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**Archway Classical Academy Lincoln (AZ)
Office for Civil Rights, Western Division,
Denver (Arizona)**

08-19-1377

May 7, 2021

Related Index Numbers

355.010 Aides/Paraprofessionals

325.007 Before/After School Child Care

10.015 Athletics/Extracurricular Activities

325.008 Extracurricular Activities

10.019 Classroom Accommodations

405.019 Classroom Accommodations

Judge / Administrative Officer

Sandra Roesti, Supervisory Attorney

Ruling

Allegations that an Arizona charter school denied a student with an undisclosed disability equal access to participate in its afterschool program in violation of ADA Title II and Section 504 were resolved with OCR. The program promised to modify its policies regarding providing accommodations to students with disabilities, omit language about the unavailability of one-to-one aides, and encourage requests for accommodations. OCR found insufficient evidence of retaliation because program staff were unaware of the mother's advocacy and the district believed it was required to enforce an order banning her from campus. OCR dismissed the complaint.

Meaning

Districts are prohibited from denying students with disabilities equal access to its programs, including afterschool programs. In this case, although the afterschool program was operated by an outside entity, the district was responsible to ensure that it didn't discriminate against its students based on disability since it provided significant assistance to the program so that its actions could fairly be considered activities of the charter school itself. A

district then becomes responsible to ensure that its afterschool program takes steps to comply or discontinue assistance.

Case Summary

An Arizona charter school afterschool program's policies raised concerns that it may have discriminated against students based on their disabilities. The student required a one-to-one aide. He attended an afterschool program operated by an outside entity on his school's campus. After behavioral incidents, the program staff informed the parents that the student required an aide to participate, and they would need to provide one or he would be disenrolled. He was subsequently suspended after he hit a staff member, and his mother was banned from the premises. She contacted OCR and asserted that the school denied the student equal access to its afterschool program. OCR explained that districts must afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular activities, including making reasonable accommodations under ADA Title II and Section 504. It determined that the tuition-based afterschool program was operated by the charter management organization, neither of which received federal funds, and therefore not subject to the same disability-based discrimination prohibitions. However, OCR explained that districts may not aid or perpetuate discrimination against students with disabilities by providing significant assistance to an outside entity that does. To the extent that the school provides significant assistance, it must ensure that the program doesn't discriminate against its students and take steps to obtain compliance or terminate its assistance, OCR added. OCR noted that the program contract indicated that students could be withdrawn for inappropriate behavior or demand for unreasonable accommodations, and it did not provide exceptional student services including a one-to-one aide. OCR had compliance concerns regarding the program's accommodation of students with disabilities. However, the program modified its policies to address how it provides accommodations

to students with disabilities, omit language about the unavailability of one-to-one aides, and encourage requests for accommodations and resolved OCR's compliance concerns.

Full Text

Dear Ms. Atolagbe:

This letter is to notify you of the resolution of the complaint OCR received on May 10, 2019, alleging that Archway Classical Academy Lincoln (the Academy) discriminated on the basis of disability.

Specifically, the complainant alleged that the Academy denied her client, a student with [] equal access to its after school program, Athenaeum.¹ Additionally, the complainant alleged that the Academy retaliated against the Student's mother by banning her from the school premises.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulation Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education; and Title II of the Americans with Disabilities Act of 1990 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 and a public entity, the Academy is subject to these laws and regulations.

In reaching a determination, OCR reviewed documents submitted by the complainant and by the Academy. OCR also interviewed the complainant, the Student's mother, and the Academy's Headmaster.

With regard to the allegation of discrimination in the Athenaeum afterschool program, OCR noted a potential compliance concern with regard to the program's accommodation of students with disabilities. When OCR brought this concern to the Academy's attention, it took steps that resolve the potential compliance concern. As a result, OCR is dismissing this allegation. With regard to the

allegation that the Academy retaliated against the Student's mother, OCR found that there was insufficient evidence to support that a violation occurred. This letter explains our findings.

I. Legal standards

The Section 504 regulation, at 34 C.P.R. § 104.4, and the Title II regulation, at 28 C.P.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the recipient's programs or activities on the basis of disability.

A. Significant Assistance

Under the Section 504 regulation, at 34 C.P.R. § 104.4(b)(1)(v), and the Title II regulation, at 28 C.P.R. § 35.130(b)(1)(v), a recipient may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity.

In determining whether a recipient is providing significant assistance to an outside entity, OCR considers the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. If a recipient provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the recipient must take steps to obtain compliance from the outside entity or terminate its assistance.

B. Non-academic services; day care programs

Under the Section 504 regulation, at 34 C.P.R. § 104.37(a), and the Title II regulation, at 28 C.P.R. § 35.130(a) and (b), recipients must provide non-academic and extracurricular services and

activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation. Additionally, the Section 504 regulation, at 34 C.F.R. § 104.38, provides that a recipient that operates a day care program or activity may not, on the basis of disability, exclude qualified persons with disabilities and shall take into account the needs of such persons in determining the aid, benefits, and services to be provided. When voluntary noneducational programs are offered on a free or tuition basis, qualified children with disabilities may not be categorically excluded from those noneducational programs on the basis of their disabling condition; and students with disabilities must be offered meaningful and equal access to that program.

C. Retaliation

The Section 504 regulations, at 34 C.P.R. §104.61, incorporate 34 C.P.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit recipients from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. §35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

In analyzing a retaliation claim, we first determine whether: the individual experienced an adverse action caused by the recipient; the recipient knew the individual engaged in an activity protected by Section 504 or Title II or believed the individual might engage in a activity protected by Section 504 or Title II in the future; and a causal connection existed between the adverse action and the protected activity. If OCR determines that a causal link exists between any adverse action and any protected activity, we next determine whether the recipient has a legitimate, non-retaliatory, reason for its action; and whether such reason is a pretext for retaliation.

II. Factual findings

A. Information about the Student

During the [] school year, the Student was [] grader who attended the Academy. The Student is a student with a disability, diagnosed with [] The Academy determined that the Student requires a 1:1 aide to receive a free, appropriate public education (FAPE) during the school day, which is documented in the IEP dated [] The role of the 1:1 aide, as described by the Academy's Headmaster, is to support the Student in class and throughout the school day, including encouraging him to listen and participate during instruction, providing breaks for the Student when needed, assisting the Student during recess, and helping to manage the Student's behavior, including preventing the Student from hitting others. The IEP indicates that this support will assist the Student in remaining on-task, remaining with his class, appropriately transitioning from one task, activity, or school environment to another, and utilizing appropriate social skills in the general education setting.

B. Information about the Academy and Athenaeum

The Academy is a charter school in the state of Arizona, serving students in grades [] It is a single-campus Local Education Agency (LEA) and is the recipient and public entity or the purposes of this matter. It is part of the Great Hearts network of charter schools.

Athenaeum is a tuition-based afterschool program held on the Archway Lincoln campus. OCR has determined that Athenaeum is operated by Great Hearts Arizona, which is the charter management organization that provides services to Archway Lincoln. Neither Athenaeum nor Great Heatis Arizona are recipients or public entities, so OCR does not have personal jurisdiction over these entities. However, to the extent that the Academy provides significant assistance to these entities within the meaning of the Section 504 regulations, the Academy is required to ensure that these entities do not discriminate against its students.

C. Athenaeum's policies and procedures

OCR reviewed the Athenaeum program's "Scholar/Family Guidelines and Agreement" document, which was signed by the Student's parents on [] The document states that in cases where "scholars continuously engage in inappropriate behavior such as bullying, physically hurting self or others, inappropriate language, frequent tantrums, destruction of property, disobeying teachers' directives, running away from the class, etc., the scholar may be withdrawn from the program."

The document also includes guidelines for "Family Behavior," and indicates that on certain occasions, a parent or guardian's behavior would warrant the need to "find a more suitable setting for themselves and their scholar." Examples of such behavior include "Parent/Guardian demands accommodations that are not reasonable in nature and are not provided for other children."

