name or title and contact information (including office and email address and telephone number) for WLA employee(s) responsible for receiving the Complaint Form and/or investigating reports of discrimination and/or harassment. This information shall include an alternate Coordinator, in the event that the designated Coordinator has a conflict of interest or is named as the accuser in a complaint.
 - h. A requirement that the designated WLA employee(s) document all reports of incidents of discrimination and/or harassment and that WLA establish a protocol for recordkeeping.
 - i. A recommendation that WLA staff who observe acts of discrimination and/or harassment intervene to stop the discrimination and/or harassment, unless circumstances would make such intervention dangerous and a requirement that WLA staff report such incidents to the Coordinator.
 - j. The interim and permanent steps WLA will take to stop the discrimination and/or harassment remedy the discrimination and/or harassment and prevent recurrence including examples of the range of possible disciplinary sanctions and remedies available to address the discriminatory effects on the complainant and others. The procedures will include specific discussions with the complainant about any necessary counseling, academic support or transcript modification, and the academic and/or extracurricular activities of the parties to determine if adjustments in schedules are necessary. The procedures will explain that any adjustments made will be designed to minimize the burden on the complainant's educational program.
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- k. The prohibition of actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of harassment or the participation in proceedings applies to third parties as well as accused students.
- l. The medical and counseling resources that are available to students and witnesses.
- m. Identification of the means WLA will use to investigate incidents of discrimination and/or harassment, including but not limited to the following:
 - 1. The various steps WLA will take to conduct adequate, reliable and impartial investigations of reported incidents, including review of statements obtained from either party, interviews with both parties, interviews with witnesses as appropriate, and review of relevant documentary evidence.
 - 11. WLA's standard of review for determining whether a hostile environment exists including a statement that evidence submitted in the investigation will be reviewed using a preponderance of the evidence standard; and
 - iii. An assurance that WLA will keep the complaint and investigation confidential to the extent possible.

REPORTING REQUIREMENT:

By September II, 2015, WLA will submit the updated anti-disability discrimination and anti-disability harassment policies and procedures developed pursuant to Item 6 to OCR for approval.

- 7. By September I, 2015, WLA agrees to review its employee handbook to determine whether it contains rules of behavior, offense categories, and disciplinary procedures to appropriately address violations of WLA's anti-discrimination and harassment policies applicable to staff, as developed pursuant to Item 6. WLA agrees to revise WLA's employee handbook to the extent necessary to ensure it contains, or otherwise incorporates by reference, such rules of behavior, offense categories and disciplinary procedures, as developed pursuant to Item 6.

REPORTING REQUIREMENT:

By September II, 2015, WLA will submit the employee handbook revised pursuant to Item 7 to OCR for approval.

- 8. Within 60 days of receipt of notice of OCR's final approval of the policies and procedures submitted to OCR, as described in Item 4, WLA will adopt the policies and procedures and the employee handbook. Within 20 days of adoption of the policies and procedures and employee handbook, WLA will implement and publish the policies and procedures and the employee handbook. Publication will include written notice of the anti-discrimination and harassment policy and procedures, including its formal and informal complaint procedures, to WLA community, including students, parents, and

administrators and staff. WLA will make this notification through its website as well as by any other means of notification WLA deems effective to ensure that the information is widely disseminated.

REPORTING REQUIREMENT:

Within 45 days after WLA implements and publishes anti-discrimination and harassment policy and procedures and the employee handbook, WLA agrees to provide OCR with a report demonstrating implementation of Items 7 and 8. In particular, WLA will provide copies of publications showing the revised documents, copies of any handbooks revised, and the location on WLA's website where the policies and procedures may be found.

Staff Training

9. By January 22, 2016, and annually thereafter for new staff, WLA agrees to provide effective training on the policies and procedures referenced in Items 1 and 4 of this Agreement to all WLA teachers, administrators, counselors and aides, and any other WLA staff charged with supervising students. WLA will administer to each employee who attends the training session a survey, which is designed to gauge the effectiveness of the training. The training shall include, but not be limited to, the following:
 - a. Responsibility of staff to refrain from harassing students;
 - b. Responsibility of staff to report incidents of physical restraints and the procedures for doing so;
 - c. Instruction on how to recognize, prevent, document and respond appropriately to inappropriate behavior without using contact;

10. By January 22, 2016, and annually thereafter for new staff, WLA agrees to provide effective training to all WLA staff who are directly involved in processing, investigating and/or resolving complaints or other reports of discrimination on the basis of disability, including harassment complaints, as well as any counselors or other WLA personnel who are likely to receive confidential reports of disability discrimination and/or harassment. WLA will administer to each employee who attends the training a survey, which is designed to gauge the effectiveness of the training. The training will include, but not be limited to, the following:
 - a. A review of WLA policies and procedures referenced in Items 1 and 4 of this Agreement;
 - b. Instruction on how to conduct and document adequate, reliable, and impartial discrimination or harassment investigations, including the appropriate legal standards to apply in such investigations.

REPORTING REQUIREMENT:

By January 29, 2016, and by the same date of all subsequent years this Agreement remains in effect, WLA agrees to provide OCR with a report demonstrating implementation of Items 9 and

10. In particular, WLA will provide a copy of all of the completed employee surveys, documentation indicating the date of the training, lists of the trainers and new staff attendees, topics covered during the programs and the amount of time spent on each topic, and copies of the materials used in the training.

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WLA understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, WLA understands that during the monitoring of this agreement, if necessary, OCR may visit WLA, interview employees and students, and request such additional reports or data as are necessary for OCR to determine whether WLA has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. §§ 104.4, 104.35, 104.36, and 104.7, and Title II at 28 C.F.R §§ 35.104, 35.107, and 35.130, which were at issue in this case.

WLA understands that OCR will not close the monitoring of this agreement until OCR determines that WLA has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. §§ 104.4, 104.35, 104.36, and 104.7, and Title II at 28 C.F.R. §§ 35.104, 3.107, and 35.130, which were at issue in this case.

WLA understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give WLA written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Approved and agreed to on behalf of the Woodbury Leadership Academy:

Daniel J Hurley

Superintendent

7-29-2015

Date