



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

December 13, 2017

**SENT VIA EMAIL**

Demian Barnett  
Principal  
Peabody Charter School  
3018 Calle Noguera  
Santa Barbara, California 93105

(In reply, please refer to case no. 09-17-1380.)

Dear Principal Barnett:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Peabody Charter School (School). The Complainant alleged that the School discriminated against the Student on the basis of disability and against students on the basis of race and color.<sup>1</sup> Specifically, OCR investigated the following issues:

1. Whether the School failed to provide the Student with a free, appropriate public education (FAPE) by failing to implement the Student's Section 504 Plan when the Student's teacher refused to allow the Student to utilize technology in the classroom, and called on the Student to read aloud in class.
2. Whether the School treated the Student differently on the basis of disability when the Student's teacher accused the Student, in front of class, of allowing his parents to do his homework, and shouted at the Student when he refused to read aloud in front of class.
3. Whether the School treats fourth grade students differently on the basis of race and color by grouping students in the fourth grade class for instruction in a manner that deprives Latino and African-American students equal access to grade level instruction in reading curriculum.

OCR is responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title

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<sup>1</sup> OCR previously provided the School with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as an education system, the School is subject to Section 504, Title II, and their implementing regulations.

OCR also investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The School receives funds from the Department and is subject to Title VI and the regulation.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the School. Prior to completing its investigation, the School voluntarily agreed to enter into a Resolution Agreement (Agreement) with OCR pursuant to Section 302 of OCR's Case Processing Manual. When fully implemented, the Agreement is intended to resolve the concerns raised in this case. The facts gathered by OCR, the applicable legal standard, and the resolution of the case are summarized below.

## **Facts**

The following facts are relevant to OCR's analysis:

The Peabody Charter School (School) is located in Santa Barbara, California. According to data submitted by the School, it has approximately 750 students in kindergarten through sixth grade. The demographic breakdown of the students is as follows:

- Hispanic/Latino 53.7%
- White 38.7%
- Asian, African-American and Other 6.6%

At the time the complaint was filed the Student was in fourth grade at the School during the 2016-2017 school year.

The School assigns all fourth grade students to a homeroom classroom, and the homeroom teacher is their primary teacher, who teaches science, math, English language arts, social studies, and technology. Occasionally, fourth grade teachers will rotate classrooms to lead students in a specific assignment, such as a science experiment or research project. The School's system allows for two teachers to combine homeroom classes, and use assignments to determine which students need an accelerated pace for Math and English Language Arts (ELA). The School stated to OCR that students who need less instruction, and can work independently, are put into Group X. According to the School, during the 2016-2017 school year, Group X was

comprised of 28 students: seven Hispanic/Latino students and 11 non-Hispanic/Latino.<sup>2</sup> Students learning at grade level but who benefit from small group instruction, additional examples and visuals, and additional teacher support, are put into Group Y. During the 2016-2017 school year, Group Y was comprised of 25 students: 22 Hispanic/Latino students and three non-Hispanic/Latino students.

The School stated to OCR that it tries to make Group Y a smaller class than Group X, and tries to place an additional credentialed teacher with Group Y a few days a week. While both classes generally work from the same materials, the difference is the pace, how the information is presented, and the amount of teacher prompting. The School acknowledged to OCR in its June 2, 2017 data response that there are more Hispanic/Latino students in Group Y than in Group X.

When determining which students to put in Group X and Group Y, the School stated to OCR that it looks at the student's academic skill level as measured by scores on assessment tools which measure reading comprehension, reading fluency, overall reading skills, and the California Assessment of Student Performance and Progress(CAASPP).

All fourth (and fifth) grade classes at the School group students into either Group X or Group Y for math and ELA. When a student transfers into the School in the middle of the school year, it is the School's practice to place them into Group Y while the School assesses the student to determine the appropriate placement.

The Student is XXXXXXXX XXXXXXXX XXX XXXXXXXXXX. On January XX, 2017, the Student enrolled in the School for fourth grade. The Student had a 504 Plan from his previous school in the District. Upon enrollment, the Student was placed in a 4<sup>th</sup> grade teacher's (Teacher 1) homeroom, and per the School's practice for mid-year transfers, in Group Y for math and ELA. Both fourth grade Group X and Group Y math classes are taught by Teacher 1. Both Group X and Group Y ELA classes are taught by another 4<sup>th</sup> grade teacher (Teacher 2).

