



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

July 24, 2017

Adam J. Schira, Esq.  
Dickinson Wright PLLC  
150 E. Gay Street, Suite 2400  
Columbus, Ohio 43215

Re: OCR Docket # 15-17-1072

Dear Mr. Schira:

This letter is to notify you of the disposition of a complaint filed on October 28, 2016, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Columbus Humanities Arts and Technology Academy (the Academy), alleging that the Academy discriminated against a former student (the Student) on the basis of disability by failing to implement the Student's Section 504 plan from XXXXXX XXXX through XXXXXX XXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the Academy is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR began investigating whether the Academy failed to provide a qualified student with a disability with a free and appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33.

To date, OCR has investigated this complaint by interviewing the Student's parent (the Parent) and reviewing documentation provided by the Academy. Prior to the completion of OCR's investigation, the Academy expressed an interest in voluntarily resolving the complaint 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 complaint allegation. We set forth below a summary of OCR's investigation to date.

## **OCR’s Investigation to Date**

XX – five paragraphs redacted – XX

## **Applicable Legal Standards and OCR Policy**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipients to provide a FAPE to each qualified individual with a disability who is in the recipient’s jurisdiction, regardless of the nature or the severity of the person’s disability. An appropriate education for purposes of FAPE 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 nondisabled students are met, and that are developed in accordance with procedural requirements set forth in 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the recipient provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

## **Resolution**

As noted above, prior to the completion of OCR’s investigation, the Academy expressed interest in resolving the complaint allegation pursuant to Section 302 of OCR’s CPM, which 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 Academy, nor does it constitute a determination by OCR that the Academy 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 July 20, 2017, the Academy signed the enclosed Agreement, which, once implemented, will fully address the complaint allegation in accordance with Section 504 and Title II. Under the terms of the Agreement, the Academy will:

- Within 30 calendar days of signing the Agreement, submit for OCR’s review and approval a copy of its proposed training materials, and the name(s), title(s), and qualifications of the proposed trainer(s).
- Within 10 calendar days of OCR’s approval of the training, or by August 8, 2017, whichever occurs later, provide training by a competent authority on Section 504, on the Academy’s obligations to students with disabilities under Section 504, to: the Academy’s Intervention Services Director/ Section 504 coordinator and all District administrators. The training will include, but is not limited to the following topics: evaluation and placement (34 C.F.R. § 104.35), procedural safeguards (34 C.F.R. § 104.36), and the

Academy's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another school district.

- Within 5 calendar days of signing the Agreement, send the Parent a certified letter notifying the parent that, should she wish to re-enroll the Student in the Academy for the start of the 2017-2018 school year, the Academy will, within 30 calendar days of the Student's re-enrollment, reconvene the Student's Section 504 team (the Team), consisting of persons knowledgeable about the Student, including the Parent, to: (a) develop, amend or revise, as necessary, the Student's Section 504 plan to ensure that the Student receives a FAPE; and (b) determine whether any compensatory education or other remedial services for the Student are necessary from XXXXXX XXXX through XXXXXXXX XXXX, when the complaint states that the Academy failed to implement the Student's Section 504 plan.
- If the Parent re-enrolls the Student, within 30 calendar days of the Student's re-enrollment, convene a Section 504 meeting to: (a) develop, amend, or revise, as necessary, the Student's Section 504 plan to ensure that the Student receives a FAPE (in the interim, the Academy will either implement the Student's current Section 504 plan created by his prior school district, or meet with the Parent to determine what accommodations will be provided during the Student's initial 30 days upon enrollment); (b) provide the Parent with notice of the procedural safeguards afforded her under the Section 504 implementing regulation at 34 C.F.R. § 104.36; (c) determine any compensatory education and/or remedial services the Student requires from August 2016 through October 2016, when the complaint states that the Academy failed to implement the Student's Section 504 plan; (d) develop a written plan for providing the Student with the compensatory education and/or other remedial services, if deemed necessary, which will become part of the Student's Section 504 plan; (e) identify the nature and amount of the services to be provided at no cost to the Parent, by whom, and when, in the written plan; and (f) provide the Parent with a meaningful opportunity to provide input into these determinations.
- Within 3 calendar days of the Section 504 meeting: (a) provide the Parent with a copy of the Section 504 plan, and a copy of the written plan for providing the Student with compensatory education and/or remedial services, and/or notification of the Team's decision regarding whether the Student requires compensatory education and/or remedial services; (b) provide the Parent with notice of the procedural safeguards afforded her under the Section 504 implementing regulation at 34 C.F.R. § 104.36, including the right to challenge such determinations through an impartial due process hearing, should she disagree. The notice will indicate that the Parent has 20 calendar days from the date of receipt to inform the Academy of her acceptance of the Student's Section 504 plan and/or the Academy's offer of compensatory education and/or remedial services, if any.
- Within 90 calendar days of the Section 504 meeting, provide any compensatory education and/or remedial services deemed necessary.

The Academy will provide documentation to OCR to demonstrate its implementation of the Agreement, as outlined in the Agreement.

## **Conclusion**

In light of the signed Agreement, OCR finds that the complaint is resolved. 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. A complainant may file a private suit in federal court whether or not OCR finds a violation.

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.

If you have any questions about this letter or the resolution of the complaint, you may contact me by telephone at (216) 522-7634. For questions about implementation of the Agreement, please contact Ms. Suwan Park, who will be monitoring the Academy's implementation. Ms. Park can be reached by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov) or by telephone at (216) 522-4972. OCR looks forward to receiving the Academy's first monitoring report by August 19, 2017.

Sincerely,

/s/

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure