



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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August 25, 2016

Dr. Benjamin Mitchell - Headmaster  
Lincoln Preparatory Academy  
2250 S. Gilbert Rd.  
Chandler, AZ 85286

Re: Lincoln Preparatory Academy  
Case Number: 08-16-1118

Dear Dr. Mitchell:

We are notifying you of our decision in this case. The Complainant alleged Lincoln Preparatory Academy (Academy)<sup>1</sup> discriminated on the basis of disability. Specifically, the Complainant alleged the Academy failed to properly implement XXX's (Student) Section 504 Plan. Additionally, the Complainant alleged the Academy failed to timely and appropriately evaluate the Student for disability-related services.

Our investigation revealed that the Academy (1) failed to properly implement Student's Section 504 Plan (504 Plan), and (2) failed to timely and appropriately evaluate the Student for disability-related services. Upon being advised of this finding, the Academy voluntarily agreed to enter into a resolution agreement to resolve the matter. A signed original of the agreement is enclosed with this letter. The reasons for our conclusion are set forth in this letter.

We investigated this complaint pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 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 a public entity, the Academy is subject to these laws and regulations.

During our investigation, we reviewed documentation submitted by the Complainant and the Academy. We also interviewed the Complainant and a Great Hearts Academies employee.

### **Factual Findings**

Student is a qualified individual with a disability (diabetes). In May 2015, Student and his family submitted paperwork necessary to enroll Student in the Academy in the XXX grade for the 2015-16 school year beginning in August 2015. The enrollment paperwork indicated that Student had a 504 Plan at his current school. That plan was dated XXX 2013.

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<sup>1</sup> The Academy is a public charter school operated by Great Hearts Academies.

The Academy did not follow up on that information at that time, due to a breakdown in its process for reviewing new registrations. The Academy did not implement the existing 504 Plan, and it did not begin the process for evaluating Student for a new 504 Plan until December 2015. Student was accepted and began the school year at the Academy in August 2015. The Academy received a XXX (Treatment Plan) from Student's doctor at the beginning of the school year that identified Student as having diabetes and contained some, but not nearly all, of the terms of his existing 504 Plan. Most relevantly, the Student's 504 Plan provided that Student (1) be given the option to re-test if blood sugar is too high or too low during testing time; (2) be given the ability to turn in work late if missed because of diabetes-related absences; and (3) the parents be contacted if blood sugar is below 80 or above 300. The Treatment Plan did not contain these terms.

Teachers began expressing concern about Student's academic performance by late August 2015. Student's teachers and the Assistant Headmaster were in regular and frequent contact with XXX regarding Student's academic difficulties and the ways that the Academy intended to address those difficulties. For example, as early as August 29 and periodically thereafter, teachers expressed concern over the fact that Student was missing or behind on work and was receiving low grades for class participation and on quizzes. The teachers also recommended improvements on Student's note-taking and home study; recommended or required tutoring, and provided their individual tutoring hours; and, in several instances, offered or required re-takes on quizzes or tests (without mention of whether such retakes might be necessary because of high blood sugar or otherwise diabetes-related), but Student appears not to have re-taken or not to have done well on those re-takes. However, topics such as Student's blood sugar levels' potential effect on his test scores and ability to turn in work, and any accommodations needed as a result, were not addressed in these contacts. In addition, on numerous occasions between August and December 2015, Student's blood sugar levels were below 80 or above 300 and he was also administered corrective insulin doses, without parental notification or authorization.

As the semester progressed, Student's academic performance continued to decline and his blood sugar levels began to fluctuate more and more drastically. Between late November and mid-December 2015, Student's blood sugar was over 300 on at least eight of 14 school days he attended. After communications with Mother relating to these high levels, on December 15, the Academy requested a copy of his previous 504 Plan and initiated the process to develop a new Section 504 Plan. Student withdrew from the Academy on December 16, after he was suspended for alleged behavioral incidents that could have been related to his disability. The Academy did not evaluate Student for disability-related services at any point between August and his withdrawal on December 16.

Throughout this time period, the Academy lacked a Notice of Non-Discrimination and a Title II Coordinator or Title II grievance procedures for students. The Academy had identified a Section 504 Coordinator and had developed Section 504 grievance procedures, but that information was not publically available or otherwise effectively published.

## **Analysis**

### **Failure to Properly Implement the Student's Section 504 Plan**

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires recipients that operate a public elementary or secondary education program or activity to provide a free appropriate public education to each student with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the student's disability. Section 504 defines a student with a disability as a student who has a physical or mental impairment that substantially limits a major life activity. Section 504 defines "appropriate education" as the provision of regular or special education and related aid and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of non-disabled students. Implementation of a Section 504 Plan developed in accordance Section 504 is one means of meeting this regulatory requirement. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The Complainant alleged that the Academy failed to properly implement the Student's existing Section 504 Plan, because the Academy never implemented any of the terms and claimed that it did not know about the Plan until mid-December 2015. The Academy concedes that the Complainant indicated that Student had a 504 plan in the enrollment paperwork submitted to the Academy in May 2015, but the Academy did not follow up on that information until mid-December 2015.

The Academy contends that it received and implemented a XXX (Treatment Plan) from Student's doctor at the start of the school year, which satisfied the Academy's obligations under Section 504. We compared the terms of the existing 504 Plan with the terms of the Treatment Plan, and we determined that the existing 504 Plan contained a number of terms that were not included in, or otherwise addressed by, the Treatment Plan. For example, the Student's 504 Plan provided (1) the option to re-test if blood sugar is too high or too low during testing time; (2) permission to turn in work late if missed because of diabetes-related absences; and (3) for parental notification if Student's blood sugar is below 80 or above 300. The Treatment Plan did not contain these terms. Moreover, the Academy did not otherwise ensure that these accommodations were provided. Though Student's teachers and the Assistant Headmaster were in regular and frequent contact with Mother regarding Student's academic difficulties and the ways that the Academy intended to address those difficulties, topics such as Student's blood sugar levels, their potential effect on his test scores and ability to turn in work, and any accommodations needed as a result, were not addressed in these contacts. Additionally, the Academy did not notify Mother each time Student's blood sugars were under 80 or over 300, which occurred on numerous occasions between August and December 2015.

Therefore, the preponderance of the evidence establishes that Academy had notice of Student's existing 504 Plan in May 2015. That 504 Plan, dated XXX 2013, was current and the Academy should have provided the accommodations in it until such time as the Academy reevaluated Student for a new 504 Plan. However, the Academy did not request a copy of the existing 504 Plan until December 2015, and its other actions with regard to the Student between August and

December 2015, including any implementation of the Treatment Plan, did not result in the provision of the accommodations in the existing 504 Plan. Accordingly, we conclude, by the preponderance of the evidence that the Academy failed to properly implement the Student's existing Section 504 Plan.

*Failure to Timely and Appropriately Evaluate Student for Disability-Related Services*

The Section 504 regulation at 34 C.F.R. § 104.35(a) requires recipients to conduct an evaluation of a student 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 student in regular or special education and any significant change in placement. OCR interprets § 104.35 to obligate a recipient to evaluate a student under Section 504 where there is sufficient information to indicate that the student may have a disabling condition that requires special education or related services. The information that prompts this obligation may come from staff, a parent, or other persons. In addition, removing accommodations from a student's Section 504 Plan would constitute a significant change in placement, thus triggering the need for a reevaluation under this regulatory requirement.

The Complainant alleged that the Academy did not evaluate Student for disability-related services while he was enrolled at the Academy. The Academy concedes that that it did not evaluate Student for disability-related services, asserting instead that its implementation of the Treatment Plan fully addressed Student's issues related to his diabetes and he had no other disability-related needs. As described above, we conclude that the Treatment Plan did not fully address Student's issues related to his diabetes.

From August to December 2015, Student's academic performance continued to decline as his blood sugar levels began to fluctuate more and more drastically and Academy teachers and the Assistant Headmaster communicated academic concerns with the Complainant, all of which occurred despite any actions by the Academy to implement the Treatment Plan. We conclude, by the preponderance of the evidence, that these facts provided sufficient information to the Academy to indicate that Student may have a disabling condition that required special education or related services beyond the Treatment Plan. The Academy was therefore obligated to evaluate Student under Section 504, but it did not do so. In addition, the Academy failed to provide accommodations (such as the option to re-test if blood sugar is too high or too low during testing time; and permission to turn in work late if missed because of diabetes-related absences; and parental notification if blood sugar is below 80 or above 300) that were required under the Student's existing 504 Plan. We conclude that removal of these accommodations constitutes a significant change in placement. This, too, should have triggered an evaluation by the Academy, but did not.

The Complainant also alleged that, monthly throughout the fall, Mother made verbal requests to the Assistant Headmaster that the Academy evaluate Student for disability-related services, but that the Assistant Headmaster never complied with these requests. Neither the Complainant's nor the Academy's evidence proved or disproved that such requests were made. However, OCR has concluded that it need not determine whether parental request(s) to evaluate were made, because OCR has determined that, regardless of any parental request(s), the Academy had sufficient

information to indicate that Student may have a disabling condition that required special education or related services beyond the Treatment Plan, and the Academy was therefore obligated to evaluate Student under Section 504, but it did not do so.

Thus, we determine, by the preponderance of the evidence, that the Academy failed to timely and appropriately evaluate the Student for disability-related services.

*Failure to Comply with Section 504 and Title II Procedural Requirements*

Finally, during the course of its investigation, OCR reviewed the Academy's "Special Education Policies Procedures," as well as its Notice of Non-Discrimination and "Notice of Rights for Disabled Students and Their Parents Under Section 504 of the Rehabilitation Act of 1973," the latter of which contains its grievance procedures. The Academy also has a handbook for parents addressing Section 504, but that handbook is not publically available or otherwise effectively published.

The Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, such as the allegations of discrimination that were at issue in this case. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7(b) and 28 C.F.R. §35.107(b)). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7(a) and 28 C.F.R. §35.107(a)).

Throughout this time period, the Academy lacked a Notice of Non-Discrimination and a Title II Coordinator or Title II grievance procedures for students. The Academy had identified a Section 504 Coordinator and had developed Section 504 grievance procedures, but that information was not publically available. Thus, we determine that the Academy violated 34 C.F.R. §104.8 and 28 C.F.R. §35.106 in that it did not publish a notice of non-discrimination until June 2016, and that notice did not identify a Title II Coordinator (although it did identify a Section 504 Coordinator). We further determine that the Academy violated 28 C.F.R. §35.107(a), because it has not identified a Title II Coordinator for students. Finally, we determine that the Academy violated 34 C.F.R. §104.7(b) and 28 C.F.R. §35.107(b) in that, though it developed Section 504 grievance procedures, it did not publish them, and the procedures raise compliance concerns. Specifically lacking is information describing (1) that even if a student is not eligible for special education services under the Individuals with Disabilities Education Act (IDEA), the Academy will consider the student for eligibility under Section 504 of the Rehabilitation Act of 1973, including the provision of "special education or related services" or other accommodations; (2) the affirmative obligation to identify and evaluate students suspected of being an individual with a disability, including but not limited to upon parent request; (3) the development of Section 504 Plans; and (4) references to Title II, including but not limited to designating a Title II coordinator. Additionally, the procedures raise a compliance concern as to the prompt and equitable resolution of complaints; these compliance concerns could be addressed by adding timeframes/deadlines for setting a due process hearing upon request and for the stages of the

internal complaint investigation, and by elaborating on the description of the internal complaint process. The “notice of rights” also describes the right to file a complaint with OCR, but lists contact information for a different agency; that contact information needs to be updated.

### **Conclusion**

As noted above, the Academy voluntarily entered into an agreement with OCR to resolve these issues. We thank the Academy for voluntarily entering into an Agreement to resolve these issues. OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase will be completed when OCR determines that the Academy has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close Case Number 08-16-1118 and will send a letter to the Academy, copied to the Complainant, stating that this case is closed.

This letter addresses only the issues listed above and should not be interpreted as a determination of the Academy’s compliance or noncompliance with Title II, Section 504, or any other federal law in any other respect.

This letter is a letter of finding(s) 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.

The Academy is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation.

Please also note that 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. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you and your staff, especially XXX, extended to us during the investigation of this case. If you have any questions, please contact XXX, Attorney and primary contact for this case, at XXX, or me at XXX.

Sincerely,

/s/

Thomas M. Rock  
Supervisory General Attorney

Enclosure – Resolution Agreement

cc: XXX - counsel for Recipient, XXX  
Honorable Diane Douglas - ADE