



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

March 30, 2015

Ms. Patricia Brantley
Chief Operating Officer
Friendship Public Charter School
120 Q Street, N.E., Suite 200
Washington, D.C. 20002

RE: OCR Complaint No. 11-15-1002
Letter of Findings

Dear Ms. Brantley:

This letter is to inform you of the disposition of the above-referenced complaint that was filed on October 2, 2014, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (the Department), against Friendship Public Charter School, specifically, XXXX School (the School). The Complainant filed the complaint on behalf of her son (the Student), alleging that the School discriminated against the Student on the basis of his disability (XXXX). OCR opened the following allegations:

1. From XXXX, the School failed to implement the disability-related services contained in the Student's Section 504 Plan (504 Plan), which had been developed at his previous school (XXXX), located in Washington D.C.). Specifically, the Complainant alleged the School failed:
 - a. To send daily/weekly progress reports home;
 - b. To provide peer tutoring; and
 - c. To provide the Student an agenda book to be sent home to track homework assignments.
2. During the 2014-2015 school year, the School failed to evaluate the Student to see if he is eligible to receive special education-related services.

In investigating this complaint, OCR reviewed information provided by the Complainant and the School. OCR also interviewed School staff. OCR attempted to contact the Complainant via email and by phone several times (in October, January, and February) to clarify her complaint allegations. As of the date of this letter, the Complainant has not responded to OCR's request for additional information.

Following its investigation, OCR found insufficient evidence of disability discrimination with regard to Allegation (1)(c) and Allegation (2). However, during the course of the investigation,

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the School expressed interest in voluntarily resolving Allegations (1)(a) and (b) pursuant to Section 302 of OCR's *Case Processing Manual*. The School has agreed to take action to address Allegations (1)(a) and (b), as set forth in the enclosed resolution agreement (the Agreement). The provisions of the Agreement are aligned with the Allegations (1)(a) and (b) and information obtained during the course of OCR's investigation and are consistent with the applicable regulations. OCR will monitor the Agreement, which when fully implemented, will resolve Allegations (1)(a) and (b). An explanation of our analysis and conclusions follows.

OCR's Jurisdiction

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. 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.

General Background

XXXX PARAGRAPH REDACTED XXXX

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts and charter schools to provide a free and appropriate public education (FAPE) to all students with disabilities in the school's jurisdiction, regardless of the nature or severity of the individual's disability. 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 students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. This includes ensuring the proper use and administration of tests and other evaluation materials; ensuring that decisions are based upon information from a variety of sources, documented, and made by a group of people knowledgeable about the student, the meaning of the evaluation data, and the placement options; and that parents/guardians are notified of their due process rights. OCR interprets the regulation implementing Section 504 as imposing substantially similar requirements to those found in the regulation governing Title II. The development and implementation of a Section 504 Plan or individualized education program (IEP), in accordance with Section 504, designed to meet the needs of a student with a disability is one means by which school districts and charter schools may provide a FAPE.

Additionally, as set out in the Section 504 regulations, at 34 C.F.R. § 104.35, a recipient, in this case, the School, must have adequate procedures and standards for the evaluation and placement

of students. With respect to evaluation and placement, the Section 504 regulation at 34 C.F.R. § 104.35 specifically requires recipients to evaluate students who need, or are believed to need special education or related services before the initial placement of the student and any subsequent significant change in placement. In interpreting evaluation data and in making placement decisions, the recipient must draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The Section 504 regulations, at 34 C.F.R. § 104.36, also require that the charter school provide parents and guardians with notice of procedural safeguards, including an opportunity for an impartial hearing.

Allegations (1)(a) and (b)

The Complainant alleged that the School failed to send daily/weekly progress reports home and failed to provide the Student peer tutoring. On January 14, 2015, the School expressed a willingness to resolve the issues in the complaint prior to the completion of OCR's investigation and, pursuant to Section 302 of OCR's *Case Processing Manual*, OCR discussed resolution options with the School.

The School signed a resolution agreement (copy enclosed) which, when fully implemented, will resolve the complaint. OCR will monitor implementation of this Agreement, which includes provisions that are consistent with the applicable regulations and are aligned with Allegations (1)(a) and (b) raised in the complaint and information obtained during the course of OCR's investigation.

