



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

July 12, 2022

Via e-mail only to: [redacted]

Mrs. Sarah Brookshire
Administrator
Countryside Academy
4800 Meadowbrook Road
Benton Harbor, Michigan 49022

Re: OCR Docket No. 15-22-1137

Dear Mrs. Brookshire:

This letter is to notify you of the disposition of the above-referenced complaint filed on December 10, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Countryside Academy (the Academy) alleging that the Academy discriminated against a Student (the Student) on the basis of disability. Specifically, the Complainant alleges that from [redacted] through [redacted] the Academy did not implement the Student's Section 504 plan.

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. As a recipient of federal financial assistance from the Department of Education and as a public entity, the Academy is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation of the following legal issue to determine if the Academy discriminated against the Student on the basis of disability: whether the Academy failed to provide a qualified student with a disability with a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

To conduct its investigation to date, OCR reviewed documentation provided by the Academy and interviewed the Complainant and Academy staff. 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

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investigation has identified concerns that can be addressed through a resolution agreement. In this case, the Academy expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. The basis for OCR's determination is explained below.

Summary of OCR's Investigation

The Complainant said that the Student was first placed on a Section 504 plan at the school district he attended prior to his enrollment at the Academy. She said he has [redacted]. The Complainant stated that the Student first enrolled in the Academy in [redacted], at which time the Academy identified him as a student with a disability and developed an updated Section 504 plan for him.

The Complainant stated that the Student's Section 504 plan was updated in [redacted]. The Complainant said that the Student's updated Section 504 plan required the following:

[sentences redacted]

The Complainant stated that the Academy did not implement provisions [redacted] of the Student's Section 504 plan from [redacted] through [redacted] in the following ways:[redacted] were not always provided; the Student did not always receive [redacted]; the Complainant was not notified of big and small problems; and the Complainant was not notified when the Student was failing a class.

The Complainant stated that most of the failures to implement the Section 504 plan occurred in the Student's [redacted] class with his [redacted] teacher (the teacher), who the Complainant alleged failed to implement all four provisions of the Student's Section 504 plan listed above. Regarding his other teachers, the Complainant did not provide specific examples of failure to implement. Instead, the Complainant said generally that all of his teachers were not completing the [redacted] sheets and were not sending e-mails to the Complainant regarding issues the Student was having in classrooms or about his grades.

Regarding [redacted] sheets, the Complainant explained that the Student was supposed to receive a [redacted] sheet at the beginning of every school day, take it to each of his teachers to complete, and then take it home after school. However, the Complainant said that the Student informed her that there were days when the [redacted] sheet was not handed to him until halfway through the day, so the [redacted] class teachers never filled in the sheet. The Complainant stated that there was never a week where every teacher filled out the check-in sheets. The Complainant stated that she raised the [redacted] sheet issue to the Academy, but the Academy never offered a response, and the situation was never resolved.

Regarding [redacted], the Complainant stated that in [redacted] there was an incident in [redacted] class between the Student and another student, and the Academy told her that the teacher was seated across the room from the Student during the incident. The Complainant asserted he should have been [redacted].

The Complainant also said that she did not receive e-mails from the Student’s teachers or his principal about any issues with the Student, good or bad. For example, the Complainant asserted that at the end of the [redacted] the Student failed three classes—[redacted]—yet the Academy did not e-mail the Complainant at any point beforehand to indicate that there was any problem for her to address.

The Academy provided OCR with the Student’s Section 504 plans dated [redacted]. The [redacted] plan listed the following “accommodations/modifications”:

[sentences redacted]

The plan also listed, under the header “Suggestions”, “Use [redacted] sheet (see example)”.

According to the [redacted] principal (principal), the Complainant and the Academy revised the Student’s Section 504 plan, based on the Complainant’s meetings with administrators, and sent it home for the Complainant’s review and signature. On [redacted], the Academy sent home the updated Section 504 plan:

[sentences redacted]

The [redacted] version of the plan continued to list the use of the [redacted] sheet as a “suggestion.” The principal stated that the Complainant received the Student’s updated Section 504 plan and added additional handwritten information that she wanted included. Specifically, the principal stated that, with respect to the provision of [redacted] sheets, the Complainant added “[T]eachers need to remind [Student] to have them sign sheet if he does not hand it to them” and added the following provision: “Parent notified before [Student] is failing class.” The principal told OCR that the Complainant’s handwritten notes on the Student’s Section 504 plan were accepted by Academy and implemented.

OCR interviewed the teacher who the Complainant alleged did not implement four provisions of the Student’s Section 504 plan. The teacher stated that teachers at the Academy learn about their students’ Section 504 plans or individualized education programs (IEPs) at the Academy’s Teacher Orientation Day, approximately two weeks before the beginning of the school year. The teacher stated that all of the teachers are given spreadsheets that list the students’ classroom accommodations. The teacher said that, anytime a student’s Section 504 plan is updated, the student’s teachers receive updated information about the new plan. The teacher indicated that the principal is the [redacted] Section 504 coordinator.

The teacher told OCR that the Student was in her [redacted] class during the [redacted] school year. The teacher said that, in her classroom, all of her students sat at tables facing her. Students that had [redacted] listed as an approved accommodation in their Section 504 plans or IEPs were placed in seats located closest to her. The teacher said that on [redacted], the class was working on a group project that included a short classroom presentation. The teacher stated that, as a result, she had the students move their tables and sit together in their groups for the project. The teacher said she first worked with each group on the project and then called up a presenter from each group to present to the class. The teacher stated that the Student was sitting in a group of [redacted] students. She further stated that, while she was standing in front of the class calling

different groups to do their presentations, the Student and another student in his group were involved in an [redacted], resulting in her sending both students to the office separately.

The principal told OCR that, after this incident, he met with the Complainant, who said that pursuant to the Section 504 plan the Student should have been [redacted]. The principal stated that he told the Complainant that Academy teachers are expected to be mobile in the classroom, so it could be difficult for the Student to be [redacted] at all times. The principal said that, prior to the [redacted], it was his understanding that the provision of “[redacted]” meant the teacher was supposed to be near the Student to provide necessary cues and to make sure the Student did not sleep in class, not that the Section 504 plan required the Student to be [redacted] at all times. After meeting with the Complainant, and at the Complainant’s request, the Academy updated the Student’s Section 504 plan on [redacted], as explained above. The principal told OCR that the Complainant’s handwritten notes on the Student’s Section 504 plan were accepted by Academy and implemented.

The principal said that after the Student’s Section 504 plan was modified there were no additional issues related to where the Student was seated. The teacher reported that after the [redacted] she and the Student’s other teachers had a discussion with the principal that the Student should be [redacted] at all times, even when working on group assignments. After this discussion, the teacher always remained seated near the Student.

Regarding [redacted] sheets, the principal stated that Academy staff would provide the Student with a [redacted] sheet in the morning, which the Student was required to carry with him to each class to give to each teacher to complete. The principal stated that the Student was supposed to take the [redacted] sheet home to the Complainant each day. The principal told OCR that the Academy did not make a copy of the [redacted] sheet at the end of each day, so the Academy could not provide OCR with copies of the Student’s filled-out [redacted] sheets. The principal stated that after the Section 504 plan was updated on [redacted], the Student was supposed to stop by the principal’s office before his first class to get the [redacted] sheet. If the Student did not stop by, the principal said he would find the Student and give him the [redacted] sheet.

The teacher stated that, although the Student’s teachers were supposed to sign the Student’s [redacted] sheets at the end of each period, she noted that the Student typically left her class as soon as the bell rang, so it was not always possible for her to sign the [redacted] sheet or to remind the Student that it needed to be signed. The teacher added that, because the Student’s Section 504 plan required that he receive reduced homework assignments, when she completed the Student’s [redacted] sheet for her class she only listed assignments that she had reduced, which included assignments she felt he could easily complete or were of high interest to the Student. The teacher stated that it was her understanding that the Student would take the [redacted] sheet home to the Complainant so they could work on the missing assignments.

The teacher stated that, after the Section 504 plan was updated, the Student’s [redacted] teacher would review the Student’s [redacted] sheets for his [redacted] classes and his [redacted] teacher would check the Student’s [redacted] sheet for his afternoon classes. If the [redacted] sheet was not completed by the teachers, the Student was required to return to his morning teachers and get the form completed and then show the completed form to his advisory teacher. Then in the afternoon, if the [redacted] sheet was not completed by his [redacted] teacher, he would be sent

to get it completed by his [redacted] teacher. The [redacted] teacher would make sure the entire sheet was completed by all the Student's teachers.

The teacher recalled that, most days, the Student returned to her class during [redacted] hour with his [redacted] sheet for her to complete. The principal confirmed that this is how the Academy handled the Student's [redacted] sheet to ensure that it was completed. He added that, despite the Academy making sure that all teachers completed the [redacted] sheet, the Student did not always take the sheet home for his parents.

