



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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September 30, 2015

Superintendent Kelly Wade  
Noah Webster Basic School  
7301 East Baseline Road  
Mesa, Arizona 85209

Re: Noah Webster Basic School  
OCR Case Number: 08-15-1156

Dear Superintendent Wade:

We completed our investigation of case number 08-15-1156 and are notifying you of our decision. The Complainant alleged Noah Webster Basic School (School) discriminated against the Complainant's son (Student) on the basis of disability. Specifically, the Complainant alleged that the School denied the Student a free appropriate public education (FAPE) by failing to implement his son's Section 504 Plan and imposing a significant change in the Student's placement without a reevaluation by implementing a long-term suspension or expulsion.

We are responsible for enforcing Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs or 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 in programs or activities of a public entity. The School receives Federal financial assistance from the Department and is a public entity, and is therefore subject to these laws and regulations.

During the investigation, we carefully reviewed documentation provided by the District and Complainant. We interviewed the Complainant, XXXX, the Principal, and the Superintendent.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion. We found by a preponderance of the evidence that the School failed to comply with the regulation as alleged. This letter explains our findings.

### **Failure to Implement Section 504 plan**

The School is a charter school serving pre-K through sixth grade. The Student attended the School since first grade and was in fifth grade when the alleged events occurred.

The regulation implementing Section 504 at 34 C.F.R. § 104.33, requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the educational needs of individuals with disabilities as adequately as the needs of individuals without a disability are met and that satisfy the requirements of the regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36 (educational setting, evaluation and placement, and procedural safeguards).<sup>1</sup>

The Student had since 2011, a Section 504 plan to provide a FAPE for Attention Deficit Hyperactive Disorder (ADHD), inattentive type. The Section 504 plan in effect during the Student's last year listed several aids and services under the heading "Possible Interventions/Modifications: (check all that apply)." The list of possible modifications checked for the Student include: "implement behavior contracts," "shorten/simplify assignments," and "extended time for assignments/tests."

The Complainant alleged that the School failed to implement certain portions of the Section 504 plan. Specifically, he alleged that the School:

- (1) did not consistently check at the end of the day to make sure the Student was bringing home his homework,
- (2) used a peer instead of a staff member to make sure the Student was taking home his homework,
- (3) did not consistently give the Student additional time to complete his work, and
- (4) did not consistently grade the Student only on the work he completed.

According to the Complainant, sometimes the planner showed that not all of the Student's homework was turned in. The Complainant believes this shows that the School was not properly checking to make sure that all of the Student's homework had been sent home with him. The Complainant further stated that copies of the Student's homework would show that the School was counting unfinished work against the Student. With regard to the Section 504 plan provision of "extended time for assignments/tests," the Complainant explained to OCR that the Student was not given additional time consistently and that he was to only be graded on the work that he was able to complete, but the School started penalizing him for not finishing. The Complainant further explained that when the Student was eventually expelled for his accumulation of points, most of the points should not have been counted because they related to the Section 504 plan. Specifically, he said that the Student should not have had any homework write-ups and that there should have been accommodations made for homework. The Complainant further explained that the School was supposed to give the Student extended time on tests or in-class work that was timed, or the Student was to be graded on only the work he turned in, or they were to give him

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<sup>1</sup> Title II provides no lesser protections than Section 504, which provide more specific requirements. Accordingly, we cite primarily to the Section 504 regulation in this letter.

extra time so he could complete all of the problems. He asserted that this was maybe happening half the time for the Student on tests, but with homework the School was counting the problems he did not complete against his score. He summarized by noting that the Student's Section 504 plan says he is supposed to have extended time for work and that if the Student had incomplete homework, he should have been given time to complete it.

The School denied that it failed to implement the Section 504 plan. OCR received a copy of the Student's file, including his Section 504 plan, evaluation, documentation of demerit points, notes from the manifestation determination meeting, and notes from the expulsion hearing.

The Section 504 plan includes "Shorten/Simplify assignments" and "Extended time for assignments/test." In writing and in interviews, the School acknowledged that homework was not shortened, simplified, and that the student was not given extended time to complete homework; the School contends these modifications apply only to in-class work. The Principal and teacher said that the provision for extra time referred only to in-class work, not homework, and that this was implemented consistently. As written, however, the Section 504 plan does not limit the scope to in-class assignments. None of the School's witnesses was aware of any requirement to grade the Student only on work he completed, and such a requirement is not stipulated in the Section 504 plan.

We reviewed the School's policy regarding homework for guidance<sup>2</sup> on how to view the language in the Student's Section 504 Plan and learned that the School characterizes homework as an "assignment." Specifically, the policy states that, "homework will be two worksheets or assignments the teacher has chosen that students should do independently for extra practice."

We find by a preponderance of the evidence that, because the Student was held accountable for incomplete homework<sup>3</sup>, it is reasonable to conclude that homework is included under the term "assignments" the same as in-class work. In the absence of limiting language in the Section 504 plan, we find sufficient evidence to conclude that the School failed to shorten, simplify, and extend time for assignments, specifically homework, as required in the Section 504 plan.

