



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
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UTAH
WYOMING

March 11, 2022

XXX

Utah Connections Academy
675 E 2100 South
Plaza 7-21 STE 270
Salt Lake City, UT 84106

By email only to: XXX

Re: OCR Complaint No. 08-21-1434
Utah Connections Academy

Dear XXX:

This letter is to notify you of the disposition of the above-referenced complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR), received on September 13, 2021. The Complainant alleges that the School discriminated against her daughter (the Student) on the basis of disability and retaliated against the Student because of the Complainant's advocacy for accommodations under Section 504.

Specifically, the Complainant alleges that the School:

1. Did not award the Student the honor of valedictorian because the Student received accommodations under Section 504;
2. Did not award the Student the honor of valedictorian in retaliation for the Complainant's advocacy regarding the School's provision of accommodations to the Student under Section 504; and
3. Did not include the Student's name in the list of graduates in the Class of 2021 during the graduation ceremony in retaliation for the Complainant's advocacy regarding the School's provision of accommodations to the Student under Section 504.

OCR Jurisdiction

OCR is 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 and activities that receive Federal financial

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

assistance from the Department, 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. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. Because the School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II

Summary of Investigation

OCR's investigation included the following:

- Two interviews of the Complainant, one in this case and one in a related OCR case (Case No. 08-21-1268);
- Review of documents pertinent to the complaint allegations that were produced in this case and Case No. 08-21-1268, including but not limited to: the School's non-discrimination and anti-retaliation policies, the log of communications between School staff and the Student and Complainant; communications that discuss the Student and the Complainant; four students' general and special education files; the school's investigation files for complaints made on behalf of the Student; and communications and data regarding the selection of valedictorian/salutatorian.
- Interviews of X – sentence redacted – X in Case No. 08-21-1268.

Prior to the conclusion of OCR's investigation of the Complainant's first two allegations and the interview of witnesses in this case, the School expressed a willingness to resolve the allegations related to the selection of valedictorian. As a result, OCR suspended its investigation of these claims.

Factual Background

A. The School

UCA is a tuition free K-12 public online school that is authorized by the Utah State Charter School Board. All students attend school from home. Pearson Virtual Schools (Pearson) provides online classroom technology services to the School, technical support for students and teaching staff, and Human Resources (HR) services, and is the employer of the School's staff. The School makes its own rules and policies regarding school administration to comply with federal and state laws applicable to Utah public schools.

B. The Student's Section 504 Plan

The Student was determined eligible for a 504 plan by her former XXX school X – sentence redacted - X.

The Student’s family X – sentence redacted - X. At the start of the 2017-18 school year, the Complainant wrote a lengthy webmail¹ to the School’s XXX describing XXX and requesting that the accommodations in their 504 plans from their prior school be maintained. A UCA team met in November 2017 and developed a 504 plan for the Student with similar accommodations to what she had been receiving at her former school.

The Student’s 2017-18 504 Plan included the following accommodations and services:

X – section redacted - X

In 2018-19, 2019-20, and 2020-21, the following additional accommodations were added to the above list in the Student’s 504 Plan:

X – section redacted - X

C. Advocacy by the Complainant and Others on Behalf of the Student

1. 2017-18 School Year

Throughout the 2017-18 school year, the Complainant wrote many webmails to the then-Assistant Principal and several teachers expressing frustration that the accommodation of XXX was not available for some of her children’s classes, including sign language, math, and physical education. The accommodations were ultimately provided by the School after some delay.

2. 2018-19 School Year

On September 4 and 6, 2018, the Complainant wrote webmails to a XXX teacher complaining that several accommodations for her children had not been implemented yet although it was the third week of school, including X – phrase redacted - X. On September 7, 2018, the Complainant explained in a webmail:

I have realized I can’t sit back and continue to do things on my own when it comes to school related issues . . . So before school started, I decided I was going to reach out and ask for the 504 accommodations to be implemented right away to try and prevent the unhealthy situation that arose last year, for my kiddos, when help didn’t come for months.

On October 11, 2018, a teacher X – phrase redacted - X (Teacher 1), logged in the Student’s Issue Aware (IA)² that she had spoken with the Complainant, who told her that the XXX accommodation was not being provided to the Student in her XXX course.

¹ Webmails refer to e-mails sent through the School’s communication system.

² IAs are running discussions among staff about a student or issue that requires special attention.

X – sentence redacted - X. In early January 2019, the Complainant requested as an accommodation that the School excuse the remaining lessons in the students’ Fall semester classes and deem those courses completed based on the work completed by the students prior to XXX. The Complainant mentioned that she had spoken to the State Board of Education, which had assured her that the Principal can make this “judgment call.”

