



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

November 1, 2019

Melissa Mackedon
CEO, Oasis Academy (K-12)
920 W. Williams Avenue, Suite 100
Fallon, Nevada 89406

Re: Oasis Academy
OCR Reference No. 10191208

Dear CEO Mackedon:

This letter is to inform you of the disposition of the above-referenced complaint filed against Oasis Academy (Academy) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complainant alleged that the Academy:

1. discriminated against XXXXXXXX (Parent), on the basis of disability, by denying his service animal entry into the Academy, beginning October 2018, pending him providing vaccination information; and
2. retaliated against the Parent, his wife (Parent 2) and his daughter (Student A), in response to the Parent's disability-related advocacy regarding his service animal, by filing a Lyon County Human Services complaint on or about March 14, 2019.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). These statutes prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance and by public entities, respectively. The regulations implementing these laws also prohibit retaliation against an individual because the individual has made a complaint, testified, assisted, participated in any manner in an investigation, proceeding, or hearing under OCR regulations, or for the purpose of interfering with any right or privilege secured by these civil rights laws. The Academy is a recipient of federal financial assistance from the Department and is a public entity. It is required to comply with these laws.

Regarding allegation No. 1, prior to completion of OCR's investigation, the Academy expressed an interest in voluntarily resolving the complaint. OCR determined that allegation No. 1 was appropriate for a voluntary resolution, and the Academy signed the enclosed Voluntary Resolution Agreement (Agreement) to address complaint allegation

No. 1. Regarding allegation No. 2, OCR has completed its investigation and has determined that the evidence does not support a conclusion that the Academy failed to comply with Section 504 and/or Title II with regard to the issue investigated. OCR's findings of fact and conclusion set forth below are based upon information and documents provided by the complainant and the Academy.

Allegation No. 1

The regulation implementing Title II, at 28 C.F.R. § 35.136, provides that, generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The regulation further provides that a public entity shall not ask about the nature or extent of a person's disability but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

OCR's investigation to date indicates that in communicating with the Parent about his service animal, the Academy's statements resulted in the Parent concluding that he needed to provide proof that his service animal was vaccinated as a condition of bringing his service animal into the Academy. A review of the policy the Academy provided OCR in response to OCR's request for information reflected that individuals wishing to bring a service animal on campus needed to provide proof of several vaccinations.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, prior to OCR issuing its final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the Academy requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the Academy's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate regarding allegation No. 1. Subsequent discussions with the Academy resulted in the Academy signing the enclosed Agreement. 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 is due by October 31, 2019.

Allegation No. 2

Findings of Fact

The Parent is a person with a disability who uses a service animal. During the 2018-2019 school year, Student A attended the Academy. Student A is also a person with a disability. The Parent told OCR that during the 2018-2019 school year, he picked up Student A from school, accompanied by the Parent's service animal, and waited in the building for Student A to be brought out.

In October, November and December 2018, the Academy engaged in discussions with the Parent about his bringing his service animal into the Academy. During these discussions, the Parent raised concerns with the Academy about limitations he believed the Academy was placing on his ability to bring his service animal to the Academy.

On March 14, 2019, the Academy's Student Services Supervisor (Services Director) sent an e-mail to the Parent and Parent 2 (Parents) informing them that Student A's uniform was dirty when she arrived at school that day, that her underpants were covered in feces, and that her backup pair of underpants were also covered in dried feces. The Services Director's e-mail indicates that "by school regulations" she "had to report this" to the Academy's administrators.

The Parent told OCR that after he received this e-mail, he was contacted by Lyon County Human Services (CPS), and a CPS employee visited the Parents' house and conducted an inspection of the premises. On March 25, 2019, CPS sent the Parents a letter indicating it was "submitting for closure" a case that had been opened against them.

It is the Parent's position that the Academy filed the March 14, 2019, CPS report in retaliation for his advocacy in support of bringing his service animal to the Academy. It is the Academy's position that it was obligated to file the CPS report based on Student A's condition at school on March 14, 2019.

The Academy CPS report reflects that on March 14, 2019, Student A "came to school in the same clothes as the day before. There was fecal matter on the pants – staff began to help her clean – she had feces in her underwear [and] smeared on her bottom – when staff went to get clean clothes out of her backpack, there were dirty underwear with fecal matter in her backpack with her lunch – staff had to go to Walmart to buy her clean clothes." The report was signed by the Academy Chief Academic Officer (CAO). Documents the Academy provided OCR confirm the Academy's description of the circumstances and Student A's condition.

In an interview, the CAO told OCR that she is the person at the Academy that directed the filing of the CPS complaint regarding the Parents. The CAO told OCR that she did not contact anyone senior to her at the Academy prior to filing the CPS report. The CAO indicated that before the Academy filed the CPS report it tried to contact the Parents but was not successful. The CAO indicated that the Academy filed the report because the information in the Academy's possession at the time indicated that the Parents might be neglecting Student A. The CAO stated that all staff at the Academy are mandated reporters of child abuse.¹

The CAO told OCR that she was aware in the fall of 2018 that there were discussions between the Chief Executive Officer of the Academy (CEO) and the Parent regarding his service animal, but that she was not involved in these discussions and never spoke directly to the Parent about his service animal. The CAO told OCR that the last time she heard about discussions regarding the Parent's service animal was in approximately January 2019. The CAO denied that her knowledge of the Parent's advocacy regarding his service animal played any role in her decision to file the CPS report.

Analysis and Conclusion

The issue OCR investigated is whether the Academy violated Section 504 and Title II by retaliating against the Parent, Parent 2 and Student A, in response to the Parent's disability-related advocacy regarding his service animal, by filing a Lyon County Human Services complaint on or about March 14, 2019.

The regulation implementing Section 504, at 34 C.F.R. § 104.61 [referencing the regulation, at 34 C.F.R. § 100.7(e), promulgated under Title VI of the Civil Rights Act of 1964], states that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 504 or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing, under OCR regulations. The Title II regulation, at 28 C.F.R. § 35.134, states that no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by Title II.

¹ Nevada Revised Statutes provide, at NRS 432B.020, that the definition of child abuse includes "negligent treatment," in turn defined, at NRS 432B.140, to include a child "without proper care" or "care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child." NRS 432B.220, regarding those required to report child abuse per reasonable cause that it has occurred includes "a person employed by a public school or private school..."

In determining whether a recipient has engaged in prohibited retaliation, OCR must establish that (1) the complainant engaged in a protected activity, such as advocating for a student's rights secured by Section 504 or Title II; (2) the complainant, or another person, experienced an adverse action by the recipient; (3) there is some evidence to infer a causal connection between the protected activity and the adverse action; and (4) there is no legitimate, nondiscriminatory reason for taking the adverse action, or the legitimate, nondiscriminatory reason is pretext for retaliation.

The evidence establishes that the Parent engaged in protected activity under Section 504 and Title II when he raised concerns about his ability to bring his service animal onto the Academy campus.

The evidence also establishes that the Academy subjected the Parents and Student A to an adverse action, when it filed a CPS report against the Parents on March 14, 2019, alleging neglect of Student A.

The evidence, however, does not indicate a causal connection between the Parent's advocacy and the Academy's adverse action. While the CAO, who filed the CPS report, told OCR that she was aware of the Parent's advocacy, she was not directly involved with it. She also stated that she did not consult with the CEO before filing the CPS report. The CAO also told OCR that the last discussion regarding the Parent's service animal she was aware of occurred January 2019, approximately three months before she filed the CPS report.

Furthermore, the evidence indicates that the CAO filed the CPS report for a legitimate, nondiscriminatory reason – namely, out of concern that the Parents were neglecting Student A. The Academy's position is supported by evidence indicating that on the day the CPS report was filed Student A came to school with soiled clothes, and that her replacement clothes were also soiled, requiring that Academy staff clean up Student A and purchase new, clean, clothes for her. OCR also found no evidence of pretext, noting that state law required staff at the Academy to file CPS reports based on their belief that there was reasonable cause to conclude neglect was occurring.

Based on the foregoing, OCR did not find sufficient evidence to conclude that the Academy retaliated against the Parents and Student A, in response to disability-related advocacy, when it filed a CPS report against the Parents on March 14, 2019.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the Academy's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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 private suit in federal court regardless of OCR's determination.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete, inaccurate, 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 recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the Academy 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.

Thank you for the cooperation you and our staff extended to OCR staff during the investigation and resolution of this complaint. If you have any questions, please contact David Kauffman, Attorney, by telephone at (206) 607-1603 or by e-mail at david.kauffman@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure: Voluntary Resolution Agreement

cc: Hon. Jhone Ebert, Superintendent of Public Instruction
Nevada State Public Charter School Authority