



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

December 22, 2015

Xx xxxx xxxxxx xxx
XXXXX xxxx xxxxxx xxxx
XXXXXXXX xxxxxxxx xxxxxx
XXXXX xxxx
XXXX xxxxxx xxxxxx xxxxxx

Re: OCR Docket #15-15-1107

Dear xx xxxxx:

This is to notify you of the disposition of the above-referenced complaint against University Preparatory Science and Math School (the School), which was filed on xxxxxxxx xx xxxx, with the U.S. Department of Education’s Office for Civil Rights (OCR). The complaint alleged that the School discriminated against xxxxxxxx xxxxxxxx (Student) on the basis of disability. Specifically, the complaint alleged that the School provides substantial assistance to Children’s Retreat Before and After School Child Care (Children’s Retreat), a childcare program for students attending the School, and that Children’s Retreat discriminated against the Student when xxxx xxxxx xxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and by public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public entity, the School is subject to these laws and OCR had the authority to investigate the allegation.

Based on the complaint allegations, OCR opened an investigation into the following legal issues:

- Whether the School aided or perpetuated discrimination against a qualified person with a disability by providing significant assistance to an organization that discriminated on the basis of disability in providing a service to a beneficiary of the School. 34 C.F.R. § 104.4(b)(1)(v) and 28 C.F.R. § 35.130(b)(1)(v).

- Whether the School, in providing any aid, benefit, or service, directly or through contractual or other arrangements, on the basis of disability, denied a qualified person with a disability the opportunity to participate in or benefit from an aid, benefit, or service, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.4(b)(1)(i) and Title II's implementing regulation at 28 C.F.R. § 35.130(b)(1)(i).

To date, OCR has obtained and reviewed documents submitted by the Complainant and information and data produced by the School and/or on its behalf. Prior to the completion of OCR's investigation, the School requested to voluntarily resolve the matter pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the issues raised in this complaint. We set forth below the applicable regulatory requirements, a summary of OCR's investigation to date, and a summary of the resolution.

Applicable Legal and Policy Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), prohibits recipients from excluding a qualified person with a disability from participation in, denying the person the benefits of, or otherwise subjecting the person to discrimination under any of its programs or activities on the basis of disability. The regulation specifically prohibits a recipient, in providing any aid, benefit, or service, from, directly or through contractual or other arrangements, denying a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit or service. 34 C.F.R. § 104.4(b)(1)(i). The regulation further prohibits recipients from aiding or perpetuating discrimination against a qualified person 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 recipient's program or activity. 34 C.F.R. § 104.4(b)(1)(v). The Title II regulation contains similar provisions at 28 C.F.R. § 35.130(a), (b)(1)(i), and (b)(1)(v). If OCR finds that a recipient is providing significant assistance to an agency or organization that discriminates on the basis of disability, the recipient must either obtain compliance by the other entity or terminate the assistance.

Appendix A to the Section 504 regulation explains that among the criteria to be considered when determining whether a recipient is providing significant assistance to another entity are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself.

Significant assistance is tested by a number of factors indicating whether a substantial relationship exists between a recipient of federal funding and a private entity. The factors evaluated in determining this issue include:

- 1) direct financial support provided by the recipient;
- 2) indirect financial support provided by the recipient;
- 3) provision of tangible resources such as staff, facilities, and/or materials at no cost or reduced cost;

- 4) intangible benefits such as the lending of recognition and approval;
- 5) selectively providing privileges and resources to the private entity; and
- 6) whether the relationship is occasional and temporary or permanent and long-term.

Not all factors must be present to support a finding of significant assistance.

Summary of OCR’s Investigation to Date

- **The Student’s Enrollment in the School and Children’s Retreat**

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

- **Procedural History**

The Complainant originally filed the complaint with OCR against the School as well as Children’s Retreat and Detroit 90/90, the management company that operates the School. Both Children’s Retreat and Detroit 90/90 are private entities that do not receive federal financial assistance from the Department. Thus, on xxxx xx xxxx, OCR opened the complaint allegation for investigation against the School but not against Children’s Retreat or Detroit 90/90. The Complainant then filed a complaint against Detroit 90/90 and Children’s Retreat with the U.S. Department of Justice (DOJ).¹ This letter and the enclosed Agreement do not address and are separate from DOJ’s investigation.

OCR sent its notice of the complaint allegations against the School to the individual identified on the School’s web page as its chief executive officer (CEO) during the xxxx xxxxx school year. The School responded to the information request on xxx xx xxxx, with documents and a cover letter from an attorney. The subject line of the cover letter to this response stated: “University Preparatory Schools/Response to OCR Complaint,” and the first sentence stated that it was the response to the notification letter and complaint filed against the School. It noted that Detroit 90/90 organizes and operates the School. Throughout the letter the actions at issue in the complaint were attributed to “the School and/or Detroit 90/90.” However, the attorney did not explicitly state in the letter that she represented the School.

Following telephone conversations with OCR staff on xxxx xx xxxxx, and in early xxxxxxxx xx, the attorney sent a revised response to OCR on xxxxxxxx xx xxxx, in which she stated that the School’s earlier response to OCR’s document request was “overly broad.” The attorney clarified that she represented Detroit 90/90, not the School, which she said was represented by different legal counsel. She said that the letter that she submitted previously was on behalf of Detroit

¹ As a private organization that provides before and after school child care services, Children’s Retreat is a public accommodation covered by Title III of the ADA. 42 U.S.C. § 12181(7); 28 C.F.R. § 36.104. DOJ enforces Title III of the ADA.

90/90, which she described as an independent contractor that manages, operates, and employs the staff assigned to work at the School pursuant to an independent contractor agreement.

In this revised response, Detroit 90/90 stated that the School is one of several public school academies it operates, collectively named Public School Academies of Detroit (PSAD). According to Detroit 90/90, it entered into an independent contract agreement with PSAD on July 1, 2012, (although it did not provide OCR with a copy of the contract) in which it agreed to provide “the labor (staff), materials, and supervision necessary for the provision of comprehensive educational, administrative, management and instructional services to PSAD,” including the School. Detroit 90/90 said that the agreement states that it is not a division of, or part of, PSAD or vice versa, but rather, Detroit 90/90 is an independent contractor of PSAD. In the revised letter, Detroit 90/90 asserted that the PSAD schools provide Detroit 90/90 with reasonable access to the building facilities at no cost to Detroit 90/90 for the provision of services and the educational program, and that Detroit 90/90 is solely responsible for its acts, and the acts of its agents, employees, and those subcontractors who are contracted through Detroit 90/90.

Detroit 90/90 also contracted with Children’s Retreat to operate a childcare program for students enrolled at the School. Documents Detroit 90/90 provided in its original data response included an undated agreement between Detroit 90/90 and Children’s Retreat for Children’s Retreat to offer and operate a school-age childcare before and after school to students attending the School starting in the 2014-2015 school year. The agreement established that Children’s Retreat employed and paid its own staff and maintained its own insurance, and that Children’s Retreat was responsible for complying with all Federal, state, and local laws and regulations.

However, the agreement also stated that Detroit 90/90 would provide Children’s Retreat with a dedicated space and location to operate its childcare program at the School, and in addition would provide it with utilities, storage space, parking areas, use of a land line telephone and dedicated phone number for Children’s Retreat at the site, and the agreement to “work cooperatively with Children’s Retreat staff,” all at no cost to Children’s Retreat.

[xx paragraph xx]

In both letters that the attorney representing Detroit 90/90 submitted to OCR, Detroit 90/90 disclaimed any knowledge of the issues regarding Children’s Retreat and the Student while she was enrolled in its childcare program.

Voluntary Resolution Prior to Conclusion of OCR’s Investigation

As noted above, prior to the completion of this complaint investigation, the School expressed interest in voluntarily resolving this complaint allegation under Section 302 of OCR’s CPM. The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegation(s). Such a request does not constitute an admission of liability on the part of the recipient, nor does it constitute a determination by OCR that the recipient has violated any of the laws that OCR enforces. The provisions of the resolution

agreement are to be aligned with the complaint allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On November 30, 2015, the School signed the enclosed Agreement, which, when fully implemented, will resolve the complaint. The Agreement requires the School to notify Children’s Retreat that it may not limit or deny the students, parents or guardians, employees, or applicants who participate in or apply to the childcare program from accessing its programs in a manner that would violate Section 504 or Title II, and that, should Children’s Retreat receive a request for services from an existing student, parent or guardian, employee, or applicant with a disability, it must determine if that individual can, consistent with Section 504 and Title II, be provided access to its programs and services.

The Agreement also requires the School to require Children’s Retreat to enact policies and procedures that prohibit it from: (1) denying individuals with disabilities the opportunity to participate in or benefit from an aid, benefit, or service it provides; or (2) otherwise discriminating against individuals on the basis of disability in its provision of services to beneficiaries of the School. Pursuant to the Agreement, the School must also establish grievance procedures by which individuals with disabilities can file complaints against Children’s Retreat regarding Section 504 and/or Title II, which the School’s management company, Detroit 90/90, Inc. (“Detroit 90/90”) will address promptly and equitably on behalf of the School.

Once OCR approves the policies and procedures, Detroit 90/90 will notify all of the School parents, students, teachers, staff, and the Student’s parent of the policies and procedures, including its grievance procedures, and the School will ensure that the School, Detroit 90/90, and Children’s Retreat adopt and implement the revised policies and procedures and will provide training to the administrators and staff assigned to the School and the Children’s Retreat on the newly-adopted policies and procedures.

Additionally, the Agreement requires Detroit 90/90 to modify the existing contract it has with Children’s Retreat to include a provision that Detroit 90/90 and/or the School will either cease providing space and associated benefits, including, e.g., utilities and parking areas, to Children’s Retreat or Detroit 90/90 will void its contract with Children’s Retreat should it fail to comply with Section 504 and/or Title II. Finally, Detroit 90/90 and/or the School will require Children’s Retreat to send a letter notification to the Student’s xxxxx xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx ensuring the Student’s parent that Children’s Retreat will comply with Section 504 and Title II going forward, and that Children’s Retreat is in the process of revising its policies and procedures accordingly. Children’s Retreat will also notify the Student’s parent that it will provide the Student’s parent with a copy of the revised policies and procedures when they are formalized, pursuant to the Agreement.

Conclusion

In light of the signed Agreement, OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the School’s implementation of the Agreement. Should the School fail to fully implement the Agreement, OCR will reopen the complaint and resume its investigation of the complaint allegation.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the School’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Please be advised that the School may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

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.

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

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates the cooperation of the School during the investigation and resolution of this complaint. If you have any questions about this letter or OCR’s resolution of this case, you may contact xxxx xxxxxx xx xxxxx xxxxxxx xxxxx xxxxxxx xxxxxxx xxxxx. You may also contact xx xxxxxxx for questions about implementation of the Agreement, as she will be monitoring the School’s implementation of the Agreement. We look forward to receiving the School’s first monitoring report by January 31, 2016.

Sincerely,

s/

Xxxxx xxxxx xxxxxxx
Regional Director

Enclosure