



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

November 20, 2023

By email only to lewis.ferebee@k12.dc.gov

Dr. Lewis Ferebee
Chancellor
District of Columbia Public Schools
825 N. Capitol St. N.E.
Washington, D.C. 20002

Re: Case No. 11-23-1447
District of Columbia Public Schools

Dear Dr. Ferebee:

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 the District of Columbia Public Schools (the District). The Complainant filed the complaint on behalf of a student (the Student) at [redacted content] (the School). Specifically, the Complainant alleged that the District discriminated against the Student on the basis of disability by allowing the School's aftercare provider (Champions) to disenroll and refuse to re-enroll him from its program from October 2022 to May 2023 because the Complainant would not provide a daily aide to accompany 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 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 District 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 District, and interviewed District and Champions staff. Before OCR completed its investigation, the District 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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Facts

The Champions Program

Champions is a private after-school care provider that has been providing aftercare in some DCPS elementary schools for the past 14 years, and at the School for the past 12 years. Champions operates under a Memorandum of Agreement (MOA) with the District, which it signed in July 2022, wherein DCPS allows Champions to use its facilities, custodial services, and security. The MOA states that the District will not provide any funding to Champions, and the program will offer its services for a fee from parents. As a DCPS aftercare provider, Champions also signed a provider agreement that it will not deny participation on a basis that would violate applicable non-discrimination laws and will provide reasonable accommodations for students with disabilities to participate in its programs.¹

OCR determined that Champions uses the School's facilities (classrooms, playground, and cafeteria/gym) and security personnel. Additionally, several School employees also work at the Champions program, but are paid directly by Champions for that time. The School advertised Champions to parents through newsletters and emails, and the School's website contained information about Champions' program and listed Champions as a "partner." The Champions Regional Manager told OCR that that new families enrolling would be told by School staff about the Champions program. Champions was only open to students enrolled at the School. It provided care both before and after school, and it followed the School calendar for openings and closures.

The Student at Champions

During the 2022-2023 school year, the Student was enrolled in [redacted content] at the School. The Student has been diagnosed with [redacted content] and receives services through an Individualized Education Program (IEP). The Student's [redacted content] medication makes him [redacted content], so during the school day he is taught in a self-contained class where he is supported by a one-on-one aide and receives [redacted content] assistance when needed.

At the start of the 2022-2023 school year, the Complainant enrolled the Student in the Champions aftercare program at the School. Before enrolling the Student in Champions, the Complainant met with several representatives from Champions, provided them with the Student's IEP, and engaged in a "trial day" for the Student to make sure that the program could accommodate him.

According to the Complainant, about a month into the Student's enrollment, in October 2023, the Champions Area Manager (Area Manager) told the Complainant that she would have to provide a one-on-one aide for the Student in the aftercare program. The Area Manager added that because of Champions' required licensing ratio of one adult to every fifteen children, Champions was

¹ The MOA further requires Champions to request the Student's IEP or Section 504 Plan; to consult with the District on what reasonable accommodations or modifications may be necessary to best serve the student; and to make a good faith effort to provide the necessary accommodations or modifications, unless Champions can clearly demonstrate that it would fundamentally alter the nature of the service, program, or activity under the ADA or cause undue hardship under Section 504.

unable to provide one-on-one care for the Student. According to the District and the Champions Regional Manager, because the Student was [redacted content] medication, he could not be outside with the other children and so required a staff member to watch only him all the time, putting the program out of their required ratio of staff to students.

At first, the Complainant found a behavioral therapist to attend the aftercare program two days a week to help the Student, but like any staff in a DCPS school or aftercare program, that aide had to pass the D.C. Office of the State Superintendent of Education (OSSE) background check process. The Regional Manager explained to OCR that that process takes a long time, and that at some point during the process, the aide was no longer available to help, and they would have had to start from scratch with somebody else.

On October 28, 2022, the Area Manager emailed the Complainant that Champions was disenrolling the Student effective immediately because neither the School nor Champions had an aide that could assist the Student, and unless the Complainant could provide one, they could not give the Student the proper care needed for him. The Regional Manager told OCR that in addition to that stated reason, the Complainant had become increasingly hostile with Champions staff, including threatening one of them, who subsequently quit.

After the Student was disenrolled, Champions worked with the Complainant and the School Principal to try to establish a plan to support the Student in the aftercare program and to repair Champions' relationship with the Complainant. According to the Regional Manager, this included hiring a new site director who attended the Student's doctor appointments and spoke with his [redacted content], as well as attending mediation with the Complainant.²

In April 2023, the Student returned to Champions and remained in the program for the rest of the school year. Starting in the 2023-2024 school year, Champions no longer operates at the School; instead, the School participates in the aftercare program run directly by the District. The Complainant has not raised, nor has OCR otherwise found, any concerns about the Student's participation in the aftercare program for the 2023-2024 school year.

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives financial assistance from the Department. The regulation implementing Title II, at 28 C.F.R. § 35.130(a), contains a similar provision.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i) and (vi), further provides that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service, or otherwise limit qualified individuals

² OCR determined that during this time period, the Complainant also filed grievances with both the District's Comprehensive Alternative Resolution and Equity team as well as the Office of State Superintendent of Education; however, neither of these investigations involved allegations under Section 504 or Title II, as is alleged here.

with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. The regulations implementing Title II, at 28 C.F.R. § 35.130, contains a similar provision.

Under the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(v), and the Title II regulation, at 28 C.F.R. § 35.130(b)(1)(v), a school district may also not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the school district's program or activity. In determining whether a school district is providing significant assistance to an outside entity, OCR considers the substantiality of the relationship between the school district and the other entity, including financial support by the school district, and whether the other entity's activities relate so closely to the school district's program or activity that they fairly should be considered activities of the school district itself. If a school district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the school district must take steps to obtain compliance from the outside entity or terminate its assistance.

34 C.F.R. § 104.4(b)(2) adds that “for purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.” In order to provide an equal opportunity, there must be an individualized inquiry to determine whether there are aids, benefits, or services that could be provided to allow the individual to have an equal opportunity to participate, unless this would fundamentally alter the nature of the activity.

Analysis

OCR determined that pursuant to a partnership agreement and an MOA, DCPS had a contractual arrangement with Champions to provide afterschool services at the School for school year 2022-2023. OCR further determined that the District provided significant assistance to Champions during this period. For example: Champions operated on the School's premises using its facilities throughout the school year at no cost to the program; Champions utilized District custodial and security staff and employed several School staff; the Champions' program was available only to students enrolled in the School; the School provided parents of students at the School with information about the Program in its newsletter, by email, and on its website; and Champions' program followed the School's calendar.

Based on OCR's investigation to date, OCR has a concern that the District discriminated against the Student on the basis of his disability by allowing Champions to disenroll the Student from October 2022 to May 2023 based on his disability-related needs. OCR is also concerned that the District failed to ensure that Champions appropriately considered whether a modification would have allowed the Student to participate in the School's aftercare program based on his individualized needs rather than as a result of staffing or resource constraints.

Before OCR completed its investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On November 20, 2023, the District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the District's implementation of the agreement until the District is in compliance with the terms of the agreement and the statutes and regulations at issue.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District'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 District 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, 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 District's cooperation in the resolution of this complaint. If you have any questions, please contact Sharon Goott Nissim, the OCR attorney assigned to this complaint, at 202-245-7261 or sharon.nissim@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team 1
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Anitra Allen at anitra.king@k12.gov