



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

32 OLD SLIP, 26th FLOOR
NEW YORK, NY 10005-2500

REGION II
NEW JERSEY
NEW YORK
PUERTO RICO
VIRGIN ISLANDS

March 5, 2019

Katie Duffy
Executive Director
Democracy Prep Public Schools
1767 Park Avenue, 5th Floor
New York, New York 10035

Re: Case No. 02-18-1452
Democracy Prep Bronx Prep Charter School

Dear Ms. Duffy:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Democracy Prep Bronx Prep Charter School (the School). The complainant alleged that the School discriminated against a student (the Student), on the basis of his disability, during school year 2017-2018, by failing to provide the Student with related aids and services, as required by his Section 504 plan, namely, (a) xxxx and (b) medically excused lateness/absences, resulting in his retention in the xxxx grade (Allegation 1); and by failing to timely evaluate the Student to determine his eligibility for special education and/or related aids and services, resulting in his retention in the xxx grade (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The School is a recipient of financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR reviewed documents and information that the complainant and the School submitted to OCR. OCR also interviewed the complainant and School staff. OCR made the following determinations.

During school year 2017-2018, the Student was enrolled in the xxx grade at the School.¹ The School identified the Student as a qualified individual with a disability,² and determined that the Student should receive related aids and services pursuant to a Section 504 Plan dated xxxx, 2018 (the 504 Plan),³ for the second and third trimesters of school year 2017-2018.⁴

With respect to Allegation 1(a), the complainant alleged that School staff discriminated against the Student, on the basis of his disability, during school year 2017-2018, by failing to provide the Student with xxx xxxx, as required by the 504 Plan, resulting in his retention in the xxx grade.

OCR determined that the 504 Plan did not include a provision addressing xxxx. In interviews with OCR staff, the Student's homeroom/integrated co-teaching (ICT) Literature II teacher, who is a special education teacher, and the Student's Global History teacher (teacher 2) stated, however, that they were aware of the Student's xxxx xxxx diagnosis, and provided the Student with xxxx xxxx when he requested them.⁵

With respect to Allegation 1(b), the complainant alleged that the School discriminated against the Student, on the basis of his disability, during school year 2017-2018, by failing to provide the Student with medically excused lateness/absences, as required by the Section 504 Plan, resulting in the Student's retention in the xxx grade. Specifically, the complainant asserted that the School penalized the Student for assignments that he missed or submitted late due to his disability-related lateness and/or absences, and subsequently refused to promote the Student to the xxxx grade.

OCR determined that the 504 Plan specified that the School would not penalize the Student for non-attendance, provided the Student submitted documentation. The 504 plan further stated that the School would provide the Student with the following additional related aids and services: (a) one and one-half time to complete in-class, final, trimester, and New York State Regents exams/assessments; (b) a separate testing location, with no more than 12 students in the room; (c) extended time for assignments that were due within 24 hours; (d) additional time to submit assignments and classwork missed due to illness; and (e) assignments sent electronically to the Student, if he was unable to attend class.

For school year 2017-2018, according to the School's promotion policy, as set forth in the School's Handbook, high school students had three promotional criteria: attendance, coursework, and end of trimester exams. With respect to attendance, the School's policy provided that

¹ OCR determined that the School is a public charter middle and high school, which is under the management of Democracy Prep Public Schools, a network of charter schools.

² The Student has been diagnosed with xxxx xxxx, a form of xxxx xxxx disease. Due to the Student's condition, he must xxx xxx xxxxx xxxxx xx xxx.

³ OCR determined that the Student's mother submitted to the School a Request for Section 504 Accommodations, dated September 1, 2017. The School stated that it did not receive the mother's request and the supporting documentation until January 19, 2018. Documentation OCR reviewed included a date stamp of January 19, 2018.

⁴ During school year 2017-2018, the school year was divided into trimesters as follows: Trimester 1: September 5, 2017, to December 7, 2017; Trimester 2: December 11, 2017, to March 15, 2018; and Trimester 3: March 19, 2018, to June 26, 2018.

⁵ OCR did not interview all of the Student's teachers.

students were allowed no more than 3 absences through Trimester 1; no more than 6 absences through Trimester 2; and no more than 10 absences at the end of Trimester 3, i.e., the end of the school year. The School required parents to report student absences to the School registrar; and also called parents via an automated system after each absence. The School stated that all students, regardless of their disability status, were given the opportunity to make up classwork and homework missed due to absence, within 24 to 72 hours of being absent, depending on the assignment.⁶ The School stated that students who did not submit homework assignments within the required time received a grade of zero on assignments. With respect to coursework, students were required to pass each core course, as determined by the combination of all trimester course and all trimester exam grades. With respect to exams, students were required to pass each core end-of-trimester exam.