Under the heading "ESS Services & Reasonable Accommodations," the document states that "Exceptional Student Services are not available for Athenaeum, including to those scholars who receive Exceptional Student Services during the school day." It goes on to explain that the program makes "reasonable, safe accommodations for any scholar." However, a reasonable accommodation "cannot include a 1:1 aide provided by Athenaeum², nor can we provide assistance for scholars who cannot independently toilet." It goes on to say that if a scholar cannot meet expectations after reasonable accommodations have been exhausted, the student may be withdrawn from the program. The form does not indicate how a parent could request a reasonable accommodation for their child.

D. The Student's participation in Athenaeum

In [] the Student's parents enrolled the Student in the Athenaeum program, which provides afterschool care to Academy students at the school site. The Student was previously enrolled in Athenaeum during the [] school year. The Student exhibited behavioral concerns in the Athenaeum

program at that time, as documented in a number of incident reports provided by the Academy. On [] the Athenaeum campus coordinator emailed the Student's father the following: "Athenaeum did not receive notice of your process of providing [the Student] with an aide by the requested date of [] We have dis-enrolled him and refunded your account for []. If in the future you are able to provide an aide, please let us know and [the Student] is welcome to re-enroll at that time."

The Academy's response did not include documentation of communication leading up to the [] email, but OCR can infer that Athenaeum determined that the Student needed a 1:1 aide to participate in the program, notified the parents that it would not provide one, and that if they did not obtain an aide on their own, the Student would be disenrolled. In the Academy's narrative response, the Academy asserts that Athenaeum provided the parents with information on a community resource that would provide a 1:1 aide at no cost to them, but documentation of this was not provided to OCR. The [] email makes no reference to this resource. The documentation provided also does not indicate whether other accommodations or services were requested or considered. The Student did not attend Athenaeum for the remainder of the [] school year.

When the Student continued into [] grade at the Academy in [] his parents did not initially enroll him in Athenaeum based on what they had been told the previous year. In [] after receiving advice from their attorney, the parents again enrolled the Student in the Athenaeum program based on their understanding that the program was required to provide him with the necessary accommodations to allow him to participate. Based on the records reviewed, the parents did not request accommodations or a meeting to discuss accommodations, and the Athenaeum program did not initiate such discussions. The Student began attending Athenaeum on or around [] The Parent Communication Log provided to OCR indicates that Athenaeum staff first notified the parents about behavioral incidents on [] The log, as

well as accompanying incident reports, document incidents of aggressive behavior on [] At that point, the director of Athenaeum suspended the Student from the program for three days.

E. [] incident

When the Student's mother arrived to pick him up on [] Athenaeum staff attempted to provide her with copies of the incident report and suspension notice, and to have her sign the incident reports. The situation escalated to the point that a heated conversation occurred, during which the Student hit one of the Athenaeum staff members. After the mother and Student left, Athenaeum staff members called the police. The Academy provided a video of the incident to OCR. OCR reviewed the video, and noted that because it did not include audio, it was not clear what happened. The Athenaeum staff members declined to be interviewed by OCR.

No charges were filed against the Student or his mother, but according to the police report, the mother was "trespassed from the property" for six months. The Athenaeum suspension notice stated that the Student could return after three days, but if the behavior continued, he would be withdrawn from the program. Rather than returning him to the program, the parents withdrew him from the program because they did not think it was safe for him to continue attending, given what had happened.

F. Trespass order and exclusion from campus

The Academy's response to OCR refers to a "no trespass order" given to the Student's mother by the Chandler Police Department at the request of Athenaeum staff following the [] incident. However, the materials provided by the Academy do not include any document that could be identified as a "no trespass order." The only evidence OCR obtained to document this order is found in the police report. An entry in the report indicates that the officer received a request by email on [] from the director of Athenaeum, requesting that the mother "be trespassed for 6 months." The report indicates that the officer

called the mother and "advised she was formally trespassed from the property." Although the Academy's response describes that "the police found sufficient evidence to issue a No Trespassing order against [the mother] based on her threatening behavior," the police report itself does not describe that the order was issued based on any findings regarding the mother's action. The report suggests that the order was issued at the request of director of Athenaeum.

The director of Athenaeum requested the order in an email to a police officer dated [] "I have spoken to my supervisor at length and we feel the charter school may not be able to enforce the trespassing order for the student (as the State mandates school provide education and this trespassing order would prevent him attending school), but can enforce it for the mother, [name]. Is it possible to file the trespassing order for 6 months against her solely?"

In its response, the Academy acknowledges that the mother was prohibited from coming on the school's premises, but only because "the Academy abided by a lawful trespass order given to the mother" by the police. As described in the Academy's response to OCR, the order bans the mother from the school premises, but only because Athenaeum uses the school's facilities.

The mother told OCR she did not receive any written notice regarding the trespass order. The Academy's Headmaster also informed OCR that she was not provided a copy of any order. The Headmaster's only knowledge of the order came from what she was told by Athenaeum staff members relaying what the police had said. While the Headmaster indicated to OCR that she was concerned that excluding the mother from campus would harm the Academy's relationship with the family, the record shows that the Academy enforced the purported order by prohibiting the mother from campus.

Additional documentation of how the Academy interpreted the "no trespass order" is found in a Prior Written Notice document dated [] This document confirms that the Academy refused access to school

grounds to the mother, even for the purposes of school drop off and pick up. The parents' attorney requested that the Academy either provide transportation or have a staff member walk the Student off the premises where the mother could pick him up. The Academy declined both options.

G. Parents' participation in activities protected by Section 504

During the course of our investigation, OCR discovered that the parents had filed a previous OCR complaint. Neither the complainant nor the Academy mentioned this previous complaint to OCR. It was filed by a different attorney than the one involved in the current complaint, and involved different issues than those in the current complaint. The complaint was filed on [] [] OCR opened the complaint for investigation on [] Interviews were conducted with Academy and Great Hearts personnel [] The case was closed with insufficient evidence findings on []

During the [] school year, the parents and the Academy had several IEP team meetings. The complainant described some of the meetings as "adversarial." The Academy described them as "difficult, but not to an extreme." The Academy believed the Student would benefit from a more restrictive placement (a 1:1 setting for core academic instruction, outside of the regular classroom), with which the parents disagreed. The parents retained an attorney to represent them in these IEP meetings. Based on the records reviewed, meetings were held on []

III. Analysis

A. Discrimination against the Student in the Athenaeum program

The complainant alleged that the Academy denied the Student equal access to its afterschool program, Athenaeum. The Academy asserted to OCR that Athenaeum is not a program of the Academy but is rather a program of Great Hearts Arizona, a separate legal entity. OCR determined that neither Athenaeum nor Great Hearts Arizona are recipients of federal financial assistance or public entities; as a

result, OCR does not have personal jurisdiction over these entities under Section 504 or Title II. However, OCR does have jurisdiction to consider whether the Academy provides significant assistance to an entity alleged to have discriminated against its students. If a recipient such as the Academy provides significant assistance to an outside entity, and the entity is shown to have discriminated against the recipient's students on the basis of disability, the recipient must take steps to obtain compliance from the outside entity or terminate its assistance. A recipient that does not do so violates Section 504 and Title II.

Recipients that offer extracurricular activities (as well as entities that receive significant assistance from a recipient) must do so in such manner as is necessary to afford qualified students with disabilities an equal opportunity for participation. This includes making reasonable modifications and providing those aids and services that are necessary to ensure an equal opportunity to participate, unless the recipient can show that doing so would be a fundamental alteration to its program.³ In considering whether a reasonable modification is legally required, the recipient must first engage in an individualized inquiry to determine whether the modification is necessary.

Prior to the conclusion of our investigation, the Academy notified OCR that Athenaeum had expressed an interest in modifying its policies to address any potential compliance concern with regard to how it provides accommodations to participants with disabilities.⁴ OCR confirmed that Athenaeum has now revised its policies to omit the language regarding the unavailability of 1:1 aides and toileting assistance as accommodations. Athenaeum also removed language that would potentially dissuade a parent from requesting an accommodation for their disabled child. Finally, Athenaeum added language inviting parents to let them know if a child needs accommodations to participate in the Athenaeum program.