Allegations (1)(c) and (2)

Allegation (1)(c): Failed to provide the Student an agenda book to be sent home to track homework assignments.

XXXX PARAGRAPH REDACTED XXXX

OCR provided the Complainant an opportunity to respond to the information provided by the School. On December 10, 2014, OCR sent the Complainant an email request for additional information necessary to investigate the complaint allegation. Additionally, on January 15 and February 2, 2015, OCR staff called the Complainant and left voicemail messages informing her of the need to speak with her about this complaint allegation. As of the date of this letter, the Complainant has not responded to OCR's email or phone communications.

A finding that a recipient has violated one of the laws OCR enforces must be supported by a preponderance of the evidence, that is, evidence that it is more likely than not that the alleged discrimination occurred. When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law. OCR concluded that the preponderance of the evidence does not support

that the School failed to provide the Student an agenda book. As noted above, School staff informed OCR that they provided the Student with an XXXX. The Complainant did not provide any additional information (other than her initial allegation) about this aspect of the complaint. Therefore, OCR finds insufficient information to support this allegation.

Allegation 2: Failure to evaluate if the Student is eligible for special education-related services.

XXXX PARAGRAPH REDACTED XXXX.

On November 4, 2014, the Complainant attended the evaluation planning meeting, along with members of the Student's 504 team. The team determined it was appropriate to evaluate the Student to see whether he is eligible for services for a learning disability. The School provided OCR a copy of the Complainant's signed consent form dated November 4, 2014. On the same date, the School made referral requests for educational-related assessments, including psycho-educational and occupational therapy (OT) due to handwriting concerns, letter formation, and pencil grip. The Student completed an educational assessment on December 18, 2014 and the OT assessment on January 12, 2015. The School was closed for winter break from December 22, 2014 until January 2, 2015. On January 13, 2015, a team of knowledgeable persons, including the Complainant, reviewed relevant Student data, including the Student's grades and assessment results, in which the Student was identified as having a Specific Learning Disability and Other Health Impaired and was determined eligible to receive special education and related services.

Unlike the Individuals with Disabilities Education Act (IDEA), which OCR does not enforce, the Section 504 regulations do not provide specific timelines under which meetings must be convened to discuss and determine evaluation and placement of students. OCR generally looks to see whether such actions occur within a reasonable timeframe so as to not have the effect of denying a student with a disability meaningful, equal access to the educational services provided to students without disabilities. In determining whether a recipient completed an evaluation and eligibility determination within a reasonable timeframe, OCR may consider whether the School followed established timeframes as described under IDEA. Under IDEA, an initial evaluation is conducted within 60 days of receiving parental consent for the evaluation *or within the State-established timeframe* within which the evaluation must be conducted, in accordance with 34 CFR §300.301(c)(1). Under D.C. Code § 38-2561.02(a), in the District of Columbia, the School shall assess or evaluate a child who may have a disability and who may require special education services within 120 calendar days from the date that the child was referred for an evaluation or assessment.

In this case, the documentary information indicates the Complainant made a referral on September 22, 2014 and the Student was evaluated and determined eligible for special education-related aids and services within 113 days. OCR also determined that the School made efforts to conduct an evaluation as soon as it received notice from the Complainant about the potential learning disability diagnosis. It made efforts to convene a meeting to discuss the nature of the referral and promptly conducted an evaluation after receiving parental consent. Because OCR found sufficient evidence that the School conducted an evaluation of the Student within a

reasonable timeframe, OCR finds insufficient evidence to substantiate this aspect of the complaint, as alleged.

Conclusion

This concludes OCR's investigation of this complaint. OCR is closing this complaint investigation effective the date of 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 retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If any individual is harassed or intimidated because of filing a complaint or participating in any aspect of OCR case resolution, the individual may file a 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. If we receive such a request, we will seek to protect, to the extent provided by law, information that, if released, could constitute an unwarranted invasion of personal privacy.

If you have any questions, you may contact Josie Evola at (202) 453-5908 or josie.evola@ed.gov or Tracey Solomon (202) 453-5930 or tracey.solomon@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

cc: Ellen Douglass Dalton, General Counsel (sent via e-mail)