According to webmails from the Principal and communications in the Student’s IA, the School X – sentences redacted - X. The Complainant expressed her dissatisfaction with the School’s accommodation decision in a series of webmail messages, which included the following:

The extension to complete all work in [the Student’s] core classes is only going to cause my daughter more stress, as an extension for this semester puts her behind from the get go . . . I feel as though more could be done to help my daughter.

On January 10, 2019, another teacher (Teacher 2) wrote to the Principal to question why the requested accommodations were not provided to the Student. She wrote:

I do not understand why accommodations are not being given to help [the Student] . . . I don’t feel as though the gravity of the situation was taken into account.

On January 13, 2019, the Student wrote a webmail message to the School’s Principal and her mom stating X – sentence redacted – X. The Principal did not respond to the Student’s message, which made the Student think the Principal hated her. The Principal told Teacher 2 in a chat message that she did not respond because she thought the Student’s email was a “callout on the school’s [accommodation] decision” and “something that her mother encouraged.”

3. 2019-20 School Year

During the 2019-20 school year, Teacher 1 was no longer the XXX. However, the Complainant continued to communicate with Teacher 1 about accommodation requests because she felt comfortable with her. The Complainant also requested that all communications with the School that are non-academic be done by teachers that the Student felt comfortable with (i.e., Teachers 1, 2, and 3). Several administrators interviewed by OCR said that they rarely, if ever, spoke directly to the Complainant because the Complainant preferred to communicate in writing or through teachers with whom she felt comfortable.

On September 3, 2019, the Complainant asked Teacher 1 whether the Student could do X – phrase redacted - X as an accommodation XXX. Teacher 2 logged the request in the Student’s IA. The XXX responded in the IA, “We want to support this family and meet 504 accommodations, but at the same time give the student the appropriate level of academics.”

On September 9, 2019, the Complainant sent a webmail to Teacher 1 complaining that the Student was not receiving appropriate accommodations in her XXX course. Teacher 1 was

advised to tell the Complainant to reach out to the administrative team with her concerns about accommodations.

On September 15, 2019, the Complainant wrote a webmail stating that despite Teacher 1’s tremendous efforts to help, the Student’s accommodations were still not in place going into the fourth week of school. The Complainant specified that XXX was not in place in the Student’s XXX courses, the XXX was not in place, and the instructor for the XXX class had not attempted to accommodate the Student. She concluded her webmail with, “I’d really like this to be the last time I have to ask for [the Student’s] accommodations to be met.”

The following day, Teacher 1 was instructed by XXX not to communicate with the family about 504 accommodations for the Student. The XXX wrote to Teacher 1:

This situation appears to be escalating. I would like to suggest that you step away from any conversations with the [Complainant] re: 504 plan, other than as a teacher role. It is my opinion that the [Complainant] is trying to put you in the middle of what she perceives as a ‘battle.’ (9/16/19).

Later that day, the School’s Principal wrote to Teacher 1:

I must echo [the XXX’s] request that you do not respond to the parent other than to send her to [XXX].

The School told OCR that it also encouraged the Complainant to communicate any concerns, questions, or requests directly to the XXX and not to teachers who were uninvolved in the accommodations process.

A few days later, in a chat message among administrators, the XXX wrote, “Teacher 1 should not be in contact with the family at all now (unless she is one of her teachers), to do so, is against policy as she does [not] have a 504 coordinator role anymore.” The XXX told OCR that she is unaware of a policy prohibiting teachers from talking to families about accommodations if they are not the 504 coordinator, and none was provided to OCR by the School.

On September 19, 2019, a teacher from the Student’s former XXX school, who was acting as an advocate for the Student, wrote an email to the School complaining that 504 accommodations were not in place for the Student – namely, that she did not have XXX in two courses and she was on the XXX, which should have been removed per her 504 accommodations. In a chat message, several of the School’s administrators discussed the email as being “out of line” and “over the top and not necessary.” They then discussed whether they could exclude the advocate from the 504 meeting and determined that doing so could lead to an OCR case, which they did not want.

According to chat messages provided to OCR by the School in Case No. 08-21-1268, on or around November 27, 2019, the Student’s XXX filed a complaint with Pearson describing X – phrase redacted - X. The XXX asked the XXX about the complaint, and the XXX named the

students and stated that the XXX and parent do not get along. She further stated that the Complainant “does not like XXX or anyone who will not cater to her.” The XXX told the XXX that the Student’s XXX was complaining, among other things, that the Complainant was not allowed to talk to certain teachers because she was labeled a ‘trouble maker.’”

