



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

September 3, 2021

Kristen Pavao  
Executive Director  
Argosy Collegiate Charter School  
By e-mail: kpavao@argosycollegiate.org

Re: Complaint No. 01-20-1238  
Argosy Collegiate Charter School

Dear Ms. Pavao:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Argosy Collegiate Charter School. The Complainant alleges that the School discriminated against her daughter on the basis of national origin and disability, by: failing to identify and evaluate the Student for placement in the School's English Language Learner (ELL) Program (Allegation 1); failing to provide her with evaluations in her primary home language for special education and/or related aids and services (Allegation 2); and failing to provide her with regular and/or special education and related aids and services to meet her individual needs and failing to accommodate her language needs when providing services (Allegation 3). Furthermore, the Complainant alleges the School discriminated against her on the basis of national origin by failing to provide translation or interpretation services at Individualized Education Program (IEP) meetings, and failing to provide documents related to special education, including documentation related to the Student's IEP in a language she can understand (Allegation 4). As explained below, before OCR completed its investigation, the School expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement.

OCR enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, or national origin in any program or activity receiving federal financial assistance from the U.S. Department of Education.

OCR also enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. In addition, OCR enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the U.S. Department of Education. Because the School receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it

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pursuant to Title VI and Section 504. Because the School is a public entity, OCR has jurisdiction over it pursuant to Title II.

### Legal Standards

The Title VI regulation, at 34 C.F.R. § 100.3(a) and (b), provides that a school district may not exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to different treatment on the basis of race, color, or national origin.

Pursuant to U.S. Department of Education guidance, where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. In summary, a school district must identify which of its national-origin minority students have limited English proficiency and provide them with an effective program that affords them meaningful access to the district's educational program. *See* "The Office for Civil Rights Title VI Language Minority Compliance Procedures" (issued December 1985).

Where an inability to speak and understand the English language excludes national-origin language-minority children from effective participation in the educational program offered by a school district, the school district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. *See* Memorandum on "Identification of Discrimination and Denial of Services on the Basis of National Origin", issued May 1970. A school district must provide alternative language services to all national-origin language-minority students who need such services. *See* December 1985 Memorandum.

A school district must provide national-origin minority students who have limited English proficiency with an effective program that affords them meaningful access to the district's educational program. In evaluating a district's compliance with Title VI, OCR first determines whether the school district has chosen a program model for providing educational services to ELL students that is based upon a sound educational approach or upon a legitimate experimental strategy. OCR then assesses whether the school district is effectively implementing the educational theory it adopted. A school district must allocate adequate and appropriate staff and resources to implement its chosen program properly. Finally, OCR considers whether the school district has taken action if the program, after a legitimate trial, fails to produce results indicating that the language barriers confronting students are actually being overcome. A school district will be in violation of Title VI and its implementing regulation if it does not provide services designed to overcome effectively the language barriers of all its ELL students.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education to each qualified student with a disability in its jurisdiction. An appropriate education is 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 compliance with Section 504's procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR

interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a free appropriate public education to the same extent required under the Section 504 regulation.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

### Summary of Preliminary Investigation

Before enrolling in the School, the Student attended XXXX XXXX XXXXX XXXXX, where she participated in a “sheltered English immersion” from XXXXXXXX through XXXXX XXXX. In XXXX XXXXX, the Student took the statewide ACCESS for ELLs exam to measure her English Language Proficiency. The Student scored a composite score of XX. At that time, the Massachusetts Department of Elementary and Secondary Education indicated that a school could consider exiting students from ELL status when they scored an overall composite score of 5.0 or higher. The Massachusetts Department of Elementary and Secondary Education also recommended, however, that schools consider other relevant data prior to exiting a student, for instance, observations and judgements from teachers.

The Student began attending the School in XXXX XXXX as a XXXXX grader. Prior to that, the Complainant completed the School’s Home Language Survey, indicating that her primary language is XXXXXXXX and that she would need documents in XXXXXXXX as well as an interpreter for oral communications. The Complainant also indicated that the Student’s primary home language is XXXXXXXX, although she noted that the Student spoke both English and XXXXXXXX at home.

When the Student started at the School, she was not assessed for ELL services. The Student did start at the School with an IEP. In XXXXXXXX XXXX, the School referred the Student for a Speech and Language Evaluation based on “concerns regarding her XXXXX and XXXXX abilities as they relate to her access to the curriculum on a daily basis.”