OCR finds that this policy modification resolves the potential compliance concern. In reaching this conclusion, OCR notes that the events regarding the

Student's removal from Athenaeum in [] were untimely when this complaint was filed. The Academy and Athenaeum have represented to OCR that the Student was voluntarily removed from Athenaeum by his parents following the April 2019 incident and is not prohibited from attending. The Student is able to re-enroll in Athenaeum and may request accommodations if necessary.⁵

Based on the information showing that any potential compliance concern has been resolved, we are dismissing this allegation pursuant to Section 108(k) of OCR's Case Processing Manual, which states that OCR will dismiss an allegation when it obtains credible information indicating that the allegation is currently resolved. Because any potential compliance concern was resolved in this manner, OCR is not making a finding about whether the Academy provides significant assistance to Great Hearts Arizona and/or Athenaeum, or whether any of these entities discriminated on the basis of disability.

B. Retaliation

The complainant alleged that the Academy retaliated against the Student's mother by banning her from the school premises. OCR considered both whether Athenaeum retaliated against the Student's mother, as well as whether the Academy itself retaliated against the mother in connection with the "no trespass" order.

1. Did Athenaeum retaliate?

If the Academy provides significant assistance to Athenaeum, it has an obligation to ensure that Athenaeum does not retaliate against its students who participate in the program. However, OCR finds that it is unnecessary to make a finding regarding the provision of significant assistance from the Academy to Athenaeum in this context. Even if we presume that the Academy does provide significant assistance, we were unable to establish that Athenaeum retaliated against the Student's mother. While it is clear that Athenaeum subjected the mother to an adverse action (calling police, requesting a no trespass order), OCR determined that the mother did not engage in

protected activity of which Athenaeum would be aware. As described further below, the protected activity occurred in the context of the IEP process, which did not involve Athenaeum staff. Because the Athenaeum staff members responsible for the adverse action would not have had knowledge of the protected activity, OCR determined that Athenaeum did not engage in prohibited retaliation.

2. Did the Academy retaliate?

While we determined that Athenaeum did not engage in prohibited retaliation when it called the police or requested a "no trespass" order, we went on to consider whether the Academy itself engaged in retaliation through its own actions in enforcing the order.

(a) Adverse action caused by recipient

The record indicates that the mother experienced an adverse action when the Academy prohibited her from being present on campus for any purpose, beginning on [] and continuing for at least six months. The mother was not permitted to visit campus for an IEP meeting, and she was not allowed to drive her car onto the premises to drop the Student off for school or pick him up. While the Academy attempted to make alternate arrangements for her participation in an IEP meeting, the Academy did not consider any alternate arrangements to facilitate getting the child to school. While the Academy asserts that this was the result of either the mother's actions during the [] incident, or the result of Athenaeum staff requesting a no trespass order that encompassed Academy's facilities, OCR nevertheless finds that the Academy took action on its own to prohibit the mother from accessing its facilities.

(b) Protected activity

While we accept the Academy's position that the mother was not engaged in protected activity during the [] incident, we find that she consistently engaged in activity protected by Section 504 and Title II through her advocacy for the Student in the IEP process, including her participation in meetings in which she expressed disagreement with the

Academy's decisions regarding the Student's IEP, including an IEP meeting held on [] She also engaged in protected activity when she filed a previous complaint with OCR, which was ongoing at the time of the incident and when the "no trespass" order was imposed.

(c) Causal connection

In a retaliation investigation, for the purposes of the prima facie case, OCR looks at the facts as a whole and broadly construes whether there is some evidence of a causal connection. Because direct evidence of a causal connection is rarely available to prove retaliatory motive, in most circumstances OCR examines all available circumstantial evidence.

The time span between when the individual engaged in a protected activity and when the recipient took the adverse action could, standing alone or in conjunction with other evidence, establish that the adverse action was taken because of the protected activity. There is no specific time period within which a recipient's adverse action must occur in order to establish causation. OCR follows the general principle that as the time period between the protected activity and the adverse action increases, the likelihood that there is a causal link between these two activities decreases. If the action happened very close to the protected activity, proximity in time could, standing alone, establish the causal connection.

In this case, OCR determined that there was very close proximity in time between the mother's last protected activity and the beginning of the adverse action. The parents (along with their counsel) participated in an IEP meeting held on [] Both the PWN issued after the meeting, as well as our interview with the Headmaster, confirmed that the parents disagreed with decisions made during the meeting, specifically related to the parents' desire for greater inclusion, along with a request for an inclusion specialist, which the team rejected.

The incident in Athenaeum occurred on [] and the record indicates that the following day the Academy made the determination that the mother

would not be allowed on the premises. Because only six days elapsed between the last protected activity and the beginning of the adverse action, OCR finds that the close proximity in time establishes a causal link for the purposes of the prima facie case.

(d) Legitimate, non-retaliatory reason

Having established a prima facie case, OCR next determines whether the Academy has a facially legitimate, non-retaliatory reason for the adverse action. Although the Academy's response does not specifically identify a legitimate, non-retaliatory reason, OCR can infer from its response that the Academy believed it was acting in response to a legitimate "no trespass" order issued by the local police department, at the request of Athenaeum staff, and that it was required to take the action it did in response to that order.

OCR examined the record to determine whether that reason was a pretext for discrimination. While it is unclear from the record what legal effect a verbal "no trespass" directive from a police officer has⁶ OCR determined that the Academy's Headmaster had a sincere belief that she was required to enforce the order by prohibiting the mother from the Academy's premises. OCR did not find any Academy policies related to the enforcement of this type of order, or regarding the removal of parents from the Academy's premises, so we are unable to assess whether the Academy followed its own policies in this instance. Additionally, we asked the Headmaster to tell us about any other instances involving parents with "no trespass" orders, and she reported that there have been no other instances during her tenure as Headmaster. As a result, we were unable to compare the treatment of the mother to the treatment of other parents in similar situations. We did not find any other evidence to suggest that the Academy's actions were a pretext for retaliation.

OCR applies a preponderance of the evidence standard to determine whether the evidence gathered during an investigation is sufficient to support a particular conclusion. Specifically, OCR examines the

evidence in support of an against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion. OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegation. In this case, because OCR found the statements of the Headmaster to be credible, and we did not find other evidence to support a retaliatory motive, we could not establish by a preponderance of the evidence that the Academy retaliated against the Student's mother by enforcing the "no trespass" order. Accordingly, we conclude that there is insufficient evidence to find that the Academy retaliated against the Student's mother as alleged.

IV. Conclusion

With regard to the allegation of retaliation for which OCR found insufficient evidence of a violation, the complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

This concludes OCR's investigation of this 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 a complaint alleging such treatment. The complainant may also file a private suit in federal court whether or not OCR finds a violation.

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, we 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.

If you have any questions, please do not hesitate to contact Rebecca Tanglen, the attorney assigned to this complaint, at (303) 844-0434 or by email at rebecca.tanglen@ed.gov. You may also contact me at (303) 844-5942.

¹As described later in this letter, the Academy denies that Athenaeum is a program of the Academy.

²The [] version of the form stated that a reasonable accommodation "cannot include a 1:1 aide." The [] version added the language "provided by Athenaeum." This implies that a 1:1 aide provided by the family could be a reasonable accommodation.

³See Dear Colleague Letter, issued by Acting Assistant Secretary Seth Galanter on January 25, 2013. This document specifically addresses extracurricular athletics, but the principles may be applied to other extracurricular offerings of a recipient.

⁴Neither the Academy nor Athenaeum concede that the Academy provides significant assistance to Athenaeum, or that either entity discriminated on the basis of disability. OCR is not reaching a finding on either of those issues.

⁵OCR cannot say with certainty whether a 1:1 aide is necessary to allow the Student to participate in

the Athenaeum program, as that is the type of individualized inquiry we expect a recipient to engage in, based on a student's individual needs.

⁶We note that the "no trespass" order was not an order that involved a judicial process, such as a restraining order or protective order.