The principal informed OCR that, after the Student [redacted], he decided that the Academy should make copies of [redacted] sheets so they could have a record or so staff could e-mail a [redacted] sheet to a parent if the parent did not receive it. The Academy informed OCR that, moving forward, depending on the student, it would use a digital [redacted] sheet that will be circulated among the teachers and e-mailed home. If check-in sheets could not be circulated digitally, the Academy would have students use a paper sheet and make a copy of the sheet before the student took it home.

With respect to communication concerning problems, the Academy provided OCR with several e-mails between the Student's teachers and the Complainant about a variety of issues concerning the Student during the [redacted] school year. On [redacted], the [redacted] teacher e-mailed the Complainant and asked that the Student come to school with his Chromebook charged and wrote that the Student had told the [redacted] teacher he had been forgetting to give his [redacted] sheets to his teachers to complete. On [redacted], an e-mail from the teacher informed the Complainant that the Student had been rough playing with other students when he came to her [redacted] class time, and the Complainant replied asking for details regarding the incident. The same teacher e-mailed the Complainant on [redacted], about all missing assignments that needed to be turned in by the end of the marking period, [redacted]. The Complainant replied and asked if the Student had any missing assignments and the teacher responded that all the missing assignments were listed on the [redacted] sheets, but added that if the Complainant had any questions to let the teacher know. An e-mail dated [redacted], from the [redacted] teacher asked the Complainant to make sure the Student's Chromebook was charged before he came to school. A [redacted], e-mail from the [redacted] teacher regarding class experiments asked if the Student needed help to complete the assignment. The Academy also produced e-mails regarding math assignments and class notes from early [redacted] and told OCR that there had also been a [redacted], e-mail about missing assignments.

The [redacted], Section 504 plan as described above required the Academy to notify the Complainant when the Student was [redacted]. The principal stated to OCR that information about the Student's classes and grades was available through PowerSchool, a platform that is available for all parents to track their child's academic progress, but that PowerSchool was not always up to date and sometimes teachers could take a while to update it. After OCR requested documentation related to whether the Academy expressly notified the Complainant when the Student was [redacted], the Academy acknowledged that staff e-mails to the Complainant were not about grades. The Student's report card showed that he [redacted], during the first semester of the [redacted] school year.

OCR conducted a follow-up interview with the Complainant. During that interview, the Complainant stated that she did not receive any e-mails from the Academy and only received three [redacted] sheets for the entire semester. She added that even those [redacted] sheets were not complete. She said that she received the three [redacted] sheets in early [redacted]. When she asked the Student, he told her he either he did not receive a blank [redacted] sheet in the morning or could not get it filled out by his teachers. The Complainant said that the Academy should not have expected the Student to manage the [redacted] sheets due to his disability. The Complainant said she had very few e-mails from the Student's teachers regarding issues with the Student and never received e-mails regarding the Student's grades unless she e-mailed the Student's teachers first asking for an update.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires public school recipients to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the student'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 students without disabilities are met, and that are developed in accordance with Section 504's procedural requirements at 34 C.F.R. §§ 104.34 - 104.36 regarding educational setting, evaluation, placement, and procedural safeguards.

Analysis

The evidence shows that the Student is a qualified individual with a disability who was on a Section 504 plan developed by the Academy during the relevant time period. The Complainant alleged the following provisions of the plan were not implemented in [redacted] and, in some instances, other classes, during the first half of the [redacted] school year.: [redacted]. There was no dispute between the parties that these provisions were part of the Student's Section 504 plan.

The evidence shows that, after a [redacted] incident in [redacted] class revealed that the parties disagreed over what the [redacted] provision of the Section 504 plan specifically required, the written plan was clarified and there were no further concerns about implementation of this provision. However, the evidence obtained by OCR raises compliance concerns about the implementation of other provisions in the plan. For example, the documentation provided to OCR from the Academy does not show that the Academy reliably contacted the Complainant regarding the Student's [redacted] several classes. Furthermore, the Academy and the Complainant offer different descriptions of the extent to which [redacted] sheets were used, and the Academy was not able to support its position that it provided the Student with [redacted] sheets with any documentary evidence.

Voluntary 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 concerns that can be

addressed through a resolution agreement. In this case, the Academy expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On July 11, 2022, the Academy 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 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 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.

OCR looks forward to receiving the Academy's first monitoring report by August 1, 2022. For questions about implementation of the Agreement, please contact Kiran Mikhael. Ms. Mikhael will be overseeing the monitoring and can be reached by telephone at (216) 522-4971 or by email at Anne.Mikhael@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709 or by email at John.Cohen@ed.gov.

Sincerely,

/s/

for John Cohen
Supervisory Attorney/Team Leader

Enclosure