



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200, ROOM 1545  
SAN FRANCISCO, CA 94102

July 6, 2023

Beverly Bryant  
Principal  
Alan Rowe College Preparatory  
10420 Big Horn Blvd.  
Elk Grove, CA 95757

By email only to: [bbryant@fortuneschool.us](mailto:bbryant@fortuneschool.us)  
OCR Case No. 09-22-1210

Dear Principal Bryant:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Alan Rowe College Preparatory School (School). The Complainant alleged that the School discriminated against her daughter (the Student) on the basis of disability.<sup>1</sup> Specifically, OCR investigated whether the School failed to provide the Student with a free, appropriate public education (FAPE) by failing to evaluate the Student in a timely manner even though it had reason to believe from the start of the 2021-2022 school year that the Student needed special education or related services because of a disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a public entity and a recipient of Federal financial assistance from the Department, the School is subject to Section 504 and Title II.

To investigate this complaint, OCR conducted an interview and reviewed documents and other information provided by the Complainant and the School. After careful review of the information gathered in the investigation, OCR concluded that the School failed to comply with Section 504 and Title II and their implementing regulations with regard to the issue investigated.

#### Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a free appropriate public education (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

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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.

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

of students without disabilities 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. 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.

In addition, under the Section 504 regulations, at 34 C.F.R. §104.35(a), school districts are required to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services.

Further, Section 504 at C.F.R. § 104.36, require school districts to have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation, or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

### Facts

The following facts are relevant to OCR's analysis:

As background, the School is one of nine public charter schools held under Fortune Schools (Charter) and is its own local educational agency.

In [redacted content] 2020, the Complainant submitted enrollment documentation for the Student to enter the [redacted content] grade at the School for the 2021-2022 school year, which stated that the Student has asthma and is prescribed an inhaler to "help with breathing."

When the Student started the 2021-2022 school year, the School did not have a nurse.

On [redacted content], 2021, the Complainant provided the School with an Authorization to Administer Medication (Authorization) for the Student's asthma inhaler, which indicated two to four puffs as needed every four hours. This document states that a student who is required to take prescription medication during the school day "may be assisted by the school nurse or other designated school person" if the school received a written statement from the doctor "detailing the name of the medication, the method, amount, and time schedules" and "a written statement from the parent ...indicating the desire" that the school assist the student. The Student's doctor and the Complainant each signed and completed this Authorization, indicating "consent to appropriate District personnel to administer or assist in administering medication." The School asserted to OCR that this Authorization was the first notice it received of the Student's need to take asthma medication.

The Student started school on [redacted content], 2021. According to the Complainant, between [redacted content], 2021, the Student went to the office multiple times with “asthmatic flare ups” and she had to pick the Student up from school after some of those instances. The Complainant told OCR that on [redacted content], 2021, the Student informed her that she needed her asthma medication earlier that day and her teacher did not allow her to go to the office for her medication. According to the Complainant, she subsequently spoke with the teacher, who told her she was not aware of the Student’s asthma.

On [redacted content], 2021, the Student’s doctor completed an amended Authorization by School personnel for the Student’s asthma, which was received by the School on [redacted content], 2021. This documentation stated that the Student has asthma and should receive two puffs of her inhaler as needed every four hours or 5 to 15 minutes prior to exercise. The documentation also stated that the Student “does not need” to “self-administer this medication,” but is capable; her doctor also noted that if she has difficulty breathing “at any time during school,” school staff should have the Student take her “prescribed medication” and if “the treatment is ineffective or the symptoms severe, notify the school nurse or administrator immediately.” According to the School, the Complainant also requested that the School notify her when the Student exhibits asthma symptoms so she can come to campus and determine whether the Student should be picked up from school early.

On [redacted content], 2021, the Student’s doctor completed another amended Authorization by School personnel for the Student’s asthma, which was received by the School on [redacted content], 2021; it states that the Student should take one to two puffs by inhalation as needed every three to four hours or 5 to 15 minutes prior to exercise and if symptoms are not resolved in five minutes, give the Student two more puffs and call the school nurse or administration.

On [redacted content], 2021, the Student experienced asthmatic symptoms. She went to the office to self-administer one puff of her inhaler. She returned to the office around [redacted content] pm with similar symptoms and self-administered four puffs, for a total of five puffs within a two-hour timeframe. The School called the Complainant to pick the Student up from school because she had taken too much medication and felt ill. The Complainant told OCR that when she picked the Student up, the Student felt dizzy, nauseous, and weak, had a headache and a pounding chest. According to the Complainant, she asked the School employees whether the Student was supervised while she self-administered medication and the School’s response was that an employee was in the room. The Complainant requested that a School employee administer the Student’s medication to avoid future medication errors and the School’s response was that staff are not trained or obligated to administer rescue medications to students. The same day, the Complainant emailed the School CEO (CEO) informing her that the Student over-medicated herself earlier that day.

According to the Complainant, she followed up with the CEO and Principal regarding the [redacted content] incident. The Complainant told OCR that they explained the following to her:

- Fortune schools do not have a school nurse on any of their campuses;
- There is no provision for staff to be trained regarding how to administer rescue medications to students, except for the EpiPen, and staff are not aware of the detailed steps of how to administer an inhaler with a spacer;

- School staff is trained to monitor students during self-administration of rescue medications; and
- An on-call medical professional is not available to provide advice or assistance to staff members.

On [redacted content], 2021, the Student's doctor completed another amended Authorization by School personnel, which was received by the School on [redacted content], 2021. This documentation indicates that the Student is able to self-administer her asthma medication of two puffs "as needed" every four hours for "cough, wheeze, shortness of breath, chest tightness" or 5 to 15 minutes prior to exercise and will self-medicate "under the observation of an Office Staff Member." This documentation explains that "[d]uring administration of medication, [Student] should be closely monitored" by staff "to ensure the correct technique" is used and provides step by step guidance for school staff. The Student's doctor explained that if her symptoms are not resolved in five minutes, school personnel should give her two more puffs and call the school nurse or administration. The Student's doctor recommended that the Student leave campus if she requires additional medication.

On [redacted content], 2021, the School Secretary (Secretary) emailed the Principal, Office Manager and Parent Liaison providing them with additional information regarding the Student. That email stated that after the Student takes two pumps "but says she needs a 3<sup>rd</sup>", the School should call the Complainant who will come to campus and "administer the 3<sup>rd</sup> pump." The Secretary stated the Principal approved this. The same day, the Office Manager replied to all requesting that the Principal "call a meeting" with the Complainant and office staff because "the instructions change every few days."

On [redacted content], 2021, the Complainant emailed the School to request a meeting to discuss the Student's medication administration and an Individualized Healthcare Plan (IHP). The following day, the Complainant spoke with the School regarding the Student's medical needs and food restrictions. On [redacted content], the CEO emailed the Principal, Office Manager and Parent Liaison confirming the School's practice of calling the Complainant when the Student comes into the office.

On [redacted content], 2021, the School notified the Complaint that a third-party agency had been contracted to train its staff on medical emergencies and proper administration of emergency medication.

OCR reviewed documentation between the School and Complainant which indicated that the School scheduled a training to staff on [redacted content], 2021 on how to adequately monitor student self-administering medication.

On or around [redacted content], 2021, the Complainant sent an email to CEO, asking for "details regarding what information was taught," whether staff monitor the Student "while she is self-administering her medication to ensure she is always doing it correctly," and whether the staff was trained "regarding the care of maintenance of the inhaler and spacer." The Complainant also mentioned that she has "been routinely coming to the office to ensure" that the Student's "inhaler is full, cleaned and that the spacer and inhaler are not clogged" and asked if the School "recommend that I still routinely check her supplies." The Office Manager responded to the

Complainant's email indicating that since the Student is capable of self-administering her medication per her doctor, School staff "is only required to provide the inhaler" and "supervise her intake" and recommended that the Complainant continue to check the Student's supplies. The School did not provide OCR with documentation that the CEO responded to the Complainant's concerns, but did provide documentation showing that on [redacted content], 2021, the CEO emailed the Principal and School Parent Liaison regarding the Complainant's concerns of School staff's training on assisting and providing medication to students.

On [redacted content], 2022, the Complainant requested a Section 504 Plan and IHP for the Student. On [redacted content], 2022, the Principal emailed the Complainant information to participate in a virtual Section 504 Meeting and requested she provide any additional information regarding the Student's asthma.

