



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 30, 2019

XXXXXX
XXXXXX
Lansing, MI 48906

Re: OCR Docket No. 15-17-1331

Dear Ms. Coe:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXX with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Plymouth Scholars Charter Academy (the Academy) alleging that the Academy discriminated against a student (the Student) based on disability. Specifically, the complaint alleged:

1. In XXXXX 2017, the Academy failed to timely update the Student's Section 504 plan.
2. During the 2016-2017 school year, the Academy failed to implement the Student's Section 504 plan as follows:

[XXXX PARAGRAPH REDACTED XXXXX]

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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 from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) 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 from the Department. Because the Academy receives federal financial assistance from the Department and is a public entity, it is subject to Section 504 and Title II and OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

1. Whether the Academy failed to timely conduct an evaluation/revaluation of a student who, because of a disability, needs or is believed to need special education or related services, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35(a)-(c); and

2. whether the Academy failed to provide a qualified student with a disability a free appropriate public education (FAPE), in violation of Section 504's implementing regulation at 34 C.F.R. § 104.33.

During its investigation to date, OCR reviewed information provided by the Student's parent and the Academy and interviewed the Student's parent. With respect to allegation 1, OCR found insufficient evidence to support that the Academy failed to timely update the Student's Section 504 plan as the Complainant alleged. However, before OCR could complete its investigation into allegation 2, regarding the Academy's alleged failure to implement the Student's Section 504 plan, the Academy asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On May 22, 2019, the Academy signed the enclosed Resolution Agreement, which when fully implemented, will address any compliance concerns raised by allegation 2.

Below, we set forth a summary of OCR's investigation to date.

- **Allegation #1 – Alleged Failure to Update the Student's Section 504 Plan**

The Student initially enrolled in the Academy at the beginning of the XXXX school year and was a XXXX grader at the Academy during the 2016-2017 school year. The parent informed OCR that the Student has XXXXX.

The parent told OCR that the Student began the XXXXX school year with a Section 504 plan that was developed during the XXXXXX school year. She stated that the Student was provided with an updated Section 504 plan in XXX.

[XXXX PARAGRAPH REDACTED XXXXX]

In its response to the OCR complaint, the Academy denied that it violated Section 504 or Title II by failing to update the Student's Section 504 plan. The Academy indicated it evaluated the Student for Section 504 eligibility upon his enrollment in XXX, found him eligible for services and developed a Section 504 plan for him. According to the Academy, it reevaluated the Student on XXXXXX. Specifically, XXXXXX conducted XXXX evaluation of the Student at the parent's request and held a Section 504 meeting to discuss the evaluation results. The Academy provided a copy of an updated Section 504 plan for the Student, which was dated XXXX and was signed by the Student's parent.

[XXXX PARAGRAPH REDACTED XXXXX]

[XXXX PARAGRAPH REDACTED XXXXX]

[XXXX PARAGRAPH REDACTED XXXXX]

[XXXX PARAGRAPH REDACTED XXXXX]

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient schools to provide a (free and appropriate public education) FAPE to students with disabilities. The Section 504 regulation defines FAPE 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 developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require recipient schools to provide a FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient school to evaluate any student who needs or is believed to need special education or related services due to a disability. A recipient school must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. The Section 504 regulation at 34 C.F.R. 104.35(d) also requires recipient schools to periodically re-evaluate students with disabilities. The regulation does not specify timeframes for reevaluating a student. However, the Individuals with Disabilities in Education Act (IDEA), timeframes are often used as a guideline for how often students must be reevaluated pursuant to Section 504. The IDEA regulation requires a reevaluation every three years.

Pursuant to the Section 504 regulation at 34 C.F.R. § 104 Appendix A, Subpart D, OCR does not, except in extraordinary circumstances, review individual placement and other educational decisions, including the services provided for in a student's Section 504 plan, so long as a school complies with the process requirements of Section 504. The appropriate forum for challenging such decisions is a due process hearing.

Analysis

The parent alleged that the Academy failed to timely update the Student's Section 504 plan. However, the evidence indicates that the Academy revisited the Student's Section 504 plan at least twice during the 2016-2017 school year. XXXXXXXXXX The evidence also indicated that Academy provided the parent with her procedural due process rights.

In light of the above, OCR finds that there is insufficient evidence that the Academy failed to timely update the Student's Section 504 plan as alleged. Based on the information OCR obtained, the District did update the Student's Section 504 plan; however, the Student's parent was unhappy with the services contained in that plan. To the extent that the parent disagreed with the substance of the Student's Section 504 plan, the proper forum for addressing that dispute was a due process complaint.

- **Allegation 2 – Alleged Failure to Implement the Student's Section 504 Plan**

The complaint alleged that during the 2016-2017 school year, the Academy failed to implement the Student's Section 504 plan as follows:

[XXXX PARAGRAPH REDACTED XXXXX]

As noted above, recipient schools have an obligation to provide students with disabilities with a FAPE. One way a school can demonstrate it has provided FAPE is by demonstrating it has fully implemented a student's properly developed Section 504 plan. A recipient school's failure to implement a student's Section 504 plan may constitute a violation of Section 504 and Title II if the failure is sufficient to deny the student a FAPE.

In the instant case, the parent stated that when she spoke with the Student's classroom teacher at the beginning of the 2016-2017 school year, XXX.

In its response to OCR's complaint, the Academy denied that it failed to implement the Student's Section 504 plan as alleged. The Academy provided OCR with copies of the Student's Section 504 plans that were in effect during the 2016-2017 school year. OCR noted the following:

[XXXX PARAGRAPH REDACTED XXXXX]

[XXXX PARAGRAPH REDACTED XXXXX]

Under Section 302 of OCR's CPM, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In this case, the Academy expressed an interest in resolving Allegation 2 prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On May 22, 2019, the Academy signed the enclosed Resolution Agreement, which when fully implemented, will address Allegation 2. OCR will monitor the implementation of the Resolution Agreement.

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.

The complainant has a right to appeal OCR's determination of Allegation 1 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 individual may file another complaint alleging such treatment.

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, OCR 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 looks forward to receiving the Academy's first monitoring report by June 14, 2019. For questions about implementation of the Agreement, please contact XXXXXX, who will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXXX, or by e-mail at XXXXX.

Sincerely,

/s
Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure