



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

October 2, 2020

Jasmin Blackmar, President
TIMES² Academy Board of Directors
By *email*: jblackmar@times2.org

Re: Complaint No. 01-18-1046
TIMES² STEM Academy

Dear President Jasmin Blackmar:

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 TIMES² STEM Academy (TIMES²) (School). Specifically, the Complainant alleged that, during the XXXX-XXXX school year, the School failed to provide the Student with a free appropriate public education (FAPE) by not implementing accommodations required by the Student's Section 504 plan. As explained further 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 (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 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 Department. Because the School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Because OCR determined that it has jurisdiction and that the allegation was timely filed, OCR opened the following legal issue for investigation:

- Whether the School has denied the Student a FAPE by failing, during the XXXX-XXXX school year, to implement accommodations required by his Section 504 plan, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130.

Summary of Preliminary Investigation

The Student enrolled in TIMES², a charter school in Providence, Rhode Island, in XXXXXX XXXX, when he was beginning XXX XXXXX. He already had a Section 504 plan from his

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

prior school, which had been developed in XXXXXXXXXXXX XXXX. The parties agree that on XXXXXXX XXXX, the School convened a team meeting, at which the Complainant provided the Student's previous Section 504 plan, and a plan was created for the Student. The meeting was attended by the Complainant, the Principal, the Section 504 Coordinator, and one classroom teacher. The Complainant told OCR that she had no concerns with the School's implementation of the Student's Section 504 plan in the XXX XXXXX. However, the Complainant alleged that the Student's XXX XXXXX teachers refused or failed to implement the plan, and that as a result, the Student performed poorly academically.

On XXXXXXXXXXX XXXXX, when the Student was beginning XXX XXXXX, the School convened its first team meeting of that school year. The Complainant attended the meeting with the Interim Principal, the Section 504 Coordinator, the Director of Student Services, and the Student's English teacher. The Complainant told OCR that that it was her understanding that after this team meeting, the Section 504 Coordinator would explain to each of the Student's teachers the meaning of each provision and how each was to be implemented. The Section 504 Coordinator told OCR that at this meeting, the team revisited the Student's plan from the previous year and made no changes to the plan. She further explained that as the meeting was attended by only one of the Student's teachers, the Section 504 Coordinator provided copies of the plan to the Student's other teachers but she did not discuss the provisions or how they were to be implemented with them. She explained that implementation of Section 504 plans was not among her job duties, and that she did not monitor whether services from a Section 504 plan were being provided.

A team meeting was held on XXXXXXXXXXX XXXXX at the request of the Complainant. The meeting was attended by the Section 504 Coordinator, the School Nurse, and the Student's Science teacher, English teacher, and Math teacher. According to the meeting minutes, the team discussed the Student's progress and the Section 504 plan provisions regarding redirection, reminders, and breaks. In addition, according to the minutes, the Complainant was concerned with implementation of certain parts of the Section 504 plan, namely, the provision regarding the Student leaving class 10 minutes early.

Another team meeting was convened on XXXXX XXXXXXX at the request of the Student's father. This meeting was attended by the Student's father, the Section 504 Coordinator, the Director of Student Services, the School Nurse, and the Student's Social Studies teacher. According to the meeting minutes, the Student's father was concerned with the Student's failing grades. He requested XXXXXXXXXXXXXXXXXXXX so that he could help the Student with his assignments. The meeting notes state that the father would communicate with the XXXXXXXXXXXXXXX teacher directly.

1. Frequent Check-Ins for Understanding and Comprehension

The Complainant alleged that the School failed to implement the provision of the Section 504 plan requiring "frequent check-ins for understanding and comprehension." According to the Complainant, the check-ins were supposed to be during class to make sure that the Student understood the material and assignments and that he wrote down relevant information. The

Complainant alleged that the XXXXXXXXXX teacher would give assignments orally in class and would not check-in to see whether the Student had written down the assignment.

The Section 504 Coordinator acknowledged to OCR that the Complainant had repeatedly raised concerns that check-ins were not being provided in XXXXX, XXXXX, and XXXXX. OCR notes that the School provided Progress Reports from the Student’s XXXXXX teachers, dated variously December through February of the XXXX-XXXX school year, which list “frequent check-ins” as an accommodation to which the Student was entitled. The XXXXXXXXXX XXXXX team meeting minutes indicate that the XXXXX teacher remarked that the Student XXXXXXXXXXXXXXX. However, there is no other information in these progress reports, or elsewhere in the documentation provided by the School, from which OCR can infer whether and/or how this provision was implemented.

2. Utilize visual cues, redirection, and graphic organizers, as supports

The Section 504 plan also required the Student’s teachers to “[u]tilize visual cues, redirection, and graphic organizers, as supports.” The Complainant told OCR that this provision meant that teachers were supposed to give a visual cue to get the Student’s attention, for example by raising their hands, which would help redirect his attention to the task at hand, and to use graphic organizers to help him organize his thoughts. The Complainant alleged that this provision was not implemented by the Student’s XXXXXX and XXXXXX teachers, causing the Student to struggle in those classes and lose confidence.¹

When asked about this provision by OCR, the Section 504 Coordinator said that visual cues, such as a poster of a math formula, were often posted around classrooms and that teachers can direct students to those aids, and that graphic organizers were intended to help students structure writing assignments. The documentation provided by the School shows that this provision was listed as an accommodation in the progress reports for XXXXX, XXXXX, and XXXXX. In addition to listing the fact of this provision, these documents also appear to include some evidence of implementation and its positive impact on the Student: the XXXXXXXXXX XXXXX team meeting minutes state that the Science teacher reported that XXXXXXXXXXXXXXXXXXXXXXX.

3. Allow for movement/frequent breaks, as needed

The Complainant alleged that the School failed to implement the provision of the Section 504 plan which “[a]llow[ed] for movement/frequent breaks, as needed.” The Complainant stated that the Student needed to take breaks if he was feeling stressed or overwhelmed, and that this provision also allowed the Student to take tests in multiple sessions instead of in one sitting. The Complainant told OCR that at the XXXXXXXXXX XXXXX team meeting, it was discussed that the Student would go to the office of the XXXXXXXXXXXXXXX for breaks, that the XXXXX would keep records of the Student’s breaks, and that the Section 504 Coordinator would communicate that information to his teachers. The Complainant told OCR that at the team meeting, it was also discussed that because the Student felt uncomfortable asking for breaks, she

¹ The Student received a final grade of F for XXXXXX and a final grade of C- in XXXXXX. These were his two lowest grades in XXX XXXXX. He received C+’s in these classes in XXX XXXXX.

suggested that his teachers should ask him privately if he needed one; it was not clear from the information available to OCR if any decision on this point was made by the team. The Complainant told OCR that the Student had a short attention span, so when he was not provided breaks, he had additional difficulty concentrating. OCR notes that the minutes of the XXXXXXXX XXXXX team meeting state that the Student's XXXXX teacher noticed a XXXXXXXXXXXXXXXXXXXXXXXX.

The Section 504 Coordinator told OCR that sometimes students need breaks to expel energy, and that the Student could be allowed to stand at his desk or go to the bathroom. She noted that the Student could ask for a break, including during testing, or the teacher could suggest it if he was fidgeting. The Section 504 Coordinator told OCR that she would find the Student an alternative location for movement breaks; she did not mention to OCR the Complainant's understanding that the Student would go to the office of the XXXXXXXX. The Section 504 Coordinator also told OCR that other than the fact that the Student would need a pass to go to the bathroom or the nurse's office, there was no requirement that any breaks be documented.

The Section 504 Coordinator told OCR that she was not aware of any instances of teachers not providing breaks to the Student. OCR did find some evidence of breaks having been provided. For instance, as noted above, the XXXXXXXX XXXXX team meeting minutes indicate that the XXXXX teacher utilized breaks and also note that the XXXXX teacher remarked that the Student XXXXXXXXXXXX.

4. Utilize behavior chart and incentives

The Complainant told OCR that the Section 504 plan's requirement that teachers "[u]tilize behavior chart and incentives" was intended to address the Student's impulsive behavior and keep him on track. She noted that when the Student was in XXXXX, his teachers had created XXXXXXXXXXXX which he earned for staying on task and could use at the school store. The Complainant alleged that in the XXXX-XXXX school year, no behavior chart or incentive system was used for the Student, and teachers would instead, variously, email the Complainant about his behavior, send a referral down to the dean of students, or even remove him from the classroom. The Complainant alleges that the failure to implement this provision left the Student without guidance as to behavior expectations and resulted in him being removed from class and missing instructional time.

The Section 504 Coordinator told OCR that she was not aware of a behavior chart or incentive system being used for the Student during the XXXX-XXXX year. OCR also notes that in the list of accommodations to be provided to the Student in the Progress Reports provided by various of the Student's teachers, there is no mention of a behavior chart or incentive system. The School also provided e-mails from some of the Student's teachers to the Complainant which reference the Student's behavior, but do not mention use of a behavior chart or incentive system.

5. Allow for extended time on assignments and assessments

The Complainant alleged that several of the Student's teachers failed to implement the provision "[a]llow[ing] for extended time on assignments and assessments." The Complainant told OCR

that the teachers were supposed to provide extra time for all assignments and projects and time-and-a-half for tests, without the Student having to request it. The Complainant alleged that after the Student would fail an assignment, she would inquire as to whether he had been provided extra time and only then would it be given.

OCR did find some evidence of the implementation of this term. The School provided at least two XXXXX Progress Reports (XXXXXXXX X and XXXXXXXX X XXXX), that mention that extended time was provided. The Section 504 Coordinator stated that the Student always received extended time for tests and that his parents never complained otherwise to her. However, OCR notes that the Section 504 Coordinator also told OCR that she did not have information from classroom teachers as to whether this term was actually implemented, especially for assignments, so it is not clear the basis for the Section 504 Coordinator's belief that that the term was being implemented. Further, the Section 504 Coordinator had no information about whether the Student was required to ask for additional time or whether it was to be provided automatically.

6. Utilize agenda for assignment management/parent communication

The Section 504 Plan states: "Utilize agenda for assignment management/parent communication." The Complainant stated that every student was provided a school agenda book with a calendar inside. The Complainant stated that in XXX XXXXX, each teacher would update the Student's school agenda/calendar daily with his assignments, whether they were completed, and what he needed to work on, which helped him stay organized. The Complainant stated that the XXX XXXXX team always checked his agenda and emailed her regularly so that she could assist him with his work. According to the Complainant, when the Student was in the XXX XXXXX, only his XXXXX teacher followed this approach. In addition, the Student's XXXXX regularly sent emails concerning assignments to the Student's father. Otherwise, the Complainant told OCR that the Student's teachers did not provide regular communication about the Student's assignments. Rather, the messages she received focused on behavior. The Complainant alleges that the lack of agenda-related communications affected the Student's understanding of what he needed to do, and hindered his parents' ability to be able to help him complete his assignments, and thus he fell behind that school year.

The Section 504 Coordinator told OCR that the purpose of this provision was to provide parents notes from teachers regarding schoolwork and to function as a communication log. The Section 504 Coordinator stated that the Student's XXXXX teacher used Google Classroom in this fashion but that she was unaware if other teachers did the same. OCR notes that the XXXXXXXX and XXXXXXXX XXXX Progress Reports from the Student's XXXXX teacher each include a reference to "XXXXXXXXXXXXX;" the Section 504 Coordinator explained to OCR that assignments and class syllabi are uploaded to these platforms and that parents have access. Both Progress Reports also state: "XXXXXXXXXXXXXXXXX."

7. Give [the Student] notice 10 minutes prior to transition to next class

The Student's Section 504 plan requires that the Student be given "notice 10 minutes prior to transition to next class." The Complainant explained to OCR that when the Student was in

XXXXX, towards the end of each class the Student's teachers would check his agenda and make sure he had his laptop. This 10 minutes' buffer time allowed the Student to figure out which class he had next, gather needed materials, go to his locker, and get to class on time. The Complainant alleged that in XXX XXXXX, however, the teachers released the Student at the same time as other students. The Complainant stated that without this lead time, the Student was less organized, more frustrated, and had more difficulty focusing.

OCR notes that while the extra 10 minutes was listed in the Section 504 plan, it is not mentioned in any of the Progress Reports or daily email updates by certain of the Student's teachers in the documents provided to OCR by the School. The XXXXXXXX XXXXX team meeting notes contain a brief mention of this provision, stating "[The Complainant] addressed the 10 minutes early between classes." The Section 504 Coordinator admitted to OCR that the Complainant had expressed frustration that this provision was not being implemented, causing the Student to be late to his next class.

Analysis

OCR does not have sufficient evidence at this time to determine whether the School discriminated against the Student on the basis of disability in violation of Section 504 and Title II. OCR's investigation to date revealed conflicting evidence as to whether the School may have failed to fully implement several provisions of the Student's Section 504 plan during the XXXX-XXXX school year, and whether any such failure amounted to a denial of a FAPE. To complete its investigation, OCR would need to conduct interviews with School staff to determine whether they failed to implement the Section 504 provisions at issue, and if so, the extent, nature of, and reason for any failures, along with any mitigating facts. OCR would also need to interview the Complainant and School staff regarding the alleged missed educational instruction and isolation of the Student.

Conclusion

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. 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 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,

/s/ Michelle Kalka

Michelle Kalka
Compliance Team Leader

Attachment