The Complainant was not happy with the Student's Group Y placement, as she considered it to be a less accelerated track. The Complainant told OCR that in January, 2017, when the Student begin fourth grade at the School, the School told the Complainant that the placement was temporary pending assessments. The School stated to OCR that the Student produced limited in-class work, and that the parent generally transcribed the Student's homework. The School questioned how much work the Student could complete independently, and for this reason, had difficulty assessing the Student. However, the Student's third grade CAASPP, and third grade grades,

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<sup>2</sup> OCR requested clarification from the District regarding the total number of students disaggregated by race that were placed in Group X. The racial breakdown of Group X students totaled 18 students, instead of the 28 which was initially reported to OCR. The District did not clarify the discrepancy prior to the resolution of this case – partially due to school closure as a result of fires in Ventura County and Winter Break.

showed he did not meet the standard in math or ELA to warrant placement in Group X. Therefore, the School determined that Group Y was the appropriate placement for the Student.

On January XX, 2017, within 30 days of enrollment, the School held a Section 504 meeting for the Student. Both general education teachers (Teacher 1 and Teacher 2) were present for the meeting, as was the School's Assistant Principal, and the Complainant. The 504 Plan established that the Student's disability, Speech and Language Impaired (SLI), affects the Student's reading and writing by impacting his ability to consistently perform at grade level in the general education program, and requires accommodations to help him access the core curriculum. The 504 Plan included reasonable accommodations to address the Student's individual needs, such as extended time on tests, use of assistive technology (including his iPad, audiobooks and cowriter program), teacher provided notes, the use of a scribe, acceptance to typed responses for classwork and homework, checks for comprehension, ungraded spelling, and extra time to respond to oral or written requests for information.

On February XX, 2017, the Section 504 team met again to include an accommodation that the Student not be required to read aloud unless he volunteers, or for an assignment. The Assistant Principal stated to OCR that the Complainant agreed to the 504 Plan, and school staff, including Teacher 1 and Teacher 2, were aware of the 504 accommodations.

On February XX and XX, 2017, the Complainant sent an email to the School stating that a substitute teacher (Teacher 3) asked the Student to read aloud. On February XX, 2017, the School shared the Student's 504 Plan with Teacher 3. On March XX, 2017 the Complainant sent an email to Teacher 2 stating that the Student had reported being asked to read aloud in class that day. However, this email was sent to the wrong address. On March XX, 2017 the Complainant emailed the Assistant Principal stating that her emails to Teacher 2 were being returned based on an incorrect address. The same day, the Assistant Principal forwarded the Complainant's email to Teacher 2. The same day, Teacher 2 responded to the Complainant stating that she had not asked the Student to read aloud since the February XX, 2017 504 meeting. Teacher 2 wrote that the Student occasionally volunteered to read aloud. Teacher 2 wrote that the Student was happy and interested in class and that the Complainant was welcome to visit the classroom and observe if she was concerned.

On March XX, 2017, the Complainant, Teacher 1 and the School Principal (Principal) met for a Parent/Teacher Conference. At this meeting, Teacher 1 and the Principal explained how the Group X and Group Y classes were formed, and that both classes support student learning of state standards. The Complainant requested at this meeting, and by email, that the Student be moved from Group Y to the accelerated Group X. The School complied and moved the Student to Group X based on the Complainant's request. The School told the Complainant that the Student would be moved to the accelerated Group X on a trial basis, and meet again with the Complainant in three to four weeks to determine if the placement was a good fit.

On April X, 2017, the Complainant reported to the Principal that Teacher 2 was demanding and aggressive toward the Student. The Principal responded the same day inviting the Complainant and the Student to meet with him to discuss their concerns. He also suggested the Complainant speak directly to Teacher 2, if she felt comfortable doing so. Other than an April X email described below, the Principal and Teacher 2 reported that neither the Complainant, nor the Student spoke to them further about these concerns.

On April X, 2017 the Complainant emailed the School stating that different treatment and harassment within Teacher 2's classroom remained an ongoing problem. The email does not describe the different treatment/harassment. Rather, it states that the Complainant requested a class change and was denied, and that the Complainant requested that School administration speak with Teacher 2 regarding harassment and was denied. The email also stated that the Complainant's emails went unanswered.

The School conducted an investigation into the concerns raised in the Complainant's April X, 2017 email. Although there is no evidence that the Student or potential student witnesses were interviewed, both the Assistant Principal and the Principal interviewed Teacher 2, who stated that she was implementing the Student's 504 Plan, and not calling on him to read aloud in class. Teacher 2 provided OCR with a written statement stating that she implemented all aspects of the 504 Plan, did not call on the Student to read aloud in class, shout at him, or accuse him publically of not doing his homework. She stated that the Complainant's email on March XX was sent to the wrong email, and that the first email she received was on March XX, 2017. On March XX, 2017, Teacher 2 promptly responded to the Complainant by email, confirming that she had not asked the Student to read aloud since the February XX, 2017 Section 504 meeting, that the Student was happy and engaged in class, and that the Complainant was welcome to visit the classroom. During the interview, Teacher 2 told the Assistant Principal and the Principal that the Complainant had not made any additional attempts to schedule a classroom visit, or to contact her.

In addition to interviewing Teacher 2, both the Assistant Principal and the Principal observed Teacher 2's classroom to determine if harassment was occurring and if his 504 plan was being implemented. Neither the Assistant Principal nor the Principal observed the Student being asked to read aloud, denial of accommodations, or shouting as alleged in the OCR complaint. On April XX, 2017, the Assistant Principal and the Principal met with the Complainant about the concerns she raised in the April X, 2017 email. They asked the Complainant what information the Student was reporting. The Complainant discussed Teacher 2's treatment of the Student, the Student's usage of assistive technology and the Student's placement. Regarding assistive technology, the Complainant reported to OCR that the Student's teachers were unfamiliar with the necessary software, and therefore, unable to utilize the assistive technology required by the 504 Plan. The School informed the Complainant that they had completed an investigation of her concerns, and notified her that they had not observed any harassing conduct, and that they had observed the 504 Plan being implemented. The School

stated that the Student had, and would continue to have, access to assistive technology while in the classroom. It was shared that the Student often forgets his iPad at home, or in his homeroom, and that he often chooses not to use assistive technology while in the classroom. The Assistant Principal and the Principal stated that based on the Student's test scores, his needs would be best served in Group Y. The Complainant disagreed, and asked that the Student remain in accelerated Group X. The Student remained in the Group X placement until he was withdrawn from the school upon the completion of the 2016-2017 school year. The District informed OCR on August XX, 2017 that the Complainant intended to home school the Student for the 2017-2018 school year.

***Issue 1: Whether the School failed to provide the Student with a FAPE by failing to implement the Student's Section 504 Plan when the Student's teacher refused to allow the Student to utilize technology in the classroom, and called on the Student to read aloud in class.***

## **Legal Standards**

The Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. §104.33(b)(2). OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

## **Analysis**

In this case the Complainant stated to OCR that the Student's 504 Plan was not implemented. OCR reviewed correspondence from the Complainant to the School at different times raising concerns about Teacher 1, Teacher 2, and Teacher 3 not implementing provisions of the Student's 504 plan. The specific provisions alleged to not be implemented concerned assistive technology, and reading aloud in class.

The evidence gathered to date shows correspondence between the School and Complainant indicates that the School believed and communicated to the Complainant that the Student's 504 Plan was being implemented in that the Student was not being required to read aloud in class. The School provided a written statement from Teacher 1 stating that she did not call upon the Student to read aloud in class once it was prohibited by his 504 Plan. The Complainant had also raised a concern directly with the School asserting that Teacher 2 also was not implementing the Student's 504 Plan by calling on him to read aloud in class. The School conducted an investigation by

interviewing Teacher 2 and observing her class. Teacher 2 also responded to the Complainant's concerns by encouraging her to visit the classroom and assuring her that she was not calling upon the Student to read aloud in class. The School administrators met with the Complainant about their investigation into her concerns and communicated that based on their investigation, the Student's Section 504 plan was being implemented. Subsequent to learning from the Complainant that Teacher 3 called upon the Student to read aloud in class, the School informed Teacher 3, who was a substitute teacher, of the requirements in the Student's 504 plan.

With respect to assistive technology, the issue was discussed in a meeting at the School regarding the Student's placement. There is a dispute between the Complainant and School with regard to whether any failures to implement the assistive technology provision were due to the teacher's lack of training to implement appropriately, or to the Student's actions of forgetting the devices or not wanting to use them.

Prior to completing its investigation to determine whether the Student was denied a FAPE due to a failure to implement his 504 plan, the School expressed an interest in voluntarily resolving the issue raised, and OCR determined that such a resolution was appropriate.

***Issue 2: The Recipient treated the Student differently on the basis of disability when the Student's teacher accused the Student, in front of class, of allowing his parents to do his homework, and shouts at the Student when he refuses to read aloud in front of class.***

## **Legal Standards**

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1)(i. & iv.) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service or provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR first examines whether there is direct evidence of discriminatory treatment on the basis of disability. Absent that, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence,

OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

## **Analysis**

The School provided OCR with a written statement from Teacher 1 stating that she did not accuse the Student, in front of class, of allowing his parents to do his homework, nor did she shout at the Student when he refused to read aloud in front of class. The School stated to OCR that there were concerns regarding the extent to which the Complainant helped the Student complete his homework. To make a finding regarding this allegation, OCR would need to interview the Student's teachers and other students in the class who may have witnessed the alleged accusations and shouting. Prior to completing its investigation to determine whether Teacher 1 engaged in the conduct alleged and whether the conduct resulted in different treatment, the School expressed an interest in voluntarily resolving the issue raised, and OCR determined that such a resolution was appropriate.

***Issue 3: The Recipient treats fourth grade students differently on the basis of race and color by grouping students in the fourth grade class for instruction in a manner that deprives Latino and African American students equal access to grade level instruction in reading curriculum.***

## **Legal Standards**

Under the Title VI regulations, at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin,

- (i) deny an individual any service, financial aid or other benefit.
- (ii) provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others.
- (iii) subject an individual to segregation or separate treatment in the receipt of any service, financial aid, or other benefit.
- (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.
- (v) treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility or other requirement which must be met to receive any service, financial aid, or other benefit.



(vi) deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.

To determine whether a student has been discriminated against on the basis of race/color/national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race.

### **Analysis**

In this case, the Complainant alleged that Latino and African-American students are tracked into a lower academic group (Group Y), than other students for ELA and math. The Student, XXX XX XXXXXXXXXXXXXXXXXXXX XXX XXXXXXXXXXXX, was initially placed in Group Y. The School alleged that grade-level instruction takes place in both of their designated groups – Group Y and Group X, but that Group Y is for students who benefit from additional teacher support, examples and visuals. The School acknowledged that there are more Latino and African-American students in Group Y than in Group X. OCR's initial investigation raised a concern that the ELA and math group designations may be resulting in different treatment, and unequal allocation of resources in that students are assigned to Group Y for both ELA and math even if they only tested as needing Group Y in one of those areas, Group Y appeared to be the larger sized group, and Group Y appeared to be comprised predominantly of Latino students. OCR's initial investigation also raised a concern that there was not a written description of the group designations, the criteria for assignment to a particular group, or the process for requesting a change in group designation, communicated to teachers, parents and guardians. Prior to the completion of the investigation, the School expressed an interest in voluntarily resolving the issue raised, and OCR determined that such a resolution was appropriate.

### **Conclusion**

OCR has not yet completed its investigation. To do so, OCR would need to interview additional School administrators, teachers and potentially students, review additional data and information, and conduct a detailed data analysis based on the information provided. Prior to completion of the investigation, the School entered into the enclosed Agreement, which is aligned with the complaint allegations and the concerns raised during the investigation. The Agreement provisions provide for: 1). a written process for ensuring equal access to grade level instruction, which includes collection and review and assessment of data, 2). training on Title VI and internal policies and procedures regarding placement, and 3). a letter to the Complainant which will state that, should the Student return to the School, the School will follow its nondiscrimination and Section

504 policy when supporting the Student, implement the Student's Section 504 plan and ensure the provision of all parent rights under the Section 504 procedural safeguards, and provide an assistive technology training for all staff that work with the Student.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. OCR will monitor the implementation of the Agreement until the School is in compliance with Section 504, Title II, Title VI and their implementing regulations, which were at issue in the case.

OCR's resolution of this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's resolution of 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.

Please be advised that the School may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Rhonda Ngom at rhonda.ngom@ed.gov.

Sincerely,

/s/

Brian Lambert  
Acting Team Leader

cc: Matejka M. Handley, District Counsel