

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

1350 EUCLID AVENUE, SUITE 325 CLEVELAND, OH 44115-1812

July 24, 2023

Via e-mail only to: [redacted content]

Aimee R. Gibbs, Esq. Member, Dickinson Wright PLLC 350 S. Main Street Suite 300 Ann Arbor, Michigan 48104

Re: OCR Docket No. 15-23-4022

Dear Ms. Gibbs:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Linden Charter Academy (the Academy) alleging that during the 2022-2023 school year the Academy excluded a student (the Student) from [redacted content] [redacted content] and [redacted content] [redacted content] [redacted content] 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. As a recipient of federal financial assistance from the Department of Education and as a public entity, the Academy is subject to these laws.

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

- whether the Academy, on the basis of disability, excluded a qualified student with a disability from participation in, denied the student the benefits of, or otherwise subjected the student to discrimination in its programs and activities in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4, and the regulation implementing Title II at 28 C.F.R. § 35.130;
- 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; and

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• whether the Academy, in providing or arranging for the provision of [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], failed to ensure that a qualified student with a disability participated with nondisabled persons to the maximum extent appropriate to the needs of the student with a disability in question, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.34(b).

During its investigation to date, OCR reviewed information provided by the Complainant and the Academy and interviewed the Complainant and Academy staff. Prior to completion of OCR's investigation, the Academy asked to voluntarily resolve this case pursuant to Section 302 of OCR's Case Processing Manual and signed a resolution agreement to address the compliance concerns OCR identified. A summary of OCR's investigation to date and the Academy's voluntary resolution follows.

Summary of OCR's Investigation to Date

During the [redacted content] school year, the Student was [redacted content] at the Academy. The Complainant told OCR that [redacted content] [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] since the beginning of the school year. The Student's [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content]. According to the Complainant, the Academy recommended that the Student [redacted content] [redacted content] [redacted content] [redacted content], [redacted content], [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content]. In addition, the Complainant told OCR that [redacted content] [redacted content], [redacted content] [redacted content]. Academy records indicate that this occurred in [redacted content] [redacted content].

[redacted paragraph].

According to the Complainant, [redacted content] [redacted content], [redacted content], [redacted content], [redacted content], [redacted content] [redacted content

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The Complainant also alleged that [redacted content] [redacted content

In response to these allegations, the Academy said that [redacted content] [redacted cont

• [redacted content]

With respect to the Student's [redacted content], [redacted content] [redacted content] [redacted content], [redacted content]

The Academy provided OCR with [redacted content] [r

[redacted paragraph]

According to the Academy, [redacted content] [redac

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content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence].

[redacted paragraph]

Most Academy staff OCR interviewed, [redacted content] [redacted conte

• [redacted content]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

[redacted sentence]

[redacted paragraph]

[redacted paragraph]

Legal Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides also 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 a recipient's program or activity. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a).

The Section 504 implementing regulation, at 34 C.F.R. § 104.37(a)(1), provides that a recipient public school district shall provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford a qualified student with a disability an equal opportunity for participation in such services and activities.

The Title II regulation, at 28 C.F.R. § 35.130(b)(7)(i), requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid

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discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Section 504 requires that a school district educate a student with a disability in an academic setting alongside students without disabilities to the maximum extent appropriate for the needs of the student with a disability. The same is true for the provision of nonacademic services and participation in extracurricular activities. Thus, a school district must place a student with a disability in the regular educational environment-meaning the setting where students without disabilities participate in academic, nonacademic, and extracurricular services and activitiesunless the Section 504 team reaches an individualized determination that the student's needs cannot be met satisfactorily in that environment even with supplementary aids and services. Supplementary aids and services could include, among other examples, preferential seating, counseling services, or the implementation of a behavioral intervention plan. In most cases, if the Section 504 plan has been implemented as designed but still does not adequately address the disability-based behavior, the Section 504 team will be able to identify additional or different services to enable a student with a disability who is in the regular education environment to remain in that setting. While schools lawfully may impose discipline on students with disabilities, they must still avoid discrimination. Under Section 504, schools must make reasonable modifications to their criteria, policies, practices, or procedures when necessary to avoid discrimination on the basis of disability.

The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipients that operate a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-36.

Voluntary Resolution and Conclusion

Based on OCR's investigation to date, there is cause for concern that the Academy did not provide the Student with [redacted content] [redacted co Page 6 – Aimee R. Gibbs, Esq.

OCR also has a cause for concern that [redacted content] [redacted con

[redacted paragraph]

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 24, 2023, the Academy signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Academy must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, 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 14, 2023**. For questions about implementation of the Agreement, please contact OCR attorney Dinola Phillips, who will oversee the monitoring and can be reached by telephone at (202) 987-1001 or by e-mail

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at <u>dinola.phillips@ed.gov</u>. If you have questions about this letter, please contact me by telephone at (216) 522-2667 or by e-mail at brenda.redmond@ed.gov.

Sincerely,

Brenda Redmond Supervisory Attorney/Team Leader

Enclosure