



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200  
SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

September 18, 2015

Tricia Blum  
Chief Executive Officer  
AEALAS, Inc.  
25443 Orchard Village Rd.  
Valencia, CA 91355

(In reply, please refer to case no. 09-15-1284.)

Dear Executive Blum:

On April 27, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), notified Albert Einstein Academy of Letters, Arts and Sciences (School) that we were investigating the above-referenced complaint against the School, which is chartered by the Acton Agua Dulce Unified School District (District). The complainant alleged that the School discriminated against a student<sup>1</sup> (Student) based on disability. Specifically, OCR opened for investigation the following allegation:

1. Whether the School denied the Student with a free appropriate public education (FAPE) when it did not implement the Student's Individualized Education Program (IEP) plan provision regarding behavioral supports and medication management.

OCR opened this complaint for investigation under the authority of Section 504 of the Rehabilitation Act of 1973, and its respective implementing regulations. Section 504 prohibits discrimination on the basis of disability, in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulations over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District receives Department funds and is subject to the requirements of Section 504 and Title II.

Under Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the School informed OCR it would voluntarily take steps to address the compliance concerns raised in the complaint. The School entered into an agreement to resolve the complaint on September 1, 2015. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the School or District's compliance with Section 504 or Title II.

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<sup>1</sup> OCR informed the School and District of the complainant's and Student's identities in our letter notifying it of the complaint. We are withholding them here to protect their privacy.

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

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegations are summarized below.

### *Legal Standards*

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 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

Section 104.35(a) of the Section 504 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 subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

OCR's preliminary investigation showed the following:

#### *Background:*

- During the 2014-2015 school year, the Student was enrolled in the XXXXX grade at the School. The Student is diagnosed with Autism Spectrum Disorder, and has an IEP (and a Behavioral Intervention Plan (BIP)) in place.
- On March 28, 2015, the Complainant filed an OCR complaint on behalf of the Student and the Student's mother (Mother) alleging that the School denied him FAPE because it failed to

properly implement the Student's IEP plan provisions regarding medication management and behavioral supports.

#### *Medication Management*

- According to the Complainant, the School failed to properly implement the Student's IEP because the Student's medication was not being administered at the appropriate time (10:30 am). The Complainant indicated to OCR that despite several attempts by Student's Mother to address this issue with the School, the problem persisted.
- The School provided OCR with a Medication Authorization Form (dated October 6, 2014) stating that the Student's medication was to be given daily at 10:30 am per the instructions from a physician. The School also provided a daily log of the administration of the Student's medication, which showed that from October 8, 2014 through February 6, 2015, the pills were typically given to the Student between 9:50 am and 10:00 am.
- The Complainant provided OCR with a letter (dated February 12, 2015) from the Student's physician addressed to the School explaining the necessity of the Student taking the pill as close as possible to 10:30 am.
- The School's medication logs following the receipt of this letter indicate that the Student's medication was given to him between 10:30 am and 10:35 am for the remainder of the school year. The Complainant also confirmed to OCR that the School has since continued to administer the Student's medication at (or close to) 10:30 am daily as required, and that the School's medication administration is no longer a problem.
- Accordingly, this allegation has been remedied.

#### *Behavioral Supports*

- The Complainant indicated to OCR that the School failed to provide the Student with behavioral supports as required by the Student's IEP and accompanying Behavioral Intervention Plan. Specifically, the Complainant stated that there was a two week period (October 18, 2014 to November 2, 2014) where the School did not provide the Student with the required behavioral supports – this gap was purportedly due to the School's failure to pay the third party provider, Behavioral Learning Center (BLC), responsible for providing the behavioral support staff who worked with the Student during the 2014-2015 school year.
  - The BLC behavioral support staff appears to have included a Board Certified Behavior Analyst (BCBA) and Behavior Intervention Assistants (BII).
- The School provided OCR with two IEPs that were in place during the 2014-15 school year.
  - The first IEP was dated December 14, 2014, and incorporated a BIP (dated December 19, 2013) from a previous IEP. The BIP lays out numerous intervention strategies to be used by the BCBA, Resource Specialist Program (RSP), and BII. The IEP indicates that the School will provide BII support to the Student for 7.75 hours per day, and BCBA support for 8 hours per month.
  - The second IEP was dated April 13, 2015, and contains the same BIP as the December 2014 IEP. It also included a second, newer BIP. This April 2015 IEP adds, among other things, an Extended School Year (ESY) for the Student. During

this IEP meeting, the School offered to implement the current BIP in a diagnostic Special Day Class placement until the end of the school year, allowing a smaller class setting for the Student. The Student's parents did not accept this offer.

- The School provided OCR with daily logs kept by various behavioral support professionals (including the School's one-to-one aides and BLC staff).
  - The BLC's logs indicate that several staff members regularly provided services to the Student between August 18, 2014 and May 4, 2015. These logs, however, appear to show a gap in services provided by the BLC (particularly the BCBA) from October 18, 2014 to November 2, 2014. Logs were maintained by School staff and one-to-one aides during this period.

As noted above, under OCR's procedures, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint. Prior to the completion of OCR's investigation, the School entered into the attached agreement to resolve the allegations in the complaint. In the agreement, the School agreed to: convene an IEP meeting to (1) clarify the BIP that is current in effect (since there are two BIPs attached to the Student's April 2015 IEP); (2) determine whether revisions to the current BIP are necessary; and (3) determine whether the Student needs compensatory and/or remedial services to account for the period of time in October and November 2014 when the Student allegedly did not receive the behavioral support services identified in his BIP. The School also agreed to provide its staff with training regarding the School's responsibility to ensure the provision of a FAPE to students with disabilities under IDEA or Section 504.

Because the School voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the School failed to comply with Section 504 or Title II. OCR will monitor the School's implementation of the agreement. This concludes OCR's investigation of the complaint and 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. OCR is closing this complaint as of the date of this letter, and notifying the complainant simultaneously. 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 whether or not OCR finds a violation.

Please be advised that the School and District 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.

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Resolution Letter

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact Naghmeh Ordikhani, OCR attorney, at (415) 486-5588.

Sincerely,

/s/

Anamaria Loya  
Team Leader

Enclosure