The evaluation was conducted wholly in English and there is no indication that her primary home language was taken into consideration. With regard to the Student’s receptive and expressive language, the evaluation noted “that [her limited] vocabulary knowledge and use may negatively impact her ability to access grade level material.” The evaluation also indicated that although the Student’s speech “was highly intelligible throughout the evaluation,” some of her scores were in the “borderline/marginal/at risk range,” including Word Classes and Sentence Assembly. Others, including Core Language and Index, and Receptive Language, were below average. The evaluation stated that although the Student’s “underlying language skills support her well enough to allow for adequate understanding,” she “may require additional supports for full understanding given the borderline scores.” Despite the Complainant’s responses on the home language survey, it does not appear that a XXXXXXXX version of the Speech and Language Evaluation was ever provided to the Complainant.

On XXXXXX XX, XXXX, the School convened a “re-evaluation meeting (speech only)” regarding the Student’s IEP to consider the results of the Speech and Language Evaluation. The records reviewed by OCR do not show that the School provided the Complainant with notice of this meeting in XXXXXXXX, nor that the School provided a XXXXXXXX interpreter for the meeting.

The Student’s IEP team decided to amend the Student’s IEP because it determined that the evaluation “revealed significant growth from the previous XXXX evaluation.” Despite the concerns noted in the above evaluation, the School proposed removing speech-related services from the IEP based on the results of the “completed speech evaluation.” The records OCR reviewed do not show that the School provided a XXXXXXXX version of the proposed IEP; rather, it appears that the Complainant signed an English version of the IEP on XXXXXX XX, XXXX.

In XXXXX XXXX, the School conducted a Functional Behavioral Assessment (FBA) of the Student “due to concerns regarding [the Student’s] displaying XXXXXXXX XXXXXX in school.” By that time, the Student was failing three classes, including English Language Arts, and had received at least XXXX XXXX XXXXXXX and XXXXX XXXXX XXXXXXX since the start of the XXXX XXXX academic year.

The FBA report stated the Student’s behaviors “appear to be maintained primarily by a deficit in social skills and managing emotional responses.” The report indicates that it was completed and received by the School on XXXXXX XX, XXXX.

The School’s Director of Student Support e-mailed the Complainant’s attorney on XXXXXX XX, XXXX, about the School’s intention to hold a team meeting on XXXXXX XX, XXXX to review the FBA and propose a subsequent manifestation determination meeting.

On XXXXXX XX, XXXX, the Complainant’s attorney informed the Director of Student Support via e-mail that the Complainant had not received a copy of the Functional Behavioral Assessment in either English or XXXXXXXX, and requested that a XXXXXXXX version of the report be provided in order for the Complainant to participate “in a productive manner.” The Director of Student Support responded that the School intended to review the FBA, and translate it, at the meeting. The Director of Student Support offered two options: proceeding with the meeting as scheduled without a translated copy of the report or postponing the meeting for a week until the FBA could be translated. Before the Complainant could respond, however, the School elected to reschedule the meeting because the School’s attorney wanted to be present for the meeting. Later on XXXXX XX, the School sent the FBA report to a translation service.

E-mail correspondence between School staff stated that a XXXXXXXX version of the FBA was provided to the Complainant on XXXXXX XX, XXXX. The correspondence also noted that the School intended to hold a manifestation determination meeting on XXXXXX XX, XXXX to address the Student’s XXXXXXXX. There is no record a manifestation determination meeting occurred.

On XXXXX XX, XXXX, the School held a virtual annual review of the Student's IEP. The School had a XXXXXXXX interpreter present for this virtual meeting. According to the XXXX XXXXX IEP, at the time of the annual review meeting, the Student had been receiving tutoring in English Language Arts and Mathematics.

The XXXXX XXXX IEP indicates that the Student's IEP team considered her performance levels during the XXXXX XX, XXXX meeting. The team noted several strategies to proactively support the Student, including: identifying any potential negative peer interactions and addressing them immediately, encouraging the Student to process her feelings and self-regulate, and providing the Student with one-on-one staff member support.

OCR has not yet determined whether the School monitored whether the Student needed further ELL services after she met the state's exit criteria for ELL status in XXXX, although the records OCR has reviewed to date suggest that the School may not have considered the Student's ELL needs as a factor in her persistent speech/language deficits.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the School expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the School resulted in the School signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the School's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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. OCR would like to make you aware that 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 School 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

Meighan A.F. McCrea  
Compliance Team Leader

Enclosure

cc: Alisia St. Florian