



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 12, 2017

Dr. Andres Lewis  
Executive Director  
Advanced Math & Science Academy Charter School  
201 Forest Street  
Marlborough, MA 01752

Re: OCR Case No. 01-16-1309  
Advanced Math & Science Academy Charter School

Dear Dr. Lewis:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Advanced Math and Science Academy (AMSA) in which the Complainant alleged that AMSA discriminated against students on the basis of disability and national origin. The Complainant alleged that, during the 2015-2016 school year, AMSA discriminated against students on the basis of disability by failing to properly evaluate them to determine whether they required special education or related services in order to obtain a free appropriate public education (FAPE) (Allegation 1). The Complainant also alleged that AMSA discriminated against students on the basis of national origin by failing to consider the language needs of each student as a part of the evaluation process to determine whether they required special education or related services in order to obtain a FAPE (Allegation 2).<sup>1</sup>

As explained further below, before OCR completed its investigation, AMSA expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department, and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public educational institutions. OCR also enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of

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<sup>1</sup> The Complainant also alleged that AMSA retaliated against her for raising the issues identified above with administrators at AMSA, by refusing to renew her contract XXXXX. This allegation was administratively closed on March 23, 2017.

race, color or national origin in programs and activities receiving financial assistance from the Department. As a recipient of financial assistance from the Department and a public entity, AMSA is subject to these laws.

### **Legal Standards**

#### ***Allegation 1***

The regulation implementing Section 504, at 34 C.F.R. § 104.4, provides that students with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, be afforded an opportunity that is not equal to that afforded others, or otherwise be subjected to discrimination. The regulation further provides that a recipient may not otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

More specifically, the regulation implementing Section 504, at 34 C.F.R. § 104.33, requires recipient school districts to provide a FAPE to each qualified student with a disability who is in the recipient's jurisdiction. An appropriate education for purposes of a 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, including behavioral needs, of students with disabilities as adequately as the needs of non-disabled students are met. To satisfy the FAPE requirements described in the Section 504 regulation at 34 C.F.R. §§ 104.35 and 104.36, recipient school districts must comply with several evaluation and placement requirements, afford procedural safeguards, and inform the student's parents or guardians of those safeguards. As the implementing regulation for Title II explicitly states that it does not set a lesser standard than Section 504, *see* 28 C.F.R. § 35.102, OCR interprets Title II to impose the same legal obligations as those imposed by Section 504.

#### ***Allegation 2***

Title VI broadly prohibits districts from subjecting students to discrimination on the basis of race, color, or national origin. The Title VI implementing regulation at 34 C.F.R. § 100.3(a) provides that no recipient of federal financial assistance shall exclude a person from participating in or deny the person the benefits of, or otherwise subject a person to discrimination under any program, on the basis of race, color, or national origin. More specifically, the Title VI implementing regulation at 34 C.F.R. § 100.3(b)(1) prohibits a recipient from discriminating against any person on the basis of race, color, or national origin by providing different services or benefits or by providing services or benefits in a different manner from those provided to others in similar circumstances.

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court determined that where the inability to speak and understand the English language excludes national origin minority students from effective participation in educational programs, districts must take affirmative steps to ensure that such English learner students can meaningfully participate in the district's educational programs and services in order to comply with Title VI.

A recipient may not assign students to special education programs on the basis of criteria that essentially measure and evaluate English language skills. As described in the previous section,

the regulation implementing Section 504 provides that a recipient that operates a public elementary or secondary education program shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in a regular or special education program. Accordingly, under Title VI and Section 504, a district must employ standards and procedures for the evaluation and placement of language-minority students that reliably identify students' educational disabilities, rather than the students' English proficiency skills.

### **Summary of Preliminary Investigation**

During the course of OCR's investigation, OCR reviewed documents provided by AMSA, including AMSA's policies and procedures for the identification, evaluation, and placement of students under Section 504; evaluation-related policies and procedures specifically for students who may have limited English proficiency; 504 grievance procedures; and a list of students who were evaluated during the 2015-2016 year for special education (SPED) services, including information about what language the evaluations were conducted in. OCR also interviewed the Complainant and several employees of AMSA, including the executive director and the SPED director. Prior to OCR obtaining additional information to complete its investigation, AMSA requested to engage in a voluntary resolution of this matter.

OCR's preliminary investigation revealed the following information: prior to the start of the 2015-2016 academic year, several key members of the AMSA staff left, including the director of the SPED department, the English language learner (ELL) coordinator, and approximately three special education liaisons. In addition, the 504 coordinator went on leave starting in September 2016. The turnover in personnel caused significant challenges for AMSA, including in the areas of special education services, ELL services, and Section 504 compliance.

Documentation provided by AMSA indicates that 28 students were evaluated for SPED services during the 2015-2016 academic year. All of those evaluations were conducted in English, based on a determination by AMSA that none of those students had language needs that would warrant conducting the evaluations in another language. However, based on interviews OCR conducted with AMSA staff, OCR is concerned whether there were deficiencies in the identification of students who needed ELL services, which in turn may have affected any evaluations for special education services for those students. OCR is also concerned whether AMSA staff are fully aware of the requirements established by Section 504 regarding AMSA's obligations to adopt and implement grievance procedures for reporting and investigating allegations of disability harassment or discrimination.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, AMSA expressed an interest in resolving this complaint. Subsequent discussions between OCR and AMSA resulted in AMSA signing the enclosed Resolution Agreement on August 23, 2017, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor

AMSA's implementation of the Agreement until the AMSA is in compliance with its terms. Failure to implement the Agreement could result in OCR reopening the complaint.

**Conclusion**

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address AMSA'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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that AMSA 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.

If you have any questions, you may contact civil rights attorney Benita Brahmhatt at (617) 289-0055 or by e-mail at [Benita.Brahmbhatt@ed.gov](mailto:Benita.Brahmbhatt@ed.gov).

Sincerely,

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: Joseph Bartulis, Jr.