On December 4, 2019, Teacher 2 reached out by chat to a XXX for assistance regarding the Student. She stated that the family feels like the Student is being penalized because they are asking for her accommodations to be provided. She additionally shared that two teachers (Teachers 1 and 3) have been told that they can no longer talk to the Student or her family. Teacher 2 concluded her message with:

I just don’t know what to do any more because they are not getting the help they are asking for, and the [Complainant] feels like her daughter is being penalized because the [Complainant] has asked for her accommodations to be met . . . They should not have to jump through so many hoops to get things done, but that is what is happening . . . Any requests for help, accommodations or changes have taken days. This is why [the Student] believes none of the admin . . . care about her.

The XXX was instructed by her supervisor to place a copy of this chat message in Teacher 2’s performance log, which is part of the teacher’s personnel file. When OCR asked witnesses why this message was considered performance-related, we were told that teachers should not have been communicating with the Complainant regarding accommodations.

On December 10, 2019, Teacher 2 sent an email to XXX, which was provided to OCR, stating that she has serious concerns about the School, including that a Student XXX is not getting the help she requests for days. On December 12, 2019, Teacher 2 spoke to the XXX about her concerns. Based on notes of this meeting provided by the School in Case No. 08-21-1268, Teacher 2 complained about the Student’s not being able to XXX, and Teacher 2’s and her colleagues’ fears of retaliation if they help the Student.

On January 22, 2020, the Complainant wrote a webmail to XXX stating:

It’s clear you do not seem to understand how accommodations are vital for children with special needs . . . it is not acceptable to me that time and time again the ball gets dropped and [the Student] is left picking up the pieces of classes not getting added in a timely manner, XXX taking forever to finally get applied to all her classes, and I have to beg for it to happen . . . I want her classes fixed and all accommodations to be applied correctly today please.

The XXX shared this webmail with the XXX, who responded, “This really is ridiculous isn’t it.”

In April 2020, there was a discussion between the Complainant and the School regarding the Student’s course schedule. The Student had completed all required courses for the year with time

remaining before the end of the school year. The School proposed that the Student take the last two classes needed for graduation and graduate in XXX. The Complainant refused, writing: “I am not willing to allow my daughter’s XXX to be effected by taking more courses this semester, since she has completed all the required courses necessary for this year.”

Later that month, there was another discussion between the Complainant and the School regarding the Student’s schedule for the following school year. The School offered to place the Student on a XXX schedule so that she could graduate after XXX, which the Complainant rejected stating that requiring the Student to work at an accelerated rate would put too much stress on her and “seems to sit in violation of her 504 to me because it allows for less work to be required not more.”

4. 2020-21 School Year

On August 14, 2020, the Complainant contacted Teacher 3 and requested that the Student be permitted to take XXX at the same time because she “is X – phrase redacted - X” and needs to be done with school as soon as possible. Teacher 3 reported in the Student’s IA that the Complainant had contacted XXX about the course and threatened further contact with XXX. The XXX responded in the IA that, “In order to prevent triangulation between this [Complainant] and various staff,” she was closing access to the IA to teachers not currently teaching the Student, including Teachers 1, 2, and 3.

On August 25, 2020, Teacher 2 filed an anonymous ethics complaint with Pearson regarding the Student, which was provided to OCR in Case No. 08-21-1268. The complaint states that accommodations in the Student’s 504 plan, which are required by law, were requested but declined. The complaint further states that when the Student’s parents fought for her rights, they were accused of “escalating the situation” and as a result, the School’s administration told two teachers that they could not speak to the Student or her parent. Although the complaint does not name the Student, it provides very specific information about the Student’s family circumstances X- phrase redacted - X, the accommodations in dispute, and that the Student’s parent had called XXX.

In follow-up communications with XXX, Teacher 2 provided additional information about the Student’s grades, tenure at the School and another XXX, and the Student’s complaint to XXX. Lastly, Teacher 2 stated that the administration has retaliated against the Student and teachers, telling them they can no longer communicate with the Complainant.

On August 26, 2020, the Complainant filed a complaint with OCR against the School (OCR Case No. 08-20-1436) alleging a denial of accommodations under Section 504 based on the School’s requirement that the Student take X – phrase redacted - X, which the Complainant alleged would cause the Student XXX. OCR never notified the School about the parent’s complaint because OCR dismissed the complaint for failure to state a violation of Section 504. The XXX all told OCR that they were unaware of the parent’s OCR complaint.

The Student completed her degree requirements on XXX. Her final transcript indicates that she graduated with a cumulative high school GPA of XXX and a class rank of XXX.

D. School’s Selection of a Valedictorian/Salutatorian

Based on chat messages provided to OCR, the XXX discussed who would be the School’s valedictorian and salutatorian on April 12, 2021. The XXX wrote:

If we go w/just gpa to determine Val and Sal ... the Val will be [XXX] and the Sal [XXX], who is XXX.

The Principal responded, “we won’t go with just GPA. And between you and I, I would not support either of those students.”

When the Principal recounted this conversation to the XXX in a chat message the following day, she wrote:

[The XXX] and I were discussing valedictorian/salutatorian. she said is it just gpa? No, its also admin choice as we take into account, disposition at school, contributions to school etc. She said okay well the valedictorian grade wise would be [XXX]. This is why I have concerns about [XXX] ever moving into a XXX role. Come on, that parent brow beat us to the end,. AND you and I know that grade inflation was alive and well there.

The Principal then copied and pasted webmails from the Student to teachers in which the Student complained about X – phrase redacted - X. The Principal subsequently wrote to the XXX, “I don’t think a [Student] that feels less than enthusiastic about graduating from UCA should be the valedictorian.”

The XXX agreed stating, “[I]n NO way should this kid be valedictorian ... she did 1/3 of the work at best... XXX...etc.” The XXX later added, “I am appalled at the entitlement this kid feels!” They then discussed how XXX was not required to take XXX, and the XXX called the Complainant a “MONSTER” that XXX and teachers “just kept feeding.”

The School provided OCR with a document described as “committee notes” from an April 16, 2021 meeting regarding valedictorian/salutatorian.³ The document states that:

Valedictorian and Salutatorian are honors based on three specific academic areas: total GPA for grades 9-12, total number of AP, Honors, and Concurrent Enrollment classes completed in the areas of: English, Mathematics, Science, Social Science, and World Languages, and the student’s highest composite ACT score. In the absence of AP courses, the rigor of a student’s schedule is

³ IA 3242930 provided in Case No. 08-21-1268, but not this case, indicates that the meeting between XXX took place on April 20, 2021.

used, which includes higher level science, math, and English courses. When selecting for these honors, the rigor of the schedule – not just the overall GPA must be calculated.

The School also provided OCR with a document explaining the weighted GPA consideration used for the 2020-21 valedictorian selection. The document lists the course credits required to graduate and then analyzes the courses the Student took in each subject area compared to the courses the student selected as valedictorian took, concluding that the student who was selected took higher rigor courses, based on State Board of Education policy, than the Student because she took X – phrase redacted - X.⁴

In mid-April 2021, Teacher 2 learned through communications in the log of one of her current students the identity of the student who had been selected as valedictorian. Shortly thereafter, the Complainant asked Teacher 2 if the Student had been selected as valedictorian, to which Teacher 2 responded that she had not been chosen. The Complainant asked how valedictorian was selected, and Teacher 2 said she didn't know.

On or around April 25, 2021, Teacher 2 asked Teacher 1 in a chat message provided to OCR in Case No. 08-21-1268 if Teacher 1 knows how valedictorian was selected by the School because the Student was ranked XXX but was not chosen. Teacher 2 responded that she assumed it was based on GPA ranking, possibly weighted by course completed or difficulty. She additionally stated that the choice is “weird” because there is a big difference in the GPAs listed on the transcripts between the two students and that she “wouldn't be surprised by any bias.” Teacher 2 said she would ask XXX. The following day, Teacher 2 reported back to Teacher 1 by chat that the XXX had told her it was based on GPA. Teacher 1 responded in a chat message, “Then they did not choose fairly.”

As recounted in the Student's log, on May 3, 2021, the Complainant called Teacher 1 and expressed concerns about the selection process for valedictorian. The Complainant stated that based on documentation she had received earlier in the year showing that XXX was ranked XXX in the class, she expected XXX to receive the honor of valedictorian. The Complainant asked Teacher 1 to describe the selection process at UCA, stating that it is important for the School to have a transparent and unbiased process. Teacher 1 explained that she thought the selection was GPA-based and not impacted by XXX, but that she was not sure. Teacher 1 told the Complainant that she would find out how she could communicate her concerns to the leadership team.

Teacher 1 then messaged the XXX through Google hangouts regarding the School's process for selecting a valedictorian. Based on log notes and witness interviews, the XXX stated that the XXX team had met with XXX and that there were additional factors beyond GPA that were considered, including “personal considerations,” but that she did not know what those factors are

⁴ The transcripts for both students reveal some errors in this document. The transcripts show that the student who was selected as XXX did not take X - phrase redacted – X.

or whether they were qualitative or quantitative.⁵ The XXX also told Teacher 1 that the academic rigor was not the same for the Student as the person selected as valedictorian, and that the Complainant had pushed for a lot of accommodations for the Student that the School doesn't usually give students.

