

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

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

August 15, 2023

Via e-mail only to: [redacted content]

John Moenk, Esq. Nicola, Gudbranson & Cooper, LLC Attorneys at Law 25 West Prospect Avenue, Suite 1400 Cleveland, Ohio 44115

Re: OCR Docket No. 15-23-4024

Dear Mr. Moenk:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], against Horizon Science Academy (the Academy) alleging discrimination against a student (the Student) on the basis of disability. After evaluating the complaint, OCR opened an investigation of the following allegations: the Academy did not implement the Student's Individualized Education Plan (IEP) [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] or alternatively evaluate the Student in a timely manner to determine an appropriate educational program for the Student; and [redacted content] [redacte

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. Because the District receives Federal financial assistance from the Department and is a public entity, the Academy is subject to Section 504 and Title II.

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

• Whether the Academy excluded a qualified student with a disability from participation in, denied a student the benefits of, or otherwise subjected a 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.
- Whether the Academy failed to timely and appropriately evaluate and determine the educational placement of a student with a suspected disability in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35.

During its investigation to date, OCR reviewed documents provided by the Complainant and the Academy. OCR also interviewed Academy staff [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. OCR also provided the Complainant with an opportunity to respond to the information OCR obtained during its investigation. OCR's review of the information obtained during the investigation to date raises a compliance concern. OCR determined that this case was appropriate for the Rapid Resolution Process (RRP) pursuant to Section 203 of OCR's *Case Processing Manual* (CPM) and that the Academy was interested in immediately resolving the complaint allegations.

The Complainant is an attorney advocate for the parent (Parent) of the Student who is the subject of this complaint. [redacted sentence]. [redacted sentence].

[redacted content], [redacted content] [redacted content] [redacted content] [redacted content] the Student eligible for special education services pursuant to an IEP and provided her specially designed instruction, [redacted content] [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content]. [redacted sentence]. The Academy also acknowledged that the Student had an IEP [redacted content] [redacted content]. The Complainant asserted that the Academy did not obtain the Student's IEP and related records [redacted content] [redacted content]. The Complainant also asserted that when the Academy did not obtain the Student's special education records [redacted content] [redacted content] [redacted content], [redacted content] [redacted content].

The Complainant further alleged that the Academy did not provide the Student any services, supports, and accommodations she needed [redacted content] [redacted conte

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

[redacted paragraph]

[redacted paragraph]

While Section 110(a)(2) of OCR's Case Processing Manual (CPM), does provide that OCR will close or dismiss an allegation if the same allegation has been filed by the complainant against the same recipient with another federal, state, or local civil rights enforcement agency and OCR determines that the allegations have been resolved by the entity and the allegation(s) was investigated, any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation regarding the allegation(s), and there was a comparable resolution process in which it applied comparable legal standards, OCR did not find ODE's remedy in the matter comparable when applied individually to the Student. OCR's determination is explained as follows.

OCR reviewed documentation related to the ODE complaint. [redacted sentence]. [redacted sentence].

With respect to the allegation regarding the implementation of the Student's IEP, ODE examined whether the District provided the Student a free appropriate public education (FAPE) pursuant to 34 C.F.R. §§ 300.323(e). Section 34 C.F.R. 300.323(e) states when a child transfers to a new school, the new school (here the Academy) must provide FAPE to the child, including services comparable to those described in the child's IEP [redacted content] [red

ODE's decision dated [redacted content] indicated that it reviewed and considered documentation and information submitted by the Parent and the Academy. ODE also interviewed witnesses. ODE found that [redacted content] [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence] [re

As a result, ODE required the Academy to take corrective action to resolve the violations. ODE's required actions were to address systemic issues and included that the Academy develop an internal procedure for the acceptance of transfer evaluation team reports and individualized

education plans and provision of services for eligible students. ODE also required training for all pertinent staff on the internal procedure and tracking mechanisms. [redacted sentence].

OCR's review of ODE's resolution found that because the Student [redacted content] [redac

[redacted paragraph]

[redacted paragraph]

[redacted sentence]

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides 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 any program or activity that receives federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities.

The regulation implementing Section 504 at 34 C.F.R. § 104.33(a) requires a recipient of Federal financial assistance from the Department to provide a qualified student with a disability with a free appropriate public education (FAPE). 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 individuals without disabilities 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. According to the Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(2), implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one way a recipient can demonstrate that it has provided a qualified student with a disability with a FAPE.

The regulation implementing Section 504 at 34 C.F.R. § 104.35 requires a recipient to timely and appropriately evaluate and determine the educational placement of a student with a suspected disability.

Under Section 504, if a student with a disability, transfers to a school district from another school district with a plan, the receiving district should review the plan and supporting documentation.

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If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student.

The evidence showed that [redacted content] [redact

[redacted paragraph]

Based on the above, the information obtained to date raised a compliance concern with respect to the allegations raised. 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 August 11, 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.

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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 31, 2023. For questions about implementation of the Agreement, please contact OCR staff member Stephen Buynack, who will oversee the monitoring and can be reached by telephone at (216) 522-7643 or by e-mail at Stephen.Buynack@ed.gov. If you have questions about this letter, please contact me by telephone at (202) 987-1838 or by e-mail at Denise.C.Vaughn@ed.gov.

Sincerely,

Denise C. Vaughn Supervisory Attorney/Team Leader

Enclosure