



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

February 23, 2022

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Re: Case No. 11-21-1320
XXXXXX

Dear XXXXX XXXXX:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against XXXXX. The Complainant filed the complaint on behalf of a former student of the Academy, who OCR will refer to as the Student. The Complainant alleged that the Academy discriminated against the Student on the basis of disability. Specifically, the complaint alleges that the Academy failed to evaluate the Student after the Complainant sent the Academy a letter from the Student's doctor on XXXXX requesting a Section 504 Plan for the Student.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, 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. Because the Academy receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation, OCR reviewed documents provided by the Complainant and the Academy and interviewed the Complainant and Academy staff. Before OCR completed its investigation, the Academy expressed an interest in resolving the complaint allegation pursuant to Section 302 of OCR's *Case Processing Manual*. OCR determined that it would be appropriate to resolve the allegation because OCR's investigation to date identified concerns that could be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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

Facts Gathered to Date

The Student was enrolled in ninth grade at the Academy during the 2020-2021 school year, and did not receive special education or related services as of the start of the school year. On XXXXX, the Student was diagnosed with XXXXX. On XXXXX, the Student started XXXXX, and the Academy began informally accommodating her by modifying her schedule and assignments.

On XXXXX, the Complainant faxed the Academy a letter from the Student’s doctor. In the letter, the doctor recommended that the Student attend school virtually and that the Academy create a Section 504 plan for the Student, and recommended that the plan include the following: (i) reduced workload where appropriate with the permission of the Student’s teachers (accommodation 1); (ii) extra time on assignments and tests (accommodation 2); (iii) notes on any missed classroom instruction (accommodation 3); (iv) breaks and turn off webcam when needed (accommodation 4); and (v) permission to miss class when ill without penalty (accommodation 5). The doctor also recommended that the plan include any other accommodations recommended by the Student, her parents or her teachers.

Later, on XXXXX, the Academy’s XXXXX drafted a Section 504 plan for the Student. Page 1 of the plan stated that “[d]ue to side effects of XXXXX, [the Student] will have appropriate accommodations and will attend the [Academy] as a remote student.” Page 2 of the plan included accommodations 1-4 but did not include accommodation 5. The Director emailed the draft plan to the Student’s teachers for their review and input, and the Student’s teachers signed the third page of the plan on XXXXX.

The Academy asserted that Academy staff hand-delivered all three pages of the Section 504 Plan to the Complainant on XXXXX for her review and signature. The Academy provided to OCR all three pages of the plan, which reflected that on the third page, under the heading “parental notice,” the Complainant signed the plan on XXXXX.¹

The Complainant denied that she received all three pages of the plan, and asserted that on XXXXX, she received a text message from the Academy’s XXXXX that included language from page 1 of the plan, indicating that the Student “will have appropriate accommodations and will attend the [Academy] as a remote student.” The Complainant stated that she signed a copy of the plan that included this language from page 1, but did not include page 2. The Complainant asserted that she never received page 2 of the plan.

On XXXXX, the Complainant messaged the XXXXX and asked to meet to discuss the Student’s Section 504 plan because she believed it was vague. Additionally, by email sent on XXXXX, the Complainant expressed concern to the Academy’s XXXXX that there was “no communication” with her prior to development and implementation of the Student’s Section 504 plan; and that she and the Student had not been advised what accommodations the Academy would provide to the Student. In summer 2021, the Complainant disenrolled the Student from the Academy.

¹ Under the heading “parental notice” the plan stated the following, above the Complainant’s signature: “I participated in the development/review of this 504 plan, give consent for its implementation, and have received a copy of the procedural safeguards.”

OCR also reviewed the Academy’s Child Find Guidelines, Section 504 Guidelines, and Section 504 Procedural Safeguards. The Academy’s Child Find Guidelines state that the Academy “identifies and evaluates all students with and suspected of having a disability”; and the Section 504 Guidelines state that the Academy identifies and evaluates students who, “within the intent of Section 504,” need special services or programs in order to receive a free appropriate public education in accordance with Section 504. Neither document provides any information explaining how the Academy identifies and evaluates such students.

Analysis

Based on the information gathered to date, OCR determined that the Academy promptly developed a Section 504 plan for the Student upon receipt of medical documentation from the Complainant on XXXXX. However, OCR is concerned that the Academy may not have evaluated the Student and developed the Section 504 plan in accordance with the procedural requirements set forth in 34 C.F.R § 104.35(c); and, instead, the XXXXX may have unilaterally developed a Section 504 plan for the Student without obtaining input from a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options.

OCR also is concerned that the Academy’s Child Find and Section 504 Guidelines do not adequately explain the Academy’s procedures governing the identification, evaluation, and placement of students with disabilities who need or are believed to need special education or related services.

Conclusion

Prior to the conclusion of OCR’s investigation, the Academy expressed interest in voluntarily resolving the complaint without further investigation. Pursuant to the attached Resolution Agreement, the Academy will revise its written policies regarding the identification, evaluation, and educational placement of students with disabilities; train staff on the revised policies; and train staff on the requirements of Section 504.²

Please be advised that the Academy must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the District with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek, to the extent provided by law, to protect personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

² The Complainant informed OCR that the Student is doing well in her new school and that she does not intend to return the Student to the Academy; and she is not interested in any individual remedies for the Student.

We appreciate the Academy's cooperation in the resolution of this complaint. If you have any questions, please contact Rashae Chambers, the OCR attorney assigned to this complaint, at 202-245-8076 or rashae.chambers@ed.gov.

Sincerely,

Zorayda Moreira-Smith
Acting Team Leader, Team IV
District of Columbia Office
Office for Civil Rights