



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

July 19, 2023

By email only to bkaraduman@tmsapcs.org

Ben Karaduman
Superintendent
Triad Math and Science Academy
104 Towerview Court
Cary, NC 27513

Re: Case No. 11-23-1191
Triad Math and Science Academy

Dear Mr. Karaduman:

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 Triad Math and Science Academy. The Complainant filed the complaint on behalf of a student, whom we will refer to as the Student, at XXXXX. The Complainant alleged that, during XXXXX school year, the Academy discriminated against the Student on the basis of disability by failing to provide a free appropriate public education (FAPE) by not providing specialized behavior instruction as required by the Student's Individualized Education Program (IEP).

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 that receive 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. The Academy receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation to date, OCR reviewed information provided by the Complainant and the Academy; and interviewed the Complainant. Before OCR completed its investigation, the Academy expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires school districts to provide a FAPE to each qualified student with a disability who is in the school district's jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Evidence Obtained to Date

The Student attended the Academy XXXXX during the XXXXX. The Student received special education services under an IEP. The IEP required the Academy to provide the Student with special education services for reading and math, and related services for speech. The IEP also included specialized behavior instruction twice a week for 30 minutes in the general education setting.

The Complainant, who XXXXX was her special education teacher at the beginning of the XXXXX school year, informed OCR that she was not able to implement the behavior instruction for the Student because her teaching schedule did not include time to do so. The Complainant stated that she was the only special education teacher at the Academy until the Academy hired another Special Education teacher in or around XXXXX, at which time the Student was placed on that teacher's caseload. The Complainant acknowledged that the Student began to receive behavior instruction as required in her IEP in XXXXX.¹

OCR reviewed copies of the Complainant's class schedules for the XXXXX school year, dated XXXXX, that were provided by the Academy. None of the schedules indicate days or times for the Complainant to provide behavior instruction to the Student in the general education (or any) setting. To date, the Academy has not provided any documentary evidence to OCR showing that the Academy provided behavior instruction to the Student in accordance with her IEP during the relevant time period. Therefore, OCR is concerned that the Academy did not provide the Student with the behavior instruction from the beginning of the XXXXX school year through XXXXX as required by her IEP.

Conclusion

Before OCR completed its investigation of the complaint, the Academy expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On XXXXX, the Academy agreed to implement the enclosed Resolution Agreement, which, when fully

¹ The Complainant informed OCR that she was not raising any allegation on behalf of any other student and stated that her allegation was specific to her alleged inability to provide behavior instruction to the Student. The Complainant did not allege or provide any information to suggest, and OCR did not otherwise find evidence indicating, that other students at the Academy did not receive required behavior instruction.

implemented, will address the evidence obtained and the allegation investigated.² OCR will monitor the Academy's implementation of the agreement until the Academy is in compliance with the terms of the agreement and the statutes and regulations at issue.

This concludes OCR's investigation of the complaint. This letter 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. 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. OCR would like to make you aware that individuals who file complaints with OCR 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 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 Academy 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the Academy's cooperation in the resolution of this complaint. If you have any questions, please contact Alex Ussia, the OCR attorney assigned to this complaint, at 202-987-1288 or alex.ussia@ed.gov.

Sincerely,

Jennifer Barmon
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Donna Rascoe

² The Complainant withdrew the Student from the Academy midway through XXXXX school year. The Complainant informed OCR that she does not intend to re-enroll the Student in the Academy, and does not wish to receive any further services for the Student from the Academy. Additionally, the Complainant informed OCR that she did not incur any out-of-pocket expense as a result of any failure by the Academy to ensure that the Student received all behavioral services stipulated in her IEP.