UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

August 20, 2026

Sent via email only to: [redacted content]

Melissa M. Grand
Baker Donelson Bearman Caldwell & Berkowitz, PC

Re: OCR Complaint No. 06211277
Advantage Charter Academy

Dear Attorney Grand:

The Office for Civil Rights (OCR) in the U.S. Department of Education (Department) received a complaint against your client, Advantage Charter Academy (Academy), alleging discrimination against the Complainant's daughter (Student) based on disability. Specifically, the complaint alleged the Academy discriminated against the Student, on the basis of disability, by failing to provide the Student with her requisite accommodations, treating the Student differently than students without disabilities by placing her in virtual learning, and failing to respond promptly and effectively to disability harassment of the Student during the 2020–2021 school year. This letter is to acknowledge that the Academy voluntarily entered into a Resolution Agreement (Agreement) resolving the complaint. This decision is explained below.

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, prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance. OCR has Section 504 enforcement jurisdiction over recipients of federal financial assistance from the U.S. Department of Education. 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, prohibit discrimination against qualified individuals with disabilities by public entities. OCR has Title II enforcement jurisdiction over public education systems and institutions.

As a recipient of federal financial assistance from the Department and a public entity, the Academy is subject to these laws, and to OCR's jurisdiction. Additional information about the laws OCR enforces is available on our website.

In response to the complaint, OCR investigated:

1. Whether the Academy discriminated against the Student on the basis of disability by failing to provide regular or special education and related aids and services deemed necessary to meet the Student's individual educational needs (e.g., extended time for classroom work, homework, and projects, breaks during work periods and between tasks, increased time for completing tests, etc.), and thereby denied the Student a free appropriate public education during the 2020–2021 school year, in violation of Section

504 and Title II and their implementing regulations, at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, respectively;

2. Whether the Academy treated the Student differently based on disability in the context of an educational program or activity when it excluded the Student from on-campus instruction from February 24, 2021, until March 22, 2021, without a legitimate, nondiscriminatory reason; and thereby, interfered with or limited the ability of the Student to participate in or benefit from the services, activities or privileges provided by the Academy during the 2020–2021 school year, in violation of Section 504, at 34 C.F.R. § 104.4, and Title II, at 28 C.F.R. § 35.130; and

3. Whether the Academy discriminated against the Student based on disability by failing to take prompt and effective responsive action to address disability-based harassment of the Student by other Academy students, which was sufficient to constitute a hostile environment, of which it had or should have had notice during the 2020–2021 school year, in violation of Section 504 and Title II, at 34 C.F.R. § 104.4, and 28 C.F.R. § 35.130, respectively.

During the investigation, OCR reviewed documents and information provided by the Complainant and the Academy.

Legal Standards

Free Appropriate Public Education

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) 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. 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 FAPE to the same extent required under the Section 504 regulation.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a school district has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services to determine whether this failure resulted in a denial of a FAPE.

Different Treatment

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.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 school

district's programs or activities on the basis of disability. Title II contains a similar provision at 28 C.F.R. § 35.130(a).

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the school district treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the school district had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the school district is a pretext, or excuse, for unlawful discrimination.

Disability Harassment

Disability-based harassment that creates a hostile environment is a form of disability discrimination. The Section 504 regulation, at 34 C.F.R. § 104.7, requires schools to provide a prompt and equitable grievance process to address complaints of disability discrimination.

A school's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the school's programs, activities, or services.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment typically must consist of more than casual or isolated incidents to constitute a hostile environment.

When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Summary of Preliminary Investigation

During the 2020–2021 school year, the Student attended the [redacted content] at the Academy. Documentation received from the Academy reflects that it determined the Student was a qualified individual with a disability. Based on this determination, the Academy prepared an

Individual Accommodation Plan (IAP) for her on September 30, 2020, that remained in effect during the timeframe implicated by the complaint allegations. The IAP states that the Student was to receive the following aids and services in Math, Reading, Writing, Science, English, and Social Studies:

- Preferential seating;
- Small group instruction;
- Teachers "stand near the Student when giving directions/redirection";
- Extended time for classroom work, homework, and projects;
- Breaks during work periods or between tasks;
- Increased time for written projects;
- Small group testing; and
- Increased time for completion for tests and quizzes.

Information from the Academy reflects that the Academy initially placed the Student in an in-person, rather than a virtual, learning environment.

On February 23, 2021, the Student and two other Academy students (Student 1 and Student 2) [redacted content] (February 23rd Incident). The Academy removed the Student from the campus and placed her in virtual learning on February 24, 2021. According to the Academy, this decision was based on initial reports that the Student instigated the February 23rd Incident.

The Complainant alleged that the Academy failed to provide the Student with her Section 504 accommodations; including extended time for classroom work, homework, and projects; breaks during work periods and between tasks; and increased time for completing tests; while the Student was in virtual learning from on or about February 24, 2021—the first day the Student was placed in virtual learning—until the Student returned to in-person learning on March 22, 2021. The Complainant questioned why the Student, who had a disability, had to learn virtually when the Student previously had issues with virtual learning. The Complainant also stated that the Student could not access her virtual classes.

While the Student was in virtual learning, the Complainant raised concerns with various Academy staff regarding both the lack of aids and services for the Student and technical issues with accessing her education virtually. On March 17, 2021, the Academy's Interim Principal advised the Complainant that the Student's Section 504 accommodations could be provided virtually. Otherwise, OCR did not receive evidence reflecting that the Academy substantively addressed the Complainant's concerns during this time. The Academy acknowledged to OCR that it did not re-evaluate the Student while she was in virtual learning.

While the Academy investigated the February 23rd Incident, Student 1 and Student 2 continued in-person learning. At the end of the investigation, which concluded on March 5, 2021, the Academy Investigator determined that the Student, Student 1, and Student 2 were all involved in the February 23rd Incident; but she could not determine who instigated it. The Academy's disciplinary records reflect that the Principal contacted the parents of Student 1 and Student 2 to inform them of the disciplinary sanctions for their students, which consisted of a 3-day, out-of-

school suspension for each student, which they completed on March 15, 2021. The Academy's documentation reflected that neither Student 1 nor Student 2 is an individual with a disability.

The Academy did not suspend the Student from school for 3 days or otherwise create a disciplinary record for the Student regarding the February 23rd Incident. Per the Academy, it "voided" the Student's punishment because she had been in virtual learning from February 24, 2021, until March 22, 2021. The Complainant contended that the Academy discriminated against the Student based on disability when it moved the Student to virtual instruction with no explanation but allowed Student 1 and Student 2 to continue receiving in-person instruction while the Academy investigated the February 23rd Incident. Additionally, the Academy provided the parents of Student 1 and Student 2 notice of its investigative findings on March 5, 2021, but did not provide the Complainant such notice until March 23, 2021.

On February 24, 2021, the Complainant emailed various staff for National Heritage Academies, which operates the Academy, to complain of bullying at the Academy. In her email, the Complainant recounted her version of the February 23rd Incident and alleged that, during the Incident, Student 1 called the Student "[redacted content]," to bully the Student because of her [redacted content], which can cause [redacted content]. She also alleged that Academy students had bullied the Student for three years and called her "[redacted content]." The Academy's Parent Relations Specialist forwarded the Complainant's email to the Principal on February 24, 2021.

The Academy denied receipt of any prior reports of disability harassment from the Student. The Academy also asserted that it responds to student reports of harassment in accordance with its policies and procedures for investigating harassment allegations. OCR reviewed documentation from the Academy concerning the Complainant's email dated February 24, 2021. OCR confirmed with the Academy that it did not investigate the Complainant's allegation of disability harassment.

At the time of the resolution of this complaint, the Academy confirmed that it remains a Kindergarten through Eighth Grade school. Further, the Academy confirmed that the Student is no longer enrolled or eligible for enrollment at the Academy based on her age.

Analysis and Conclusion

With respect to Allegation 1, OCR has concerns that the Academy failed to provide the Student with her Section 504 accommodations while the Student was placed in virtual learning on or about February 24, 2021, until the Student returned to in-person learning on March 22, 2021. Relatedly, OCR has concerns regarding the Academy's failure to re-evaluate the Student after it changed the Student's placement from in-person learning to virtual learning.

Regarding Allegation 2, OCR has concerns that the Academy treated the Student less favorably than Student 1 and Student 2 when it placed the Student in virtual instruction for eighteen days immediately after the February 23rd Incident, but allowed Student 1 and Student 2 to remain on campus. Furthermore, while the Academy provided the parents of Student 1 and Student 2 notice of its investigative findings on March 5, 2021; it did not provide the Complainant such notice until March 23, 2021.

As to Allegation 3, OCR has concerns that the Academy's decision not to investigate, or otherwise respond to, the Complainant's report of disability harassment did not comply with the requirements of Section 504 and Title II.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's Case Processing Manual, the Academy expressed an interest in resolving this complaint, and OCR determined that a voluntary resolution is appropriate. Accordingly, the Academy signed the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the Academy's implementation of the Agreement until the Academy has fulfilled its terms.

This concludes OCR's investigation of the complaint. When OCR determines the Academy has fully implemented the terms of the Agreement, OCR will close this complaint. If the Academy fails to carry out the Agreement, OCR may resume investigating the complaint. OCR will not close the monitoring of the Agreement until OCR determines that the Academy has demonstrated compliance with all the terms of the Agreement and is in compliance with Section 504, Title II, and their implementing regulations, which were at issue in this complaint.

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 OCR policy. 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 regardless of whether OCR finds a violation.

The Academy may 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. Complaints alleging such retaliation may be filed 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, 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.

If you have any questions about this letter, please contact Attorney Tanya Oliveira at tanya.oliveira@ed.gov.

Sincerely,

/s/

Cristin Hedman Sparks
Supervisory Attorney

Enclosure: Executed Voluntary Resolution Agreement