



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Ms. Cindy Shinsky
Director of Special Education
National Heritage Academies
3850 Broadmoor Avenue SE, Suite 201
Grand Rapids, Michigan 49512

Re: OCR Docket #15-16-1199

Dear Ms. Shinsky:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on February 12, 2016, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Legacy Charter Academy (the Academy), alleging that the Academy discriminated against a student (the Student) on the basis of disability and retaliated against him. Specifically, the complaint alleged that:

1. The Academy failed to timely and properly evaluate the Student for eligibility under Section 504 during the 2015-2016 school year until November 18, 2015.
2. For several months during the 2015-2016 school year, the Academy did not provide the Student with a “bumpy seat,” as required by his Section 504 plan.
3. In November 2015 and January 2016, a teacher at the Academy disciplined the Student more harshly after he received a Section 504 plan and the Academy’s principal asked the Student to leave the Academy in retaliation for the Student’s parents’ advocacy and requests for a Section 504 plan.

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 (Section 504), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Persons who seek to enforce their rights under these laws are also

protected from retaliation by these laws. As a recipient of Federal financial assistance and as a public entity, the Academy is subject to Section 504 and Title II. Therefore, OCR had jurisdiction to investigate this complaint.

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

- Whether the Academy failed to timely and appropriately evaluate a student who, because of disability, needs or is believed to need special education or related services, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35.
- Whether the Academy failed to provide a free appropriate public education (FAPE) to a qualified student with a disability in violation of Section 504's implementing regulation at 34 C.F.R. § 104.33.
- Whether the Academy intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II or because the individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504 or Title II in violation of Section 504's implementing regulation at 34 C.F.R. § 104.61, and Title II's implementing regulation at 28 C.F.R. § 35.134.

Summary of OCR's Investigation to Date

To date, OCR has investigated this complaint by interviewing the Complainant and reviewing information and documentation provided by the Complainant and the Academy.

From the beginning of the 2015-2016 school year through February 2016, the Student was a XXXXX grade student at the Academy. He has been diagnosed with XXXXXXXXXXXXXXXX. The Complainant told OCR that the Student XXXXXXXXXXXXXXXX. She said he was still having problems at school at the end of the 2014-2015 school year, such as behavior issues and failing to obey directions. She said the Academy would frequently call home because of his behavior, and that someone from home would have to go to the Academy several times a day in response to these calls. She said he was also suspended approximately four or five times, sometimes for three consecutive days. She said she submitted written requests for a Section 504 plan for the Student to the Academy's social worker on May 27 and September 9, 2015. She said the Academy did not respond to her request at first and that the Student's teacher told her that the Student did not need a Section 504 plan because of his grades. The Complainant said the Academy did not schedule a Section 504 meeting until November 2015, after her second written request.

OCR reviewed documentation submitted by the Academy, including an invitation to the Complainant for a Section 504 meeting on November 18, 2015, and a completed Section 504 plan dated November 16, 2015, and signed by the Complainant on November 19, 2015.

The Complainant told OCR that the Student did not receive the "bumpy seat" referenced in his Section 504 plan for months after the plan was finalized and not until sometime after January

2016. She submitted a copy of the Student's "accommodations log" for December 2015. The provisions of the plan were listed and included, among other things, a bumpy seat. The log is filled out only for December 2, 2015. On this date, there is a circle on the line for "bumpy seat" and a note stating "no bumpy seat."

The Academy submitted an "Accommodations Log" for the month of January 2016, which states, "Got bumpy seat on the 14th." The chart shows a checkmark on the "bumpy seat" line on January 14 and a line through the rest of the dates in January.

The Complainant also told OCR that, after the Student received a Section 504 plan, his teacher retaliated against him by disciplining him more often. The Complainant and the District both submitted a copy of the Student's discipline record from September 8, 2015, through June 17, 2016. The logs show disciplinary incidents occurring both before and after the date of the Section 504 plan (November 16, 2015).

The Complainant told OCR that she felt the Academy retaliated against the Student because of her advocacy on his behalf when the principal asked her withdraw the Student from the school in February 2016.

Prior to the completion of OCR's investigation, the Academy requested to voluntarily resolve the allegations pursuant to Section 302 of OCR's *Case Processing Manual* (CPM).

Applicable Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), states that no qualified person 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 Federal financial assistance.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (FAPE) to each qualified student with a disability within the district's jurisdiction. For the purposes of this requirement, an appropriate education is defined as the provision of 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 based upon adherence to procedures that satisfy the setting, evaluation, placement, and procedural safeguards requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. If the placement, aids, and services identified by a school district as necessary to meet a student's individual needs were not provided, OCR determines the district's reason for failing to do so and whether the failure to provide the services for the student resulted in a denial of a FAPE.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient, before taking any action with respect to the initial placement of a student with a disability in a regular or special education program or any subsequent significant change in placement, to evaluate that student.

The Section 504 regulation, at 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.7(e) by reference), prohibits retaliation against individuals who seek to assert their rights under Section 504. The Title II regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

Resolution

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), allegations and issues under OCR investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the complaint. This resolution does not constitute an admission of liability on the part of the Academy, nor does it constitute a determination by OCR that the Academy has violated any of the laws that OCR enforces. On November 3, 2016, the Academy submitted the enclosed Resolution Agreement (Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegations and the information obtained to date during the investigation and are consistent with applicable regulations. The Agreement, when fully implemented, will resolve the allegations and issues raised by the complaint.

The Agreement requires the Academy to:

- invite the Student to re-enroll;
- determine what compensatory education or other remedial services the Student requires and provide the Student with the compensatory education or other remedial services deemed necessary;
- conduct a review of all of the Student's disciplinary records for the 2015-2016 school year to determine whether any referrals and/or sanctions were inappropriate and whether any referral or sanction was made for retaliatory motive; and adjust or expunge the Student's disciplinary records, as appropriate; and
- provide relevant Section 504 training to Academy staff and administrators.

Conclusion

In light of the Agreement, OCR is closing its investigation of the allegations as of the date of this letter. OCR will, however, monitor the Academy's implementation of the Agreement. Should the Academy fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the Academy's compliance with the Section 504 and Title II regulations.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the Academy 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 harmed individual may file a complaint alleging such treatment.

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

We look forward to receiving the Academy's first monitoring report by December 16, 2016. For questions about implementation of the Agreement, please contact Allison Beach, who will be monitoring the Academy's implementation, by e-mail at Allison.Beach@ed.gov or by telephone at (216) 522-2666. For questions about this letter, please contact Sacara Martin, Supervisory Attorney/Team Leader, at (216) 522-7640.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure