



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 19, 2020

Via E-mail Only to [redacted]

Pamela A. Leist, Esq.
Ennis Britton, Co., LPA
1714 West Galbraith Road
Cincinnati, Ohio 45239

Re: OCR Docket No. 15-18-1075

Dear Ms. Leist:

This letter is to notify you of the disposition of the above-referenced complaint filed on November 3, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Great Oaks Career Campuses – [redacted] (Great Oaks) alleging that Great Oaks discriminated against an applicant (the Student) based on disability. Specifically, the complaint alleged that Great Oaks rescinded the Student's admission to its [redacted] program for the [redacted] school year because of his disabilities.

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 by recipients of 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 on the basis of disability by public entities. In addition, OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. As a recipient of Federal financial assistance from the Department and as a public entity, Great Oaks is subject to these laws.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether Great Oaks denied a student with a disability access to its vocational education program because of equipment barriers or because of his need for related aids and services or auxiliary aids, in violation of 34 C.F.R. § 100, Appendix B, Section IV.N; and/or excluded a qualified student with a disability from participation in, denied the student the benefits of, or otherwise subjected the student to discrimination under any program or activity on the basis of disability in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4, or the regulation implementing Title II at 28 C.F.R. § 35.130.

Background and Summary of Investigation to Date

During its investigation to date, OCR reviewed information provided by the Student’s parent and Great Oaks and interviewed the Student’s parent and Great Oaks staff. Prior to the completion of OCR’s investigation, Great Oaks asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual*.

During the [redacted] school year, the Student was enrolled in the [redacted] grade in the [redacted] School District (the District). The Student was on an individualized education program (IEP) at the District; [redacted]. The Student applied and was accepted into Great Oaks’ [redacted] Program for the [redacted] school year on [redacted]. The Student’s parent told OCR that, after his acceptance, he was required to complete a [redacted] situational assessment at Great Oaks with [redacted], who had limited to no knowledge of the Student or his disability. The Student’s parent stated that there was no meeting or discussion held prior to the assessment about the accommodations and modifications the Student needed. Following the assessment, Great Oaks rescinded the Student’s admission, stating that Great Oaks staff felt the Student’s participation in the program would be unsafe for the Student and for others.

The Student’s parent stated that during a meeting on [redacted], to discuss the assessment a Great Oaks staff person claimed that unspecified accommodations and modifications had been provided to the Student for the assessment and then kept encouraging the Student to consider Great Oaks’ “programs for students with special needs.” The parent said that when the Student stated he was not interested in these programs the staff person said to him, [redacted] The Student’s parent stated that, when she asked if the Student could attend the program with modifications, Great Oaks staff said this was not an option.

Great Oaks stated on its website that it

specializes in career and technical education for both high school students and adults. At four campuses, Great Oaks high school students prepare for careers and college, and adults get training and certification to begin a new career or advance in a current career.

Over 30 career programs are available for high school students living in 36 area school districts.¹

The District is assigned to the [redacted] campus, which is one of the four Great Oaks campuses.

As noted above, the District identified the Student as a student with disabilities; he was found eligible for an IEP under the category of [redacted]. The IEP stated that the Student received special education and related services targeting [redacted]. The IEP stated the following regarding the Student’s [redacted]:

[paragraphs redacted]

¹ See <https://www.greatoaks.com/>.

[paragraphs redacted]

Great Oaks' website indicated that the Program teaches high school students to [redacted] and to [redacted]. The website stated that, among other things, students will learn to [redacted]. The website also stated that the Program makes several certifications available, including: [redacted]. The instructor for the Program (the program instructor) is responsible for [redacted]. Great Oaks explained that a student's school day is [redacted] hours, 50% in the [redacted] and 50% in academic classes.

OCR's review of the documents showed that staff from the District and Great Oaks began discussing the Student in [redacted], and that Great Oaks' staff was aware that the Student was a student with a disability.

On [redacted], in an e-mail to Great Oaks to schedule a visit, a [redacted] introduced the Student as "[redacted]" and "[redacted]" Per this e-mail, the purpose of the visit to the [redacted] was to see what was involved in these programs to determine if they are something the Student would be able to [redacted] and to see if he really wanted to participate in the program. Great Oaks staff asked whether the District would like feedback related to [redacted]. District staff replied that such feedback would be helpful.

[paragraph redacted]

On [redacted], the District's [redacted] e-mailed Great Oaks, stating that the Student was interested in applying to the program. On [redacted], Great Oaks issued a letter to the Student accepting him into its [redacted] Program. The letter stated: "If you are receiving, or may be eligible for, services through an IEP or 504 plan, you or your parents should contact your current high school or the Great Oaks' manager of disability education to begin the process."

[paragraph redacted]

On [redacted], the [redacted] sent a letter to the Student with a copy of a document entitled "Great Oaks [redacted] Essential Skills Needed at completion of program." The letter stated as follows:

Your child has been accepted to a Great Oaks program for the next school year. Your child's school district indicated that your child is receiving Special Education (IEP) or 504 services. An IEP or 504 meeting will be held prior to enrollment. ... Successful completion of the school year is also required. Enclosed are the essential skills for the program your child has been accepted into and will be discussed at the IEP or 504 placement meeting. ... A representative from Great Oaks will also be in attendance at this meeting.

On [redacted], the District's [redacted] e-mailed Great Oaks stating that as the Student, [redacted], was accepted into the Program, the District needed to "determine what his day would look like next year and [redacted]" and "what kind of supports he would need and have in place." [sentence redacted]

Between [redacted] and [redacted], a string of e-mail communications titled [redacted] was exchanged between District staff, discussing scheduling a meeting with Great Oaks to discuss the Student. [sentences redacted]

On [redacted], the District e-mailed Great Oaks, providing the Student's [redacted]. On [redacted], District and Great Oaks staff had a meeting without the Student or his parent. District notes from the meeting show that participants discussed contacting the Student's parents about a situational assessment and discussed the Student's "[redacted]" and "[redacted]." The next day, Great Oaks staff sent an e-mail to Great Oaks' [redacted], stating the following:

[paragraphs redacted]

The [redacted]'s response stated: [redacted]. Great Oaks replied, stating, [redacted]. Great Oaks also e-mailed the [redacted], stating:

[paragraph redacted]

On [redacted], the District's [redacted] sent an e-mail to the Student's parent that she was contacted by Great Oaks about scheduling the Student's situational assessment. The Student's parent replied, asking what the "situational assessment" was, what it looked like, who created it (e.g., school, county, program), and how it was going to be administered. The District's response to the Student's parent stated the following:

[paragraph redacted]

Internal e-mails between Great Oaks staff show that, [redacted].

On [redacted], a [redacted] situational assessment was conducted for the Student at Great Oaks. The [redacted] from Great Oaks created assessment observation notes which the Student's parent received on [redacted]. The assessment notes described [redacted]. For example, the assessment notes stated that the Student asked if he could [redacted] and that he was permitted to do so. The notes also described what type of actions the Student could or could not do (e.g., [redacted]). The notes also described incidents where the Student [redacted].

[paragraphs redacted]

On [redacted], the District's [redacted] sent an e-mail to Great Oaks, stating: "[redacted]" OCR reviewed several e-mails exchanged on [redacted] between Great Oaks staff, sharing a copy of the situational assessment and stating that the District "has schedule[d] a meeting to discuss [the Student] participating in the [redacted] program for next year. We are meeting just [redacted] staff – not the parents." The e-mail states that the [redacted] is going to be there to talk about the Student's [redacted] performance and that staff should brainstorm how/if the Program could be modified. The e-mail then stated: "[redacted] is in agreement with us that this is not an appropriate program. The issue is going to be the parent. Today is us meeting with [redacted] to decide how we will communicate with the parents."

On [redacted], the Student’s parent met with District and Great Oaks staff. Meeting notes prepared by District staff stated the following:

[paragraphs redacted]

The notes also stated that the Student could make multiple visits to programs of interest during the [redacted] school year. The Student’s parent provided OCR with a copy of notes she took during the meeting, which stated:

[paragraphs redacted]

The Student’s parent filed a complaint with [redacted]. [redacted], letter of findings stated that the District provided a copy of notes created by the District, which indicated the following:

[paragraph redacted]

An e-mail between Great Oaks staff on [redacted] stated the following regarding the [redacted] meeting with the Student and his parent:

[paragraph redacted]

A second internal e-mail stated, “Please w/d the application for [the Student] and stop all communication per the IEP team decision.”

On [redacted], the Student’s parent sent an e-mail to Great Oaks asking questions about the application process; she asked that answers to the following questions be provided by [redacted]:

- How are students accepted to [redacted] via the application process?
- Are all students invited for situational assessment? If not, who is chosen and on what basis? How was [the Student] chosen in relation to other students? Is there an appropriate timeframe for this to be done before/after application acceptance? Please provide me with a copy of the policy and guidelines/regulations that outline implementation of this practice.
- Please provide me the copy of the situational assessment on letterhead and with the assessor’s signature and that of approving Administrator’s. How was [the Student] assessed in relation to other students? Please indicate which comments were made by the [redacted] and which by the [redacted] as I am unable to differentiate between the two staff members.
- How does [redacted] factor in “accommodations” that would reasonably support for a successful assessment and or future opportunity? How were accommodations factored in for [the Student]?
- Please provide me with the final decision and reason behind that which was made on [redacted] following the Situation Assessment Meeting.

On [redacted], the [redacted] sent a draft response to Great Oaks and District staff for review and feedback. On [redacted], a District staff person provided feedback, [redacted]. On [redacted], Great Oaks sent a letter to the Student's parent and copied the District. The letter stated the following regarding the application process:

The application process begins when a student submits an application for a program at Great Oaks. Great Oaks reviews applications and transcripts to determine if a student has met minimum academic and other program requirements. Students who meet program requirements are accepted based on program space availability and are notified by Great Oaks. If there are more qualified applicants than spaces, a rubric is used to rank the students. Subsequently if students withdraw from a program and a space opens up, the next student on the "wait" list is offered the spot.

Once students are accepted, home districts are asked to indicate which students have been placed on an IEP. Great Oaks does not know if a student has any disabilities or special needs until that time. The Student Services department then sends a second letter out to students as indicated above. The letter indicates that an IEP meeting will be convened. A representative from Great Oaks attends that meeting.

At the meeting, the IEP team has an opportunity to review each student's IEP and discuss the program(s) that the student is interest[ed] in attending at Great Oaks. Either the IEP team or the parent may request that a situational assessment be completed during this process. Situational assessments can occur at any time and are conducted typically by Great Oaks staff. The situational assessor observes and evaluates a student's needs and abilities in light of the requirements of the selected program. Levels of independence are also reviewed. The assessor collaborates with the program teacher and intervention specialist as well. The assessor may also observe safety concerns as part of the assessment. Most situational assessments, as in this case, occur in the spring after the welcome/acceptance letter has been sent. Assessment results are reviewed by the IEP team. The situational assessment provides important data for the IEP team to consider when it makes decisions about placement and services.

The IEP team is responsible for making final placement decisions for students and for determining what accommodations and services will be provided. Great Oaks provides the accommodations listed in the IEP while the student attends Great Oaks. The placement, services and programs in the IEP may be modified as appropriate through the IEP process.

On [redacted], the Student's parent contacted Great Oaks by e-mail stating that she had not heard from Great Oaks regarding her request. On the same date, a Great Oaks [redacted] sent an e-mail to other Great Oaks staff stating, [redacted].

On [redacted], after receiving the [redacted] letter, the Student’s parent sent Great Oaks an e-mail asking for the following by [redacted]: a copy of the policy and guidelines/regulations that outline implementation of the situational assessment; at which IEP meeting a request for a situational assessment was made and who made it; with which [redacted] did the assessor collaborate (e.g., the District or Great Oaks); and whether the [redacted] meeting was an IEP meeting.

Internal e-mails between Great Oaks staff show that the following information was discussed:

[paragraphs redacted]

On [redacted], the [redacted] sent a draft response to Great Oaks and District staff. The e-mail stated in part: Great Oaks does not have a policy for situational assessments; Great Oaks does not provide a signature on its situational assessments; and the IEP team made the final decision. The e-mail also stated the following:

[paragraph redacted]

A Great Oaks staff person provided the following additional facts:

[paragraphs redacted]

On [redacted], Great Oaks responded to the Student’s parent, stating that “[s]ince Great Oaks had such a limited role in this situation, I believe your questions are better answered by [the Student]’s IEP team. I will forward your communications to [redacted] so that they are aware of them for your upcoming meeting.” He also provided a document entitled “Affiliate School Application Process to Great Oaks: Special Education and 504 Process,” but stated that Great Oaks had been significantly modifying its procedures and that the document was a “working draft of our procedures, which continue to evolve as we streamline our process.”