On [redacted content], 2022, the Complainant emailed the School copies of the Student's Asthma Action Plan, and an Authorization from the Student's doctor.

On [redacted content], 2022, the School convened a virtual Section 504 meeting with the Complainant, [redacted content] Teacher, [redacted content] Teacher, Office Manager, and Principal. The result of that meeting was a draft Section 504 Plan (Plan), dated [redacted content], 2022. This draft Plan states that the Student will take two puffs of asthma medication as needed every four hours or five to 15 minutes prior to exercise and the Complainant will be "[c]alled when given medication daily"; it also states that the Student will go to the office and take two puffs of asthma medication on Tuesdays and Fridays. OCR reviewed documentation which shows that the School did not provide the Complainant with procedural safeguards prior to, during, or at the end of this meeting. The Complainant confirmed this to OCR.

Between [redacted content], 2022, the Complainant and the School communicated via email about a proposed Section 504 Plan and IHP. During these communications, the Principal requested additional information from the Student's doctor and confirmed that the School does not have a nurse. On or around [redacted content], 2022, the Complainant provided the School with a letter from the Student's doctor (dated [redacted content], 2022), which states that the Student's "every day treatment plan" includes two puffs each of Medication 1 and Medication 2 "daily" in addition to Medication 3 "as needed." The letter explains that if the Student experiences "ongoing or worsening" symptoms, she should receive six puffs of Medication 3 "every 20 minutes for a total" of three treatments. The Student's doctor refers School personnel to a previous Authorization that "clearly details" the emergency action plan for school personnel to follow if the Student experiences an asthma related incident. On [redacted content], 2022, the Complainant asked the Principal whether a nurse created the IHP. The following day, the Principal responded that the Plan was prepared using information from the Student's doctors and from the [redacted content] Section 504/IHP meeting. The Principal also informed the Complainant that the School was attempting to obtain a third-party nurse to oversee the proposed plans. The same day, the School contracted with a third-party nurse (Nurse), to review and modify the proposed Section 504 Plan and IHP. On [redacted content], 2022, the Principal emailed the Complainant to inform her the School had contracted with a Nurse who would contact her to discuss the proposed Section 504 and IHP.

On [redacted content], 2022, the Nurse emailed the Principal, stating in part, “any health plan has to have designated trained personnel attached to it.” Between [redacted content], 2022, the Complainant and the Nurse communicated via email regarding modifications, edits, and clarifications on the proposed Plan and IHP. On [redacted content], 2022, the Nurse emailed the Complainant the final IHP and Plan, which incorporated the Complainants edits to the IHP.

The Student’s IHP, dated [redacted content], 2022, states that it incorporates the Student’s doctor’s letter and Asthma Action Plan dated [redacted content], 2022, Authorization for Medication Administration and Recommendations dated [redacted content], 2021 and the [redacted content], 2022 Plan.

On [redacted content], 2022, the Complainant signed the Section 504 Plan and IHP, which stated the Student should receive between two to six puffs from the asthma inhaler every three to four hours as needed. On [redacted content], 2022, the School provided the Complainant procedural safeguards via email.

On [redacted content], 2022, the Student went to the front office to self-administer her asthma medication, pursuant to the IHP. According to the Complainant, the Office Manager did not follow the Student’s Section 504 Plan and IHP to adequately supervise the Student’s self-administration.

According to the School, the Office Manager called the Complainant to inform her that the Student needed the inhaler, monitored the Student’s self-administration of two puffs, and called the Complainant again. The School also asserted to OCR that the Office Manager told the Student that the Complainant “said two puffs, so you can take your last one now.” The Office Manager then asked the Student to confirm how many puffs she had taken and the Student responded she had taken five puffs of her inhaler. The School asserted to OCR that the Office Manager had only heard the third puff and did not realize that the Student had taken four puffs prior to the “last one.” According to the School, after realizing that the Student had taken five puffs from her inhaler, the Office Manager called the Complainant to inform her of the incident. According to the School, the Student was in the front office from [redacted content], until the Complainant picked her up from school.

The School told OCR that during the 2021-2022 school year, the Student had minimal absences, excellent grades, and provided no indication that she had a disability impacting her basic life activities to the extent it impacted her ability to receive an education. OCR’s review of the Student’s attendance records show that the Student had 22 excused absences (seven due to illness, and 15 categorized as “absent”).

### Analysis

Based on the facts described above, OCR found that the School was not in compliance with Section 504 and Title II with respect to the issue investigated.

#### *Failure to Timely Evaluate*

The Section 504 regulations require school districts to evaluate a student who needs or is believed to need special education or related aids and services because of disability and must ensure that all

students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. Here, although the School asserted that it first received notice of the Student's asthma related symptoms and required medication in [redacted content] 2021, the evidence indicated that the Complainant informed the School as early as [redacted content] 2020 when she submitted the Student's enrollment application. As such, the School had reason to suspect that the Student required special education or related aids or services because of a disability as early as [redacted content] 2020.

Further, with respect to the 2021-2022 school year, OCR found that the Complainant notified the School on at least two separate occasions prior to [redacted content], 2021 ([redacted content]) that she consented for School personnel to administer the Student's asthma medication. However, the School did not convene a Section 504 meeting or put any plan in place for the Student. Consequently, on [redacted content], 2021, the Student self-administered her asthma medication without School personnel assistance and she over-medicated, which resulted in her getting sick and leaving school.

The School argues that the Student had minimal absences and provided no indication that her asthma impacted her ability to receive an education, which was the reason that that it did not suspect that the Student required additional services. OCR found, however, that during the 2021-2022 school year, the Student had 22 excused absences; at least seven were related to illness. Specifically, OCR found that the School had notice that the Student was experiencing asthma related illness between [redacted content], 2021, because the Student was absent or missed classroom instruction when she went to the office for asthma medication or the Complainant picked her up from School. Further, the Complainant submitted numerous Authorization forms in [redacted content] 2021 consenting to the administration of the Student's asthma medication by School personnel. The School did not inform the Complainant that the campus did not have nurse or trained personnel to administer asthma medication until after the [redacted content], 2021 incident.

Even after learning of this [redacted content] incident, the School did not convene a Section 504 meeting on or around that date to put services in place for the Student. Instead, the School waited until the Complainant requested a Section 504 Plan in [redacted content] 2022 to convene a Section 504 meeting on [redacted content], 2022 to evaluate whether the Student's asthma substantially limited her ability to receive an education.

As such, OCR found that the School had reason to suspect that the Student needed special education or related aids and services because of her asthma and failed to timely evaluate her, as it did not convene a Section 504 meeting until [redacted content], 2022, after the Complainant requested a meeting. Therefore, OCR found that the School failed to comply with Section 504 and Title II with respect to this issue.

#### *Failure to Provide Procedural Safeguards*

The Section 504 regulations require school districts to provide procedural safeguards with respect to any action taken by the district regarding the identification, evaluation, or placement of the student. OCR's investigation determined that the Complainant did not receive procedural safeguards until [redacted content], 2022, which was over two months after the Student's [redacted

content], 2022 Section 504 meeting. As such, OCR found that the School failed to comply with Section 504 and Title II with respect to this issue.

By a preponderance of the evidence and for the reasons stated above, OCR determined, in accordance with OCR's *Case Processing Manual* (CPM) subsection 303(b)<sup>2</sup> that the School is not in compliance with Section 504 and Title II at 34 C.F.R. § 104.45(a) and 28 C.F.R. §§ 35.130(f).

### Overall Conclusion

This concludes the investigation of this complaint.

To address the complaint allegations and OCR's findings identified in the investigation, the School, without admitting to any violation of the law, entered into the enclosed resolution agreement (Agreement). Under the Agreement, the School will modify its policies to allow individuals other than nurses to administer and or monitor student self-administration of asthma medication, train at least one staff member to administer and monitor student self-administration of asthma medication, issue written guidance, and convene a Section 504 meeting to determine whether compensatory services are appropriate due to the Student's asthma related absences.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address the evidence obtained and the allegations investigated. OCR will monitor the implementation of the resolution agreement until the School is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in 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 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.

Please be advised that the School may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any 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 a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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 the law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

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<sup>2</sup> See OCR's Case Processing Manual (July 18, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.



Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Nezhia Burkes at [Nezhia.Burkes@ed.gov](mailto:Nezhia.Burkes@ed.gov).

Sincerely,

/s/

Naghmeh Ordikhani  
Team Leader

Enclosure

Copy to: Lisa Corr, Counsel, via email only