OCR determined that the Student was absent for 18 days during school year 2017-2018. Six of the 18 absences occurred during Trimester 1, when the Student did not have a Section 504 Plan; 12 of the 18 absences occurred during Trimesters 2 and 3, the period when the 504 Plan was in effect. By letter dated June 26, 2018, the principal informed the Student's mother that the Student had failed to pass all of his courses with a grade of 70 or above; failed 6 exams; and failed 6 of his courses.⁷ The principal stated that she determined that the Student would not be promoted to the xxx grade, based on the School's promotional criteria, i.e., attendance, course grades, and test scores. The principal stated that during Trimesters 2 and 3, the Student had more than 10 absences;⁸ and the Student was not a student with an individualized education program, which modified promotional criteria. The principal stated that the Student had failed several exams/courses; and was held to the same standard for submitting assignments as students without disabilities; however, for homework assignments due within 24 hours, the Student was allowed the one and one-half time extension specified in the 504 Plan to submit the assignment without incurring a penalty.

With respect to Allegation 2, the complainant alleged that the School discriminated against the Student, on the basis of his disability, during school year 2017-2018, by failing to timely evaluate the Student to determine his eligibility for special education and/or related aids and services, resulting in his retention in the xxx grade.

OCR determined that according to New York City Department of Education (NYCDOE) practice, the parents/guardians of students attending public charter schools within New York City must make requests for evaluations for special education and/or related aids and services

⁶ The School Handbook states, "If a scholar is absent, his or her homework should be dropped off at school by 3:00pm or it will be marked late. Scholars who are absent will receive their work on the day that they return. Depending on the campus and grade level of the scholar, this work must be completed within the next 1-3 days. Documentation must be provided in order for scholars to make up any assignments. Failure to make up any assignments including tests, midterms, projects, and classwork will result in a 0."

⁷ During Trimesters 2 and 3, the Student missed xxx chemistry assignments; and xx geometry assignments.

⁸ The School Handbook states that a Student with **more than ten absences in a year** is truant, "and the student at risk of not being promoted to the next grade. The parent/guardian will be called to the school to meet with the social worker and school leader. Student will be required to recover any lost instructional time in excess of ten days during Summer Academy. School leader reserves the right to retain any scholar who misses more than ten days of school. Finally, a report may be filed with the New York State Association of Children's Services."

directly to their NYCDOE home district Committees on Special Education (CSE).⁹ The NYCDOE works with students' charter schools to provide CSE-recommended programs and services at the charter schools.

OCR determined that by facsimile transmittal dated xxx x, 2018, the Student's mother, on the Student's behalf, submitted a written request for evaluation for special education services to the NYCDOE's CSE. The School's Academic Collaboration Team (ACT) coordinator, who serves as the liaison between the School and the NYCDOE, stated that she was aware that the Student's mother had submitted the request to the CSE for evaluation of the Student for special education and related aids and services.

OCR determined that the Student's evaluations were conducted during the period from xxx xx, 2018, through xxx xx, 2018. The ACT coordinator stated that although the Student's mother requested the evaluation on xxxx x, 2018, the NYCDOE CSE delayed in beginning its evaluation of the Student and did not seek the Student's mother's consent¹⁰ for evaluation of the Student until xxx xx, 2018, i.e., the day on which the Student's social history interview was scheduled and conducted.¹¹ The School stated that on xxxx x, 2018, following the evaluations, the Student's teachers provided their reports regarding the Student to the CSE; and by letter dated July 17, 2018, the NYCDOE CSE sent a notice to the Student's mother and the School that the Student's CSE meeting had been scheduled for xxxx x, 2018. On xxxx x, 2018, the CSE convened and classified the Student as an individual with a speech and language impairment, eligible to receive special education and/or related aids and services.¹² OCR determined that the Student did not repeat the xxx grade, for school year 2018-2019; rather, the Student enrolled in the xxx grade at another charter school.

On March 5, 2019, the School signed the enclosed resolution agreement (Agreement) to voluntarily resolve the complainant's allegations. OCR will monitor the implementation of the Agreement.

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.

⁹ See <https://www.schools.nyc.gov/special-education/school-settings/other-educational-settings>.

¹⁰ The ACT coordinator stated that the NYCDOE did not print the evaluation consent form for the Student's mother's signature until xxxx xx, 2018.

¹¹ The ACT coordinator stated that all of the NYCDOE CSEs that she worked with were significantly understaffed.

¹² The CSE developed an individualized education program for the Student, which included: counseling once weekly for 30 minutes individually; speech and language in a group twice weekly for 30 minutes; one and one-half extended time on tests; special location with a maximum of 15 students for testing; and (5) minute breaks, every thirty minutes on tests.

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 a 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, 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, please contact Genara Necos, Compliance Team Attorney, at (646) 428-3828 or genara.necos@ed.gov; Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisakhandhar@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Ximena Flores, Esq.