



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA
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SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

April 5, 2017

Katrina Abston
Executive Director
California Virtual Academy
50 Moreland Road
Simi Valley, California 93065

(In reply, please refer to docket no. 09-17-1155.)

Dear Ms. Abston:

On December 19, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against California Virtual Academy (Academy), alleging that the Academy failed to provide a free, appropriate public education (FAPE) to a student with disabilities (Student¹). Specifically, OCR investigated whether the Academy failed to provide the Student with a FAPE by failing to implement the Student's Individualized Education Program (IEP) plan during the summer of 2016 when the Student was to receive extended school year services.

OCR began its investigation of this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by public educational entities. The Academy receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Under Section 302 of OCR's Complaint Processing Manual,² a complaint may be resolved at any time prior to the conclusion of an investigation when a recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint with an agreement during the course of an investigation. Prior to the completion of OCR's investigation into this matter, the Academy informed OCR it was amenable to resolving the complaint in this manner. OCR determined that it was appropriate to resolve the complaint before the conclusion of this investigation; as such, OCR and the Academy entered into the attached agreement to resolve the issues alleged in this complaint. Accordingly, OCR did not complete its investigation of the complaint or reach conclusions regarding the Academy's compliance with Section 504 and Title II.

¹ OCR previously provided the Academy with the identities of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

² OCR's Case Processing Manual is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

The applicable legal standards, the facts OCR gathered during its preliminary investigation, and the disposition of the allegation 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.

Factual Findings

OCR's preliminary investigation showed the following:

In the 2015-2016 school year, the Student was enrolled in eighth grade at the Academy. The Student is a student with a disability and has an IEP. Following her March 2016 triennial assessment, the Student's primary qualifying disability was a Specific Learning Disability. According to the Complainant, the Student's IEP, and the Student's Psycho-Educational Multi-Disciplinary Assessment Report (Report), her disabilities impact her academically and in her social skills and pragmatics. The Report also asserted that the Student did not routinely attend class (by logging in) and that as a consequence of poor attendance and poor work completion, she had fallen further behind in her course work and regressed academically.

The March 2016 IEP included an offer of Extended School Year (ESY) services to the Student for the summer term (approximately seven weeks) to address her academic regression. The offer for ESY services was 60 minutes per week of Specialized Academic Instruction (SAI) and 60 minutes per week of Behavior Intervention Services (BIS). The summer term began June 29, 2016. The Academy provided the IEP to the Complainant for review and signature on July 2, 2016, and she returned the signed IEP to the Academy on July 12, 2016. The Complainant consented to implementation of the March 2016 IEP but reserved consent on whether or not the offer constituted FAPE for the Student.

The Complainant told OCR that the Student's ESY services required in-person support. However, according to the Complainant, she was not contacted by the ESY teacher until "late" in the summer, and then the ESY teacher offered on-line support, rather than in-person. Additionally, according to the Complainant, the Student did not receive any behavior intervention or SAI services during ESY. The Complainant asserted that she was never contacted by the behavior intervention or SAI specialists regarding the services to be provided pursuant to the IEP.

The Academy, through its counsel, told OCR that the Academy “worked diligently to support [the Student] at all times.” However, according to the Academy, it had difficulty identifying a provider through the Complainant for behavior intervention services from the time it received the signed IEP (i.e., July 12, 2016) through the remainder of the ESY term. The Academy also stated that it was unclear from its records how much SAI was made available and/or accessed by the Student over the summer months.

The Student enrolled in her local school district at the beginning of the 2016-2017 school year and is currently a ninth grader in the district. The Complainant has no intention of re-enrolling the Student in the Academy.

The Academy has not yet provided OCR with its records regarding the provision of services to the Student; however, in February 2017, prior to the completion of OCR’s investigation, the Academy indicated its interest in voluntary resolution.

Analysis & Conclusion

The Complainant and Academy are in agreement that the Academy agreed to provide 60 minutes per week of SAI and 60 minutes per week of BIS for the seven weeks of ESY, and further are in agreement that those services necessitated in-home support. According to the Complainant, the Student did not receive any of the services she should have received during ESY. The Academy does not admit that it did not provide the services but avers that it is “unclear” how much of the SAI was provided, and asserted that it had difficulty identifying a provider for BIS.

The Complainant’s allegation, if true, raises concerns about the Academy’s implementation of the Student’s IEP during ESY in summer 2016. Such actions, if true, would demonstrate deficiencies in the Academy’s compliance with Section 504 and Title II.

Under OCR’s procedures, as noted above, a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the complaint before the completion of its investigation. As such, prior to the completion of OCR’s investigation, the Academy entered into the attached agreement to resolve the complaint. The agreement requires the Academy to, in sum: offer to the Complainant to pay for up to 420 minutes of academic tutoring for the Student through a nonpublic agency certified by the State of California or other mutually agreed to provider; offer to the Complainant to pay for up to 420 minutes of behavior services for the Student through a nonpublic agency certified by the State of California or other mutually agreed to provider; pay for such services implemented and billed for through August 15, 2017; and notify OCR of the provision of and payment for services pursuant to this Agreement.

Because the Academy voluntarily resolved this complaint, OCR did not complete its investigation or reach conclusions as to whether the Academy failed to comply with Section 504 and Title II. OCR will monitor the Academy’s implementation of the agreement.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the Academy’s compliance with any other regulatory provision or to address any issues other than

those addressed in this letter. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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 Academy may not harass, coerce, intimidate, or discriminate against any individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it 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.

OCR thanks the Academy for its cooperation in resolving this investigation. In particular, we appreciate the assistance of the Academy's legal counsel, Megan Moore. If you have any questions, please contact Laura Welp, Civil Rights Attorney, at 415-486-5577.

Sincerely,

/s/

Jenny Moon
Acting Team Leader

Enclosure

Cc: Megan M. Moore, Esq.
(By email only)