



**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

November 15, 2023

By email only to [redacted content]

[redacted content]

Principal

[redacted content]

[redacted content]

[redacted content]

Re: Case No. 11-23-1430

[redacted content]

Dear [redacted content]:

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 [redacted content], which we will refer to as the Academy. The Complainant alleged that the Academy:

- Denied the Student a free and appropriate public education (FAPE) when it failed to timely evaluate him for special education and/or related aids and services beginning on [redacted content] (Allegation 1); and
- Discriminates on the basis of disability by failing to designate a responsible employee to coordinate its efforts to comply with Section 504, and failing to maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the Section 504 regulation, at 34 C.F.R. § 104.7(a)-(b) (Allegation 2).

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 allegations pursuant to Section 302 of OCR's *Case*

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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. OCR determined that Allegation 1 is appropriate for resolution pursuant to Section 302 of OCR's *Case Processing Manual*.

OCR completed its investigation of Allegation 2. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II regarding Allegation 2. During the course of its investigation, OCR also identified a violation of Section 504 and Title II regarding the Academy's procedural safeguards pursuant to 34 C.F.R. § 104.36. The Academy agreed to resolve both findings through the enclosed resolution agreement.

OCR's findings and conclusions regarding Allegation 2 are discussed below, as well as a summary of the evidence obtained by OCR during the investigation to date regarding Allegation 1.

Allegation 1:

The Complainant alleged that the Academy denied the Student a FAPE when it failed to timely evaluate him for special education and/or related aids and services beginning on [redacted content].

Legal Standards

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 a Section 504 Plan developed in accordance with Section 504's procedural requirements 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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The regulation implementing Section 504 does not impose a specific timeframe for completing an evaluation and determining placement. However, an unreasonable delay may result in discrimination against a student with a disability because it may have the effect of denying the student meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) and state timelines, which OCR does not enforce, are nevertheless helpful guidance in determining what is reasonable. The IDEA regulation requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation or within a timeline established by the state (34 C.F.R. § 300.301(c)(1)). North Carolina state policy requires initial evaluations to be completed and

placement determined within 90 days of receipt of a written referral (NC Policies Governing Services for Children with Disabilities 1503-2.2(c)(1)).

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; 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 student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Evidence Obtained to Date

During the [redacted content] school year, the Student was enrolled in the Academy as a [redacted content] grade student. In [redacted content], the Complainant spoke with the School Counselor about [redacted content] and her concerns about [redacted content] because of it. The School Counselor provided the Complainant with forms for [redacted content] to complete, and indicated the Academy would convene in [redacted content] to review the completed forms and discuss [redacted content].

The Complainant returned the completed forms, which stated that the Student [redacted content]. The forms also stated that [redacted content]. Upon receiving the form, the School Counselor spoke to the Complainant to share that she did not believe [redacted content] would be required [redacted content], given that school policy already permitted [redacted content], but that she would check with his teachers to see if they thought differently. On [redacted content], two of the Student's teachers replied to the School Counselor's email that they agreed with the School Counselor's assessment, with one teacher noting that [redacted content]. The Complainant was not included in the email thread. A [redacted content] meeting was not convened in response to the [redacted content] documentation provided by the Complainant.

By [redacted content], the Student had accumulated [redacted content] school absences and [redacted content] tardies since the beginning of the [redacted content] school year. [redacted content] of the absences were recorded as due to [redacted content]. In addition, the Student [redacted content]. On [redacted content] occasions, the [redacted content] called the Complainant or other member of the Student's family to [redacted content] based on [redacted content].

On [redacted content], the Complainant emailed the Assistant Principal to request that the Academy reconsider providing the Student with [redacted content]. The Assistant Principal replied that he would like to wait and see how [redacted content] went, and that they could then discuss [redacted content]. However, an initial meeting to discuss [redacted content] was held on [redacted content], and was continued with a second meeting on [redacted content]. The team created [redacted content] for the Student, which includes [redacted content].

Analysis

By [redacted content], the Academy had received information from the Student's [redacted content] and related recommendations for the school setting. In addition to this documentation, the Student [redacted content], some of which appear to have been [redacted content]. OCR is therefore concerned that the Academy was on notice that the Student may have required [redacted content] in order to access his FAPE prior to the Complainant's second request [redacted content]. Although the School Counselor spoke with the Complainant on approximately [redacted content] and exchanged emails with school staff members about the request, OCR did not receive information to support that the Complainant was included in the conversation, that she received a [redacted content] after the determination, or that the Academy reviewed information from a variety of sources in making its determination. OCR is therefore unable to determine based on the evidence reviewed to date that these conversations satisfied the procedural requirements of Section 504.

Allegation 2:

The Complainant alleged that the Academy discriminates on the basis of disability by failing to designate a responsible employee to coordinate its efforts to comply with Section 504, and failing to maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the Section 504 regulation, at 34 C.F.R. § 104.7(a)-(b).