The Section 504 plan includes the requirement for "Implement behavior contracts." The Principal informed us that no behavior contract was ever created. The Student's teacher said the behavior contract modifications referred to her five-point "ticket system" that she used in her class for behavioral issues. The teacher used this system for students in general, not just the Student. Because the teacher's "ticket system" is not an individualized modification, we do not find this to be the behavior contract specified in the Section 504 plan. We conclude that no behavior contract was developed and implemented, specific to the needs of the Student, as required by the Section 504 plan.

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<sup>2</sup> The policy being referred to is the one the District relied upon to issue demerits to the Student for missing or incomplete homework and other conduct.

<sup>3</sup> As discussed under the second issue, the Student's failure to complete homework accounted for nearly one-half of the basis for his expulsion.

We do not reach a finding regarding the implementation of other parts of the Section 504 plan that address daily checks of the homework to be brought home and the reliance on a student peer. Nevertheless, OCR finds sufficient evidence to conclude that the School failed to implement the Student's Section 504 plan in that (1) assignments, specifically homework, were not consistently shortened, simplified, or allowed extend time, and (2) behavior contracts were not implemented, resulting in the denial of a FAPE, in violation of 34 C.F.R. § 104.33.

### **Failure to Reevaluate Student Prior to Initiating a Significant Change in Placement**

The School has a 30-point system for discipline. Students accrue certain numbers of demerit points, depending on the infraction. Once a student reaches 30 points or more in a school year, the student is a candidate for expulsion. In the 2014-2015 school year, the Student accrued 33 points, 12 of which were for homework violations. The rest of his demerits were for behavioral issues. The Student's last violation was March 3, 2015. In reviewing the Student's disciplinary file we noted that there was no mention of the Student receiving detentions after missing three assignments as required in the School's Homework Policy.

The School provided OCR a document entitled "Section 504 Manifestation Determination Review Documentation," dated March 9, 2015. The meeting was attended by the Superintendent, the Principal, the teacher, the Complainant, and the Student's mother. The document indicates that medical documentation from the Student's doctor was considered, and this documentation was included in the data response. The document states the team considered "current evaluation and diagnostic results," "current academic performance," "attendance records," "disciplinary records," "staff reports," "information supplied by parents," and "504 Accommodation plan." Boxes marked "yes" are included next to the following statements: "services, including behavior interventions, have been provided according to the current 504," "the student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to disciplinary action," and "the student's disability did not impair the student's ability to control the behavior subject to disciplinary action." A note at the bottom of the document states that all three of these statements must be marked "yes" for the team to determine that the behavior of the student was not a manifestation of the student's disability.

There is an additional document dated March 9, 2015, entitled "Section 504 – Meeting Summary." It states that the purpose of the meeting is to conduct a manifestation determination. There are notes of verbal statements by the Complainant, the Student's mother, and XXXX. The end of the document states that the team determined that services have been provided according to the current Section 504 plan and that the Student's disability did not impact his ability to understand the consequences of his behavior or to control his behavior. There are no notes regarding the specifics of the Section 504 plan. The expulsion hearing was held later the same day, and the board voted to expel the Student, per the School's discipline policy. We conclude that the expulsion resulted in a significant change to the Student's placement.

Contrary to longstanding OCR policy and the requirement at 34 C.F.R. § 104.35(d) requiring the periodic reevaluation of students who have been provided special education and related services, the team assembled to determine whether the Student's behavior was caused by his disability relied on medical documentation from the Student's doctor that was more than three years old.

Documentation provided to us by the School shows that two more current multidisciplinary psychoeducational evaluations of the Student had been conducted, but neither was cited in the “Section 504 Manifestation Determination Review Documentation,” or the “Section 504 – Meeting Summary.”

Contrary to our finding with respect to the implementation of the Section 504 Plan, the team concluded erroneously that the Plan had been fully implemented. Further, the modifications we found not to have been fully implemented related directly to the bases for the Student’s expulsion – completion of assignments and behavior.

OCR finds that the School failed to reevaluate the Student prior to a significant change in placement in that written documentation shows the School relied on a medical evaluation that was more than three years old when a current evaluation should have been pursued and did not explore sufficiently whether the current Section 504 plan had been appropriately implemented, in violation of 34 C.F.R. § 104.35.

### **Conclusion**

For the reasons explained, we determined that the evidence is sufficient to conclude that the School discriminated against the Student on the basis of disability with respect to the allegations. The School agreed to voluntarily resolve the violations found in this investigation and entered into a Resolution Agreement, signed September 30, 2015. OCR will closely monitor the District’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District’s policies and practices are administered in a nondiscriminatory manner. Once fully implemented, the Resolution Agreement will ensure the School’s compliance with the regulations as addressed in this complaint.

This letter addresses only the issues raised in this complaint and should not be interpreted as a determination of the School’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court regardless of whether OCR finds a violation.

Please be advised that the School 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 another complaint alleging such treatment.

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.

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.

If you have any questions or concerns, you may contact XXXX, Equal Opportunity Specialist, at XXXX, or me at 303-844-4506.

Sincerely,

/s/

Thomas E. Ciapusci  
Supervisory Team Leader

Enclosure: Resolution Agreement

cc (w/o enclosures): Diane Douglas, Arizona Superintendent of Public Instruction