According to Teacher 1, the conversation continued as follows: Teacher 1 responded, "You can't deny valedictorian based on the receipt of 504 services," to which the XXX said, "We didn't." Teacher 1 responded, "The way you just said it makes it seem like the student's accommodations were the basis for the decision." Teacher 1 additionally stated that without clear criteria and a written, transparent process that is based on more than how you feel about a student, the decision could be viewed as discriminatory and a violation of Section 504. Teacher 1 subsequently informed the Complainant that there were additional factors beyond GPA that were used, but that she doesn't know what they are.

On May 3, 2021, the XXX wrote a message to XXX describing her meeting with Teacher 1. She wrote:

[Teacher 1] wanted to make sure we're not excluding [the Student] based on her accommodations and she thinks we need a clear written process on how Valedictorian and Salutatorian are chosen.

The XXX responded, "what in the absolute world!" The XXX met with Teacher 1 later that day, and told her it is "not her job nor her lane to give the parent information on graduation. It is also not her role or her job to be a sounding board while the parent vents." Teacher 1 explained to OCR that she was told during that meeting she was prohibited from communicating further with the Complainant about the selection of valedictorian.

The XXX told OCR that Teacher 1 had already provided notice of her voluntary resignation by that time but that if Teacher 1 had wanted to return to UCA, she would have been demoted and received disciplinary measures because she "was not making good decisions by not referring families to someone who could answer their questions" and "not staying in her lane."

On May 4, 2021, the Complainant wrote to XXX to express her concerns about the lack of transparency in the selection process for valedictorian. She stated that the Student has always been told by school staff that valedictorian is earned by the student with the highest GPA and there has never been any communication of any other factors that weigh into the choice of valedictorian.⁶ The Complainant further stated that since the Student has XXX and has been ranked XXX in her class for all but XXX, she views the decision as unfair and a denial of the opportunity for the Student to be considered for scholarships and immediate acceptance to schools, which are only available for valedictorians.

⁵ The XXX told OCR that the conversation was a little different than what was recorded in the log by Teacher 1 but did not tell OCR what exactly she had said to the teacher.

⁶ The Complainant told OCR that her XXX was also informed by XXX that valedictorian is based on GPA. According to the Complainant, all Connections Academy schools have the same policies.

The Principal responded that day that she could not find any communications in the Student's log notes with a staff member about graduation/valedictorian other than the conversation she had with Teacher 1 the day prior. She additionally stated that a committee had met to review students for distinction in graduation and that unweighted GPA is not the sole factor in deciding valedictorian; the rigor of the student's schedule and courses are considered. Lastly, she stated that the School stands by its decision regarding the 2021 valedictorian and salutatorian and intends to list the Student as one of two Distinguished Students of Highest Honors.

The following day, on May 5, 2021, the Complainant sent another email to the Principal clarifying:

I'm not asking for the school to take the honor away from the XXX that was already asked to speak at graduation and be the administrations' valedictorian pick. I'm not even asking for the school to mention my daughter . . . at graduation at all. . . All I'm asking is for [the Student] to receive the honor on paper with her diploma and transcripts, so the doors she's work[ed] so hard to have open to her can remain open.

On May 5, 2021, the XXX suggested to XXX that the School develop written criteria over the summer regarding the selection of valedictorian/salutatorian.

On May 6, 2021, the Complainant stated in another email to XXX that it was the prior XXX who had given the Student information about how valedictorian is selected. The Complainant reiterated her belief that the valedictorian process was not "fair, respectful, or honest," and stated:

I am withdrawing permission for my daughter's information, pictures, quotes, themes and any other information that was supplied by her in the graduation Google Docs. I want something in writing from the counseling department, saying they no longer intend to use her information in graduation along with [the Student's] Google Doc sheet and her pictures returned to me.

Lastly, the Complainant stated that her lawyer "is going to love reading how many times [the Student's] civil rights were violated and how often the school leader ignored her and treated her like poo on the bottom of her shoe."

The XXX responded that she would relay the Complainant's request to the XXX department that afternoon and ask, "that all information/pictures etc. are sent back to your family and it is noted in writing that we will not use anything supplied by you or otherwise collected by you in the graduation ceremony." She reiterated the offer to issue a formal letter stating that the Student graduated as one of the two Distinguished with Highest Honor students from UCA's 2020/2021 cohort, which the Complainant declined.

On May 6, 2021, the XXX sent the XXX the photos that had been submitted by the Student for graduation. She informed the XXX that she had deleted her copy of them and deleted all the Student's responses in the google form. Lastly, she stated, "[W]e will not be using any of the information per the parents request."

On May 17, 2021, the Complainant sent an "Administration Violation Complaint" to the Pearson XXX complaining that the School's administrative team, including the XXX, have created a "threatening, abusive environment for students, families, and teachers alike" and allow "emotions to trump UCA policy at every turn." She complained about how teachers have been told that they cannot talk to her, and that "[p]arents are considered threats and treated as the enemy by the school administration."

The Complainant specifically complained that instead of giving the honor of valedictorian to the Student, who has XXX, the Principal gave it to someone else "because she has never liked my daughter." She explained that members of the XXX department had told the Student that the valedictorian honor was based on GPA, and now the administration conveniently claims there are other "factors" besides GPA that are considered but refuse to share the factors or the policy. She further stated that a XXX was unable to explain the process to a teacher. Lastly, the Complainant wrote:

My daughter's civil rights have been violated time and time again, but I've not wanted to raise hell because I have been fearful of the retaliation that would come my daughter's way from the administration team if I did. When teachers have been threatened and told pointedly not to speak with me over getting help for my daughter, something is not right.

The XXX told OCR that she investigated the Complainant's complaint by identifying the list of concerns and reviewing the Student's 504 accommodations, log, and the valedictorian criteria. She additionally met with XXX on May 18, 2021, to discuss the valedictorian criteria and selection process. The XXX told her that the criteria the School used are weighted GPA, rigor of courses, and attendance. The XXX said that the School did not consider conduct, but that it is a good idea. The XXX additionally stated that the Student was not selected "[b]ecause it is not just the GPA; she didn't take the level of rigor in courses." The XXX suggested that the criteria and selection process be included in the student handbook in the future. She concluded without talking to the Complainant that the allegations that the school forced the Student to finish school early, didn't follow the Student's 504 plan, created a threatening or abusive environment, and awarded valedictorian to another student unfairly were all unfounded.

On May 25, 2021, Teacher 2's employment with UCA was terminated based allegedly on XXX, as well as other policy violations. Teacher 2 alleges that her termination was retaliatory, which is currently being investigated by OCR in Case No. 08-21-1268.

During the School's virtual graduation on May 27, 2021, each graduating student's name was read and the photos that he/she had provided were displayed on the screen. If the student did not

provide a photo, the School’s logo was displayed as the student’s name was announced. The Student’s name was not included in the list of 2021 graduates that were announced.

Notes provided in Case No. 08-21-1268 regarding the valedictorian decision state that the Complainant did not want the Student “to be included in the graduation ceremony or process or be noted.” The Complainant claims that she never stated she did not want the Student’s name to be read at graduation; she merely rescinded permission for the information (i.e., photos and quotations) that the Student had submitted to be displayed on the screen.

In the 2021-22 UCA Advisory/Counseling Guide, there is a new section on “Graduation” which includes the policy that was provided to OCR as the “April 16, 2021” committee notes with the following addition:

The base formula starts with the state requirements for graduation. Courses that are more rigorous than the state courses listed (Honors, Advanced sequences, AP, Concurrent Enrollment are given more weight). Courses that are less rigorous than the state courses listed for graduation are given less weight (Personal Finance rather than Sec Math 3, Speech & Debate or Journalism for Eng 12).

A committee made up of the Manager of Counseling, the School Leader or AP, and 2 HS teachers will review the students who qualify because of their unweighted GPA and class rank. The committee will apply the formula above to determine the weighted GLA and then, using the results, determine a Valedictorian and Salutatorian. The committee will apply data from the Suspension/Expulsion dataview, and the Attendance metric which applies to Truancy/nonattendance.

Legal Standards

A. Disparate Treatment

Section 504 and the regulation at 34 § CFR 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Prohibited discrimination includes limiting a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

In determining whether a recipient subjected a student with a disability to disparate treatment, OCR considers whether the recipient treats similarly-situated students differently. If evidence of different treatment is found, OCR then determines whether the reasons offered by the recipient for the different treatment are legitimate or a pretext for unlawful discrimination. Additionally, OCR examines whether the information shows that the recipient treated the individual student in

a manner that is inconsistent with its established policies, practices and procedures or whether any other evidence of discrimination based on a protected category exists.

B. Retaliation

Section 504 and Title II of the ADA prohibit a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual “because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under” the regulation (participation clause) or “for the purpose of interfering with any right or privilege secured by” the statute and regulations (interference clause).

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To establish a *prima facie* case of retaliation, OCR must find the following:

1. The complainant engaged in a protected activity;
2. The recipient took a materially adverse action against the complainant; and
3. Some evidence of a causal connection exists between the protected activity and the materially adverse action.

If a *prima facie* case has been established, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its materially adverse action. If a non-retaliatory reason for the materially adverse action exists, OCR must determine whether the recipient’s reason is genuine or a pretext for retaliation.

Legal Analysis

A. Allegations One and Two

As discussed above, OCR received information pertinent to the allegations regarding selection of a valedictorian in this case and in another related case, Case No. 08-21-1268. Based on the interviews in Case No. 08-21-1268 and the documents provided to OCR in both cases, OCR has concerns about the School’s selection of a valedictorian/salutatorian for the following reasons.

First, chat messages among administrators from April 2021, produced in Case No. 08-21-1268 but not in this case, suggest that the School’s valedictorian decision was not only subjective, but also that the Complainant’s advocacy for the provision of the accommodations listed in the Student’s 504 plan and the Student’s accommodations may have factored into the decision because both were described by administrators in a negative light when discussing why the XXX would not support the Student for valedictorian.

Second, the School had no written policy regarding the selection of a valedictorian or salutatorian at the time that it decided not to select the Student for either honor despite her

ranking as XXX in her class, and the criteria the School says it used to select a valedictorian have been described differently over time and are not clear.

- On April 13, 2021, the XXX told the XXX, “it is admin choice as we take into account disposition at school, contributions to school.”
- The notes from an April 16, 2021 meeting state that the committee considered: total GPA for grades 9-12; total number of advanced courses, and highest composite ACT score.
- The XXX wrote in an email to the Complainant on May 4, 2021, that the rigor of a student’s courses is considered in addition to GPA. She did not mention any other factors.
- The notes from a May 18, 2021 meeting between the XXX and XXX state that the criteria used was: weighted GPA, rigor of courses, and attendance -- not ACT score.

In addition, none of the documents provided to OCR include any explanation of how the “formula” is applied (i.e., how much weight the total GPA and ACT score are given as compared to the rigor of courses in the calculation of a “weighted GPA”). Furthermore, one of the individuals who X – phrase redacted - X was unable to explain the criteria that was used to her colleague.

Third, the School does not seem to have applied the criteria it says it used. The notes explaining the School’s decision that were produced in this case analyze *only* the rigor of courses between the Student and the student who was selected as valedictorian. There is no mention of total GPA or composite ACT score or how those other criteria factored into the School’s decision. Similarly, when the School provided information about the students selected as valedictorian/salutatorian in prior years, it provided only an analysis of the rigor of the students’ courses with no mention of their GPAs or class rank, suggesting that the School did not consider this information.

OCR’s review of student records from the 2021 graduating class reveals that the Student’s GPA was XXX and class rank was XXX, and the valedictorian’s GPA was XXX and her class rank was XXX. Neither student took XXX. Thus, it is not clear how the gap between the two students’ unweighted GPAs was overrode by the differences in the rigor of their courses.

More importantly, OCR’s review of the transcript of the student ranked as XXX reveals that he should have been the valedictorian had the School applied the criteria it says it used. He graduated with a GPA of XXX, which is higher than the student who was selected, and took XXX.⁷ According to the School’s committee notes, Honors and AP courses should have been considered before the rigor of a student’s schedule.

In Case No. 08-21-1268, the School provided OCR with a document stating that the student ranked number XXX was not selected for valedictorian or salutatorian because of X – phrase

⁷ He took X – phrase redacted – X.

redacted - X. However, the April 16, 2021 committee notes do not indicate that attendance or conduct were considered, and the Principal specifically told the Director of Schools on May 18, 2021 that student conduct was not considered.

In addition, the student ranked XXX, who had a 504 plan like the Student, took XXX (unlike the other three top students) and lacked only one “higher rigor” course than the student who was selected as valedictorian XXX.⁸ Thus, it is not clear why his higher GPA and ACT score would not have ranked him higher in the valedictorian analysis than the student who was selected as valedictorian had the School used the criteria it says it used. The School told OCR that it discussed the valedictorian honor with this student’s parent and that the student preferred not to be singled out at graduation and thus was named XXX. However, none of the documentation provided by the School to OCR indicates that this student was considered for valedictorian.

Fourth, there appears to have been a pattern at the School of a desire or attempt to exclude from meetings and communications anyone who advocated for accommodations for the Student, including current and former Connections Academy teachers, and a reluctance to investigate claims of retaliation made by or on behalf of the family.

When OCR requested additional information from the School responsive to the data request, including the recording of the graduation ceremony, the IA regarding graduation planning and monitoring, and the transcripts of the valedictorians and salutatorians in years prior to the 2020-21 school year, the School expressed a willingness to voluntarily resolve the Complainant’s claims regarding the selection of a valedictorian. OCR therefore has not made any legal determinations regarding the Complainant’s first and second allegations.

B. Allegation Three

The Complainant alleges that the School’s omission of the Student’s name during the virtual graduation ceremony was retaliatory. The School contends that it did not include the Student’s name in the graduation ceremony because the Complainant specifically requested that the School not use any information regarding the Student during the ceremony.

1. Protected Activity

A protected activity is any action taken to further a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR or to express opposition to any practice made unlawful by the statutes and regulations enforced by OCR.

OCR finds that multiple individuals, including the Complainant, the Student’s XXX, and former Connections Academy teachers, engaged in protected activity on behalf of the Student by: a) requesting many times, which are detailed above, that the School provide additional accommodations and/or existing accommodations in the Student’s 504 plan and; and 2) by

⁸ The Recipient told OCR that the student selected as XXX had a 504 plan but the students’ records reveal that it was the XXX – not the XXX – who had a 504 plan.

complaining several times about retaliatory restrictions on the Complainant’s ability to discuss the Student’s accommodations with trusted teachers. The fact that the Student was ultimately provided many of the requested accommodations and the School’s actions may not have been a violation of Section 504 is immaterial. At the time the individuals were complaining, they had a good faith and objectively reasonable belief that the School was discriminating against the Student on the basis of her disability and retaliating against individuals who advocated on the Student’s behalf.

2. Materially Adverse Action

A materially adverse action is one that it is likely to dissuade a reasonable person in the individual’s position from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR. OCR finds that the exclusion of the Student’s name from the list of graduates during the 2021 graduation ceremony is a materially adverse action because it diminished her significant accomplishment and would dissuade a reasonable person from complaining about discrimination.

3. Causal Connection

OCR must determine whether the evidence demonstrates that the School took the materially adverse action because the Complainant engaged in protected activity or for the purpose of interfering with protected activity. To do so, OCR considers whether there is some evidence of a causal connection between the adverse action and the protected activity. The evidence may include changes in the treatment of the individual after protected activity occurred, the proximity in time between protected activity and adverse action, the School’s treatment of the individual compared to similarly situated individuals, or the School’s deviation from established policies or practices.

OCR finds that there is no evidence of a causal connection between the protected activity and the School’s decision not to mention the Student during the graduation ceremony. On the contrary, the evidence shows that after the protected activity on behalf of the Student, the School stated its intent to specifically recognize the Student during the graduation ceremony as a Distinguished Student of Highest Honors. In response, the Complainant requested that the School not use any information, pictures, quotes, themes or other information supplied by the Student in the graduation ceremony. The Complainant wrote, “I’m not even asking for the school to mention my daughter . . . at graduation at all.”

While the Complainant contends that she did not mean for the School not to announce her daughter’s name in the list of graduates, OCR finds that the Complainant’s communications on this issue were unclear and reasonably interpreted by the School as a request not to mention the Student at all during the graduation ceremony. Thus, the preponderance of the evidence is that the School’s actions were because of the Complainant’s request – not her protected activity on behalf of the Student.

For this reason, OCR finds insufficient evidence of a causal connection between the protected activity and the materially adverse action and accordingly that the Complainant has not established a *prima facie* case of retaliation with respect to the graduation ceremony. OCR is therefore dismissing the Complainant's third allegation under Section 303(a) of its Case Processing Manual (CPM).

Conclusion

As discussed above, during OCR's investigation, the School agreed to voluntarily address OCR's concerns regarding its valedictorian/salutatorian selection process. Thus, pursuant to Section 302 of the CPM, OCR has not made any legal determinations regarding the Complainant's first two allegations.

The School signed the enclosed Resolution Agreement on March 11, 2022. The Agreement requires the School to issue a letter to the Student stating she is eligible for the honor of valedictorian based on having achieved XXX. It also requires the School to revise its non-discrimination, anti-retaliation, and valedictorian/salutatorian selection policies and procedures and provide training to administrators and staff on those policies and procedures.

The Agreement, when fully implemented, will fully resolve the compliance concerns in this case. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information that was obtained during OCR's investigation and are consistent with applicable law and regulation. OCR will monitor the School's implementation of the Agreement until the School is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

OCR finds insufficient evidence that the School retaliated against the Student in violation of Section 504 or Title II by not including her name in the list of graduates during the 2021 graduation ceremony and is therefore dismissing the Complainant's third allegation under Section 303(a) of the CPM.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the School may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

The Complainant has a right to appeal OCR’s determination with respect to allegation three within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the School. The School has the option to submit to OCR a response to the appeal. The School must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the School.

Under the Freedom of Information Act (FOIA), 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the School’s cooperation in the resolution of this complaint. If you have any questions, please contact X – sentence redacted – X.

Sincerely,

/s/

Enclosure: Resolution Agreement

cc: XXX, Counsel for Recipient (by email only)
Sydnee Dickson, State Superintendent of Public Instruction (by email only)