On [redacted], the Student’s parent asked when the document was created and whether the application process was followed for her son. Great Oaks replied the same day, stating the document was “a draft that [Great Oaks] started to use this past spring” and that the application process had changed and was still “a work in progress.” Great Oaks also stated that the Student’s parent should contact the District regarding the IEP team’s decision. The Student’s parent contacted the District and asked for clarification regarding the Student’s accommodations, overall program assessment and program denial; the e-mail was forwarded to Great Oaks.

On [redacted], the District responded to the Student’s parent, stating the following:

[paragraphs redacted]

On [redacted], the Student’s parent replied, stating that Great Oaks’ response was vague and that accommodations were not made; she stated that Great Oaks told her that they wanted to see what the Student could do and that they could not make accommodations to environmental situations.

The Student and his parent met with District and Great Oaks staff on [redacted]. The Student's parent provided OCR with a copy of her meeting notes, which stated:

[paragraphs redacted]

On [redacted], the Student and his parent met with District and Great Oaks staff. The Student's parent provided OCR with a copy of her meeting notes and notes prepared by [redacted] at the Student's high school. The District's notes stated the following:

[paragraphs redacted]

The Student's parent's notes stated, in part, the following:

[paragraph redacted]

The Student's parent provided OCR with a copy of e-mails dated [redacted], between her and the District in which she asked for a response to her [redacted] questions. The parent's [redacted] e-mail stated:

[paragraphs redacted]

The e-mail asked for a response by [redacted]. A District [redacted] responded on [redacted]; her e-mail, in part, stated the following:

[paragraph redacted]

The District forwarded this e-mail to Great Oaks and asked for a meeting to develop a response.

The Student's parent provided OCR with a copy of a Prior Written Notice form dated [redacted]. The form noted, "Parent disagreement with denial of participation in the [redacted]" and stated the following:

[paragraphs redacted]

As a "description of other options that the IEP team considered and the reasons why those options were rejected," the form stated that the team "considered ignoring the safety concerns raised during the heavily modified and accommodated Situational Assessment, but rejected this option because the Situational Assessment indicated significant danger posed to [the Student] and others if he were to participate in this program."

A Great Oaks staff person interviewed by OCR stated that [redacted]. She explained that the applicable admissions process required a parent to sign an online application and for a student's home district to agree to the student's participation in a Great Oaks program. [sentences redacted]. The Great Oaks staff person stated that as long as there is room in the requested program and the student meets the above requirements, the student is accepted into the program. The Great Oaks staff person stated that Great Oaks sends students and parents the relevant

program's essential skills after the student is accepted; thus, whether or not the student can meet the essential skills is not considered during the admission process. [sentence redacted].

OCR interviewed a second Great Oaks staff person. When asked what modifications were considered for the equipment, this staff person stated that [redacted]. [sentences redacted] Great Oaks rents [redacted]; they do not own it. The [redacted] knew about a few things that could be modified. This staff person told OCR that the availability of [redacted] was "pretty limited." [sentence redacted]

OCR also asked this staff person what Great Oaks considered regarding how to modify or adapt the manner in which the courses are offered, so that the Student could participate in the Program. In response, [redacted]. OCR also asked what Great Oaks considered regarding housing the program in facilities that are readily accessible to students with [redacted] or how to alter the facilities to make them readily accessible to students with [redacted]. She responded that [redacted]. [sentence redacted]. When OCR asked what Great Oaks considered regarding providing related aids or services that would assure that the Student received an appropriate education, she stated that [redacted]. [sentence redacted].

When asked if Great Oaks considered adjusting the Program's asserted essential requirements, so that the Student could participate, this Great Oaks staff person stated that [redacted]. [sentence redacted]; the ability to perform these essential skills is not a requirement to participate in the Program. [sentence redacted].

[sentences redacted]. None of the documentation reviewed by OCR showed that the Student or his parent were informed that they could refuse to participate in the assessment.

The Student's parent provided OCR with information showing that the Student ultimately enrolled in the [redacted] program at another vocational education center and that he successfully completed the program. A staff person from this center wrote a letter of recommendation for the Student, stating that [redacted]. The documentation indicated that the Student was successfully certified at [redacted], the same certification offered by Great Oaks.

Applicable Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person 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 regulation, at 34 C.F.R. § 104.4(b)(1)(i), further provides that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability, deny a qualified individual the opportunity to participate in or benefit from the aid, benefit, or service. The Title II regulation contains similar provisions at 28 C.F.R. §§ 35.130(a) and (b)(1)(i).

With respect to vocational education programs, the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, at 34 C.F.R. Part 100, Appendix B, provides specific guidelines for preventing discrimination on the basis of race, color, national origin, sex,

and disability in vocational education programs, where those programs are offered or administered by recipients of Federal financial assistance. As Great Oaks is a recipient of Federal financial assistance, it is subject to these guidelines.

These guidelines prohibit recipients from judging candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or disability. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diploma, and standardized tests, such as the Test of Adult Basic Education (TABE). 34 C.F.R. Part 100, Appendix B, Section IV.K.

The guidelines also state that recipients may not deny students with disabilities access to vocational education programs or courses because of architectural or equipment barriers, or because of the need for related aids and services or auxiliary aids. If necessary, recipients must: (1) modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) house the program in facilities that are readily accessible to students with mobility impairments or alter facilities to make them readily accessible to students with mobility impairments; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to postsecondary students with disabilities; and (5) provide related aids or services that assure secondary students an appropriate education.

The guidelines further stated that academic requirements that the recipient can demonstrate are essential to a program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. However, where possible, a recipient must adjust those requirements to the needs of individual students with disabilities. Access to vocational programs or courses may not be denied students with disabilities on the ground that employment opportunities in any occupation or profession may be more limited for persons with disabilities than for nondisabled persons. 34 C.F.R. Part 100, Appendix B, Section IV.N.

These guidelines, at 34 C.F.R. Part 100, Appendix B, Section VI.A, further state that recipients must place secondary students with a disability in a program only after the recipient satisfies the provisions of 34 C.F.R. Part 104 relating to evaluation, placement, and procedural safeguards.

Resolution and Conclusion

Under Section 302 of OCR's *Case Processing Manual*, 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. As noted above, Great Oaks expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate.

Based on the information obtained to date, OCR notes compliance concerns with Great Oaks' decision to rescind the Student's admission to the Program. For example, Great Oaks cited safety concerns related to [redacted] conditions, without determining if [redacted] could be modified and what accommodations would allow the Student to participate in the program. Although Great Oaks asserted that accommodations were provided during the assessment, the evidence to date suggests that these were at best ad hoc accommodations made during the assessment at the Student's request and did not include the [redacted] nor any [redacted] modifications, even though Great Oaks knew that modified [redacted] was available. The evidence indicates that the Student's IEP team was not at all involved in determining what, if any, accommodations would be provided to the Student. Although Great Oaks asserted that it was an IEP team decision that the Program was not an appropriate placement for the Student, Great Oaks staff participated in the IEP team meeting and it is clear from e-mail correspondence that Great Oaks expressed to the District that, based on the situational assessment, Great Oaks felt the Program was not safe for the Student, and the District agreed. As a result of this rescission of admission, the Student's parents were required to attend several more placement meetings for the Student regarding his [redacted] year, and they had to pay for the Student to attend the alternate program, as well as transport him to and from the alternate program every day.

On February 28, 2020, Great Oaks signed the enclosed Resolution Agreement which, when fully implemented, will address the complaint allegation. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address Great Oaks' 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 Great Oaks 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 received Great Oak's first monitoring report on March 16, 2020, and will address this report under separate cover. For questions about implementation of the Agreement, please contact Ms. Suwan Park. Ms. Park will be overseeing the monitoring and can be reached by telephone at

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(216) 522-4972 or by e-mail at Suwan.Park@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure