UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 22, 2018

Dr. Brenda McDonald
Principal/Chief Executive Officer
811 East Sprague Avenue, Suite A
Spokane, Washington 99202

Re: PRIDE Prep Alternative Learning School
OCR Reference No. 10161237

Dear Dr. McDonald:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the referenced complaint against PRIDE Prep Alternative Learning School (the school). OCR investigated whether the school violated Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) during the 2015-2016 school year by,

1. failing to provide a student with a free appropriate public education (FAPE) by failing to timely develop and implement a Section 504 plan to provide her with necessary disability-related aids and services; and

2. treating her differently than similarly-situated non-disabled students by informing the student's parent (the parent) that the student is not welcomed back to the school for the 2016-2017 school year.

OCR conducted the investigation under its authority to enforce Section 504 and Title II. The regulation that implements Section 504 at 34 C.F.R. Part 104 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance. The regulation that implements Title II at 28 C.F.R. Part 35 prohibits discrimination on the basis of disability by public entities. The school receives federal financial assistance from the Department and is a public entity, and is subject to these federal civil rights laws.

Based on our investigation, OCR has determined that the findings support a conclusion that the school failed to comply with the requirements of Section 504 and Title II with respect to the first issue investigated and that the school complied with the requirements of Section 504 and Title II for the second issue investigated. The school has agreed to take voluntary

remedial actions set forth in the enclosed Settlement Agreement concerning the first issue. OCR has concluded that, upon full implementation of the agreement, which OCR will monitor, the school will be in compliance with Section 504 and Title II concerning the identified areas of noncompliance.

In conducting its investigation, OCR considered information provided by the parent and the school. OCR's findings of fact, analyses, and conclusions are set forth below.

Findings of Fact

The school is an open-concept (a school without walls) college-preparatory public school that offered grades six through twelve during the 2015-2016 school year. The school created a personalized learning plan for every student at the school. In addition to a personalized learning plan, students who are deemed eligible under Section 504 or the Individuals with Disabilities Education Act also received disability-related educational aids or services pursuant to a Section 504 plan or an individualized education program (IEP).

The student was a thirteen-year-old student attending the seventh grade at the school during the 2015-2016 school year. The student had been diagnosed with attention deficit hyperactivity disorder (ADHD), anxiety, and post-traumatic stress disorder (PTSD).

School records show that on March 19, 2015, the parent completed the on-line application process for the student to attend the school. On the application form, the parent stated that the student did not qualify for special education services, did not have an IEP, and did not have a current Section 504 plan. The parent contended that her failure to indicate that the student previously had a Section 504 plan was an error. She further asserted to OCR that she provided the school with a copy of the student's previous Section 504 plan prior to the beginning of the school year. The school denies receiving a copy of the Section 504 plan at that time.

The student did not receive disability-related educational aids or services under an IEP or a Section 504 plan during the 2015-2016 school year. The school created a personalized learning plan for the student on September 25, 2015. The learning plan was not based on the student's disabilities.

The student's personalized learning plan stated that: (1) the student will receive regular and increased positive reinforcement; (2) teachers will highlight student strengths in art and writing and allow projects to emphasize showing understanding through art and writing; (3) the parent will talk with the student about her behavior; (4) the school Dean of Students will talk with the student about her behavior; (5) the school tutor will work with the student after school and on the weekends; (6) the student will have frequent opportunities to move around; (7) teachers will break tasks into smaller parts and conduct frequent check-ins; (8)

the student will be seated away from distractions as possible in an open-concept; and (9) the parent will meet with school staff every Friday.

On October 7, 2015, the parent completed a school "Health Record" form. Under the form's heading "Current Health Conditions," the parent wrote that the student had "ADHD/Anxiety - PTSD" and that the student required "quiet time when … over stimulated as an accommodation need." The parent contended that she had conversations with the school's staff throughout the 2015-2016 school year regarding the student's disability and her medication needs.

The student was involved in numerous behavior-related school offenses during the 2015-2016 school year. These incidents included name calling, poking or hitting other students, and distributing photographs of other students. The parent told OCR that these incidents "[weren't] anything special … just normal teen drama." The principal told OCR that the student's behavior did not indicate that the student required a Section 504 plan. However, the school did take action with respect to these incidents such as asking the student to write a letter of apology, speaking with the parent either by telephone or by scheduling meetings, amending the student's learning plan, assigning the student "clean up duty," and imposing limitations on the student's ability to ride the school bus.

Additionally, in early November, a meeting was held to discuss the student's progress. As a result of the meeting, tutoring for the student was increased and the school "altered [the student's] work space to decrease the amount of distractions that [the student] might have." Records provided by the school indicated that the parent informed the school at this meeting that the student had not been taking her medication regularly.

On November 5, 2015, the student's advisor wrote an email to the parent in which he stated that the student needed to work on "defining respectful boundaries with peers" and that, academically, the student "needs focus." The advisor suggested that it might be good to find the student a book showing a "correlation between academia and long term success, versus social impulse and failure."

The parent told OCR that she began speaking to school staff about helping the student with her academics during December 2015. The parent contended that, while she did not specifically request a Section 504 plan for the student, she did request additional assistance for her daughter.

In February 2016, the student was identified among twelve other students for a "higher level of intervention." According to school records, "part of this intervention was to identify if the school model was supporting student progress or if students needed a school environment that provided greater structure in a contained classroom setting." The student received additional tutoring and was placed in the front of the classroom. According to the

school's records, the student was the only student who needed to continue this intervention for two weeks and that she "struggled in this small environment, but showed signs of an ability to focus better and stay on task."

In a meeting on March 31, 2016, school staff expressed concerns to the parent regarding the student's ability to succeed in the open concept environment, and expressed their opinion that the student would be better served in a more structured, traditional setting.

In an e-mail message to the school principal, dated June 9, 2016, the parent informed the principal that the student received disability-related educational aids and services on a Section 504 plan at another school the previous school year. In the message, the parent also raised the issue of disability-related accommodations for the student. According to the school, these emails were the first time the parent mentioned a Section 504 plan for the student.

The school principal told OCR that the school did not evaluate the student for a Section 504 plan because the parent never requested a plan and school staff "never saw the need to develop one for the student." The principal also told OCR that the student had a personalized learning plan and that, even though the student did not have a Section 504 plan, the student received the disability-related accommodations she needed.

The parent alleged that, during conversations with school administrators, the administrators told her that the school "was not a good fit" for the student and that the student was not welcomed back to the school for the next school year. The parent asserted that school staff did not "want to deal with her [the student]" because of the student's disabilities. The parent subsequently told OCR that she also felt the school "was not a good fit" for the student because the school is located in a large open warehouse full of distractions. She stated that, because the student has ADHD, the student needed a distraction-free environment and the school was unable to provide one.

The school principal acknowledged to OCR that he did feel the school was not a "good fit" for a student with ADHD because of the open-concept of the school, the distractions, the school's inability to limit those distractions, and the impact they had on the student because of her disability. The school principal also told OCR that school staff shared that concern with the parent.

However, the principal told OCR that the student was not prohibited from returning to the school for the 2016-2017 school year. OCR found no evidence that the student was denied enrollment at the school for the 2016-2017 school year.

According to the parent, she placed the student in a private school for the 2016-2017 school year.

Analysis and Conclusion – Issue No. 1

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires the school to provide a free appropriate public education to each qualified student with a disability within its jurisdiction. An appropriate education is defined as regular or special education and related aids and services that are designed to meet individual educational needs of the individual with a disability as adequately as the needs of nondisabled persons are met, and that are based upon adherence to the procedures identified in Section 504.

Section 504 at 34 C.F.R. §104.35(a) requires a recipient to conduct an evaluation for any person who, because of a disability, needs or who is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. Additionally, 34 C.F.R. § 104.35(c) requires recipients to draw upon information from a variety of sources in interpreting evaluation data and making placement decisions.

The regulation implementing Title II at 28 C.F.R. § 35.130 states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

OCR found that, while the parent did not initially provide information on the school's application form regarding the student's disability and prior Section 504 plan, she did complete a Health Record form on October 7, 2015, in which she disclosed the student's disabilities and need for a disability-related "accommodation." There were also communications between the parent and the school throughout the 2015-2016 school year in which school staff noted concerns regarding the student's behavior and her ability to "focus" and "stay on task." These concerns were significant enough for the school to provide interventions for the student and even prompted staff to recommend a more traditional, structured placement for the student for the next school year. While the evidence suggests that the parent may not have specifically requested a Section 504 plan for the student until June 2016, the school's responsibility to conduct an evaluation of any person who needs or is believed to need special education or related services is not contingent upon receipt of a parental request.

The school staff members were aware, or should have been aware, that the student had disabilities based on the Health Form dated October 7, 2015, and the numerous reported staff concerns with the student's behavior and ability to "focus." These should have prompted an evaluation under Section 504. To the extent that the school was providing the student regular or special education and related services that were designed to meet the individual educational needs of the student, there is no evidence that the school complied with Section 504's evaluation and placement procedures prior to doing so.

Because the evidence established that the school failed to evaluate the student to determine whether she required disability-related aids and services, OCR concludes that the school failed to comply with Section 504 and Title II with respect to the issue investigated.

Analysis and Conclusion – Issue No. 2

The regulation implementing Section 504 at 34 C.F.R. § 104.4(b) prohibits a recipient from denying a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service, and prohibits a recipient from affording a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. As stated above, Title II at 28 C.F.R. § 35.130 similarly prohibits disability discrimination.

OCR found that, during conversations with the parent, school staff told her that the school was not a "good fit" for the student because of the distractions inherent in the school's open-concept learning environment and the impact they have on the student because of her disability. OCR also found that the parent, herself, believed the school was not a "good fit" for the student because of the distractions. OCR, however, found no evidence to indicate that school took steps to deny the student admission to the school for the 2016-2017 school year.

Because OCR did not find that the student was denied an opportunity to participate in the school's program for the 2016-2017 school year, OCR concludes that the school did not fail to comply with respect to Section 504 or Title II with respect to the issue investigated.

The school and OCR entered into discussions regarding the area of noncompliance identified above. As a result of these discussions, the school has agreed to take the voluntary remedial actions set forth in the enclosed Settlement Agreement to bring itself into compliance with Section 504 and Title II. OCR concludes that upon full implementation of the commitments in the agreement, the school will be in compliance with Section 504 and Title II with respect to the issues investigated in this case.

This determination of compliance with Section 504 and Title II is contingent upon the school's implementation of the commitments set forth in the agreement. The school's failure to honor these commitments may result in further action by OCR with respect to this 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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a suit in court regardless of OCR's determination.

Please be advised that the school 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.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement was due by June 4, 2018. Please provide the report promptly. If you have any concerns about the school's implementation of the agreement, please raise those concerns with OCR.

Thank you for bringing this matter to our attention. If you have any questions, please contact Steve Riley, the OCR staff member assigned to this complaint. You can contact Mr. Riley at (206) 607-1635 or at steven.m.riley@ed.gov.

Sincerely,

Kelli Lydon Medak
Supervisory Attorney

Enclosure