



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

XXXXXXXX X XXXXXX
XXXXXXXXXX XXXXXXXX
XXX X XXXX XXXXXX
Ann Arbor, Michigan 48104

Re: OCR Docket #15-14-1345

Dear xx xxxxxx:

This letter is to inform you of the disposition of the above-referenced complaint, which was filed with the U.S. Department of Education's Office for Civil Rights (OCR) on xxxxxxxxxxxx xx xxxxx, against Woodward Academy (the Academy). The complaint alleged that the Academy discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that:

- 1. The Academy failed to implement the Student's Individualized Education Program (IEP) during the xxxx-xxxxx school year when it did not create a xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxx xx xxxxxxxx xxx xxxxxx xxxxxxxxxxxx xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx
2. The Academy xxxxxxxxxxxx the Student on xxxxxxxxxxxx xxxxxxxxxxxx during the xxxx-xxxx school year without conducting a manifestation determination to assess whether the underlying conduct was the result of a disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation, 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 and as a public entity, the Academy is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Because the regulation implementing Title II provides no greater protection than the Section 504 implementing regulation with respect to this case, OCR applied Section 504 standards. Based on the complaint allegations, OCR opened an investigation into the following legal issues:

- whether the Academy failed to provide a qualified student with a disability with a free appropriate public education (FAPE), including the provision of related aids and services designed to meet the student’s individual needs, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33; and
- whether the Academy failed to conduct an evaluation of the Student prior to significantly changing her placement through the imposition of a series of out-of-school suspensions during the 2013-2014 school year, in violation of 34 C.F.R. § 104.35(a).

Summary of OCR’s Investigation to Date

To date, OCR has investigated this complaint by reviewing information and documentation provided by the Complainant as well as documentation provided by the Academy. OCR also interviewed some Academy staff. In addition, OCR provided the parent with an opportunity to respond to information obtained from the Academy relevant to the complaint.

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

OCR found insufficient evidence to support a conclusion that the Academy violated Section 504 as alleged with respect to conducting a manifestation hearing (allegation #2) and with respect to implementing a xxx or providing xxxxxxxxxx services (part of allegation #1). The reasons for OCR’s determination are explained below. Prior to the completion of OCR’s investigation of allegation #1, the Academy requested to voluntarily resolve the remaining portion of allegation #1 pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM), and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the remaining issues.

- **Alleged Failure to Implement the Student’s IEP**

OCR reviewed documentation from the Academy showing that an IEP team consisting of four Academy staff, which included two of the Student’s teachers (Teacher A and Teacher B), the social worker, and the special education director, formulated an IEP for the Student dated xxxxxxxx x xxxx. Academy staff confirmed in interviews with OCR that they had contacted the Student’s parent numerous times to invite her to participate in the team meeting, but that the Student’s parent never attended the meetings that had been scheduled with her. The Student’s xxxxxxxx x xxxx, IEP recorded the Academy’s efforts to invite the Student’s parent to attend the xxxxxxxx x IEP meeting. The IEP indicated that the Academy had provided the Student’s parent with notice of her procedural safeguards and the Academy confirmed this to OCR.

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

The Student's parent was given an opportunity to respond to the information obtained from the Academy; however, in xxx written response to OCR, xxx did not provide any additional information regarding this allegation.

- **Alleged Failure to Conduct a Manifestation Determination**

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

Applicable Legal Standards and Policy

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (FAPE) to each qualified student with a disability within the district's jurisdiction. For the purposes of this requirement, an appropriate education 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 based upon adherence to procedures that satisfy the setting, evaluation, placement, and procedural safeguards requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. The Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(2) specifies that implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting Section 504's FAPE requirements. If the placement, aids, and services identified by a school district as necessary to meet a student's individual needs were not provided, OCR determines the district's reason for failing to do so and whether the failure to provide the services for the student resulted in a denial of a FAPE.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient, before taking any action with respect to the initial placement of a student with a disability in a regular or special education program or any subsequent significant change in placement to evaluate that student. Under Section 504, when a student with a disability is suspended or expelled for more than ten consecutive school days, the exclusion constitutes a significant change in placement. Additionally, a series of suspensions that are each ten days or fewer in duration but which total

investigation pursuant to Section 302 of OCR’s Case Processing Manual (CPM). The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegation(s). Such a request does not constitute an admission of liability on the part of the Academy, nor does it constitute a determination by OCR that the Academy has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On September 24, 2015, the Academy provided OCR with the enclosed signed Agreement, which, once implemented, will resolve the remaining portions of allegation #1. In summary, the Agreement requires the Academy to develop a plan for the provision of compensatory xxxxxxx xxxx xxxxxxxxxxxxxxxxxxx xxx xxxxxxx xxxx xxxxxxxxxxxxxxxxxxx to account for services not documented as provided to the Student during the xxxx-xxxx school year and to provide training on Section 504 to its staff.

In light of the signed Agreement, OCR is closing its investigation of the relevant portions of allegation #1 as of the date of this letter. OCR will, however, monitor the Academy’s implementation of the Agreement. Should the Academy fail to fully implement the Agreement, OCR will reopen the complaint and resume its investigation of the complaint allegation.

- **Alleged Failure to Conduct a Manifestation Determination**

The evidence obtained during OCR’s investigation shows that, during the xxxx-xxxx school year, the Student was xxxxxxxxxxx on xxx separate occasions for a total of xxxxxx days. Suspensions totaling xxxxxx xxxx do not constitute a significant change in placement that would trigger the Academy’s duty to re-evaluate the Student by means of a manifestation determination, and the Academy could discipline the Student in the same manner as it would discipline any other student without a disability. Further, the weight of the evidence shows that, even on the occasions when the Student was suspended, xxxxxxxxxxx returned to school and was generally permitted to participate in classroom instruction. Therefore, OCR has determined that there is insufficient evidence to support a finding of a violation under Section 504, as alleged, and is closing this allegation effective the date of this letter.

- **Conclusion**

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 harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We look forward to receiving the Academy's first monitoring report by October 30, 2015. For questions about implementation of the Agreement, please contact xxxxx xxxxxxxxxxxxxxxxxxxx, who will be monitoring the Academy's implementation, by e-mail at xxxxxxxxxxxxxxxx@ed.gov or by telephone at (216) xxx-xxxx. For questions about this letter, please contact xxxxxxxxxxxxxxxxxxxx, Supervisory Attorney/Team Leader, at (216) xxx-xxxx.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure