



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

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April 6, 2017

Mark Plitzuweit
CEO/President Edkey, Inc.
The Sequoia Schools
1460 S. Horne Street, Bldg. 6
Mesa, Arizona 85204

Re:

AZ Conservatory of Arts and Sciences LEA
OCR Case Number: 08-17-1016

Sequoia Charter Schools LEA
OCR Case Number: 08-17-1021

American Heritage Academy LEA
OCR Case Number: 08-17-1017

Sequoia Choice LEA
OCR Case Number: 08-17-1022

Sequoia Pathfinder Academy LEA
OCR Case Number: 08-17-1018

Sequoia Pathway Academy LEA
OCR Case Number: 08-17-1023

Sequoia Ranch LEA
OCR Case Number: 08-17-1019

Sequoia School for the Deaf and Hard of
Hearing LEA
OCR Case Number: 08-17-1024

Sequoia Redwood Academy LEA
OCR Case Number: 08-17-1020

Sequoia Village School LEA
OCR Case Number: 08-17-1025

Dear Mr. Plitzuweit:

On October 14, 2016, we received complaints alleging that the Sequoia Schools, including the ten Local Education Agencies (LEAs) operated by Edkey Inc. identified above, and each of the approximately 21 individual schools governed by Edkey Inc. (all hereinafter collectively referred to as "Edkey"), discriminated on the basis of disability.

Specifically, the Complainant alleges that Edkey failed to provide a free appropriate public education to students with disabilities in its schools by: (1) failing to provide special education or related services to students with disabilities, including failing to implement students' Individual Education Programs (IEPs) and Section 504 Plans and failing to provide speech language services; and (2) failing to follow appropriate evaluation and placement procedures for students with disabilities, including failing to make individualized evaluation and placement determinations, and failing to make such determinations by a group of knowledgeable persons.

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

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs or 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 in programs or activities of a public entity. The LEAs operated by Edkey receive Federal financial assistance from the Department and are public entities, and are therefore subject to these laws and regulations. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 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.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under §104.35(c), in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

Background Information

OCR opened an investigation of the complaint and contacted Edkey to obtain initial information. Edkey provided an initial response to our data request, including information related to its policies and procedures for identifying, evaluating and placing students with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA). It also provided information pertaining to Section 504 and the Americans with Disabilities Act, which included a definitional section of “individual with a disability”, a statement that it has developed procedural safeguards for actions related to the identification, evaluation and placement of students covered by Section 504, a section on the substance of the Section 504 procedural safeguards, and a Section 504/ADA

grievance procedure. It also provided a link to its student handbook, which contains information relating to special education practices and Section 504 Plans for students with health needs. Although the documents Edkey provided states it adheres to the evaluation and placement procedures set forth in the Section 504 regulations, because these evaluation and placement procedures do not appear to be written, we have concerns they may not be compliant with Section 504, especially with respect to making individualized determinations.

While Edkey was compiling its full response to OCR's data request, Edkey contacted us and expressed interest in taking action to resolve the complaint. Pursuant to Section 302 of OCR's Case Processing Manual (CPM), allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the 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.

At this time, OCR would need additional information from Edkey, including interviews of administrators and staff, and reviews of student files at each of the Edkey locations, to determine whether Edkey (1) fails to provide special education or related services to students with disabilities, including failing to implement students' Individual Education Programs (IEPs) and Section 504 Plans and fails to provide speech language services; and (2) fails to follow appropriate evaluation and placement procedures for students with disabilities, including failing to make individualized evaluation and placement determinations, and failing to make such determinations by a group of knowledgeable persons. Since Edkey expressed willingness to enter into an agreement that would wholly address the specific issues raised in the complaint – essentially approaching the resolution as though the allegations were true – we determined that it was appropriate to enter into an agreement without completing the investigation.

Conclusion

We then drafted a Resolution Agreement (“the Agreement”) and sent it to Edkey. On April 5, 2017, we received the signed Agreement, a copy of which is enclosed.

When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of the Agreement through periodic reports from Edkey demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If Edkey fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the complaint and should not be interpreted to address Edkey compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

Please note that a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please be advised that Edkey 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 individual may file another complaint alleging such treatment.

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 a duly authorized OCR official 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. 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.

If you have any questions or concerns, you may contact xxxx, the attorney assigned to this complaint, at xxxx or xxxx. You may also contact me at (303) 844-2557.

Sincerely,

Stephen Chen
Program Manager