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.7(a), requires a school district that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with Section 504. The Title II regulation, at 28 C.F.R. § 35.107(a), requires a public school district that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II, including any investigation of complaints alleging noncompliance with Title II. Further, the Section 504 regulation, at 34 C.F.R. § 104.8(a), requires a school district that employs fifteen or more persons to take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the school district, of the identity of a responsible employee designated pursuant to the Section 504 regulation, at 34 C.F.R. § 104.7(a).

The Section 504 regulation, at 34 C.F.R. § 104.7(b), further requires school districts that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public school districts that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

OCR examines a number of factors in evaluating whether grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Facts

The Academy informed OCR that it has designated [redacted content] to serve as the Section 504 Coordinator, and provided the staff member's name and contact information. However, OCR could not locate, nor could the Academy otherwise provide, information regarding the Section 504 Coordinator on the District's website. Although the staff member is listed on the Academy's website, [redacted content] designation is only as [redacted content], not Section 504 Coordinator.

With respect to its grievance procedures, the Academy has undertaken several revisions during the course of OCR's investigation. During the [redacted content], the Academy informed OCR that its practice was to provide its Section 504 grievance procedures directly to individual parents and guardians; the procedures were not posted on its website. The grievance procedures included a list of parent rights under Section 504, and an appeals procedure, which was to be used "for a disagreement with respect to actions regarding the identification, evaluation, educational services, or educational program of students" who need or are believed to need a Section 504 plan. The grievance process instructed the complainant (described as a student, parent, or guardian) to submit a written request to the Section 504 Coordinator for a conference to review the grievance, after which the Section 504 Coordinator would issue a written decision. The complainant could then appeal the Section 504 Coordinator's decision through an independent hearing.

In its most recent revision, which is still in draft form, the Academy's Section 504 grievance procedures require that individuals file a written complaint submitted to the Section 504 Coordinator within 30 school days of when the complainant becomes aware of the discriminatory act. The Section 504 Coordinator will then issue a written determination within 30 days, which can be appealed to the Principal within 5 school days. The draft procedures do not indicate that they apply to employees or third parties; do not state that Complainant's can submit evidence and witnesses; and do not discuss remedies.

Analysis

OCR has determined that the Academy failed to provide sufficient notice of a responsible employee designated to coordinate its efforts to comply with Section 504, and it failed to maintain grievance procedures that provide for the prompt and equitable resolution of complaints of disability discrimination, as required by the Section 504 regulation, at 34 C.F.R. § 104.7(a)-(b). Although the Academy informed OCR of the name and contact information of its Section 504 Coordinator, this information does not appear on its website or in the 504 grievance procedures that are currently published. In addition, its grievance procedures do not specify that they apply to employees or third parties, nor that complainants may submit evidence and witnesses during the investigation of a grievance. Finally, the grievance procedures do not specify that the Academy will take steps to remedy any violations which are identified as a result of a grievance.

Additional Findings

During the course of its investigation, OCR identified a violation of Section 504 and Title II in regards to the Academy's procedural safeguards pursuant to 34 C.F.R. § 104.36.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that school districts establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities, a system of procedural safeguards that includes notice, an opportunity for parents to examine relevant records, an impartial hearing with an opportunity for participation by parents and representation by counsel, and a review procedure. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Facts

The Academy has undertaken several revisions of its Notice of Procedural Safeguards during the course of OCR's investigation. During the [redacted content], it did not maintain procedural safeguards separate from the grievance procedures described above. In its most recent revision, the procedural safeguards, which are described as being for the purpose of resolving disagreements with the identification and education services and program of qualified students with a disability, describes a three-step process. Step 1 of the procedural safeguards is to request a conference with the Section 504 Coordinator within 30 days of disclosure of the facts giving rise to the grievance, during which only the Section 504 Coordinator and parent/guardian may be in attendance. The Section 504 Coordinator will then issue a written decision, which the complainant can appeal to the Principal within 5 school days. In Step 3, if the grievance is not resolved at Step 2, the complainant may appeal the Principal's decision in a due process hearing before an independent hearing officer. The procedures, as written, do not include information on a parents/guardian's right to examine records.

Analysis

OCR determined that the Academy's Notice of Procedural Safeguards does not comply with 34 C.F.R. § 104.36, including that it does not specify an opportunity for parents to examine relevant records. As such, OCR finds sufficient evidence of a violation of Section 504.

Conclusion

On November 14, 2023, the Academy agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegations investigated. OCR will monitor the Academy's implementation of the agreement until the Academy is in compliance with the terms of the agreement and the statute 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 [redacted content], the OCR attorney assigned to this complaint, at [redacted content].

Sincerely,

[redacted content]
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Enclosure

cc: [redacted content]
[redacted content]