



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

33 ARCH STREET, SUITE 900
BOSTON, MASSACHUSETTS 02110-1491

AUG 22 2008

ALSO VIA EMAIL TO: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Re: Complaint No. 01-07-1188

Dear Mr. & Mrs. [REDACTED]

This letter is to inform you that the Office for Civil Rights (OCR) has completed its investigation into the above-referenced complaint. I want to apologize at the outset for the length of time it has taken us to complete this investigation. We greatly appreciate your family's patience throughout our investigation.

In your complaint, you alleged that your son (Student) was discriminated against, on the basis of his disability, by the Barnstable Public Schools (District). Specifically, you alleged that: (1) the District did not respond to your grievances that the Student's Section 504 Accommodation Plan (504 Plan) was not being implemented, and (2) the District did not implement the Student's 504 Plan, particularly in regards to accommodations designed to address the Student's behavior. For the reasons provided below, we found compliance concerns relating to these allegations, which the District has agreed to remedy in the enclosed Resolution Agreement.

OCR investigated this complaint because your allegations fall within our jurisdiction under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II). Both Section 504 and Title II prohibit discrimination based on disability. The District is subject to the requirements of Section 504 because it is a recipient of Federal financial assistance from the U.S. Department of Education, and it is subject to the requirements of Title II because it is a public entity operating an elementary or secondary school system.

OCR investigated two issues:

- 1) Whether the District failed to promptly and equitably address your complaints that the District was not implementing the Student's 504 Plan, in violation of 34 C.F.R. Section 104.7(b) and 28 C.F.R Section 35.107(b); and

- 2) Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement his 504 Plan, in violation of 34 C.F.R. Sections 104.33(a) and (b) and 28 C.F.R. Section 35.130.

In the course of our investigation, OCR reviewed documents provided by you and the District; we interviewed you, your son, your educational advocate and District staff; and, we listened to recordings of a series of meetings held in the spring of 2007 regarding your son.

ISSUE NO. 1

Whether the District failed to promptly and equitably address your complaints that the District was not implementing the Student's 504 Plan, in violation of 34 C.F.R. Section 104.7(b) and 28 C.F.R. Section 35.107(b).

Legal Authority and Standards

Section 504 and Title II require every entity covered by these laws (covered entity), such as the District, to respond promptly upon notice that discrimination based upon disability may have occurred, and further to act swiftly and effectively to end any such discrimination. In accordance with that obligation, the regulations implementing Section 504, at 34 C.F.R. §104.7(b), and Title II, at 28 C.F.R. Section 35.107(b), both require covered entities to adopt and implement grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability. Additionally, Title II specifically requires that grievance procedures be published.

In evaluating whether a covered entity's grievance procedure complies with the procedural requirements of Section 504 and Title II, OCR considers a number of factors. These include whether: (a) notice of the procedures is provided to students, employees, parents, and other interested parties, including where and with whom complaints may be filed; (b) the procedures apply to the full range of potential discriminatory actions covered by Section 504 and Title II; (c) the procedures provide for an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (d) the procedures have designated and reasonably prompt timeframes for major stages of the complaint process; and (e) the parties are provided notice of the outcome of the complaint. OCR determines whether a covered entity's grievance procedure provides for a prompt and equitable resolution of complaints by assessing the procedures as a whole. The absence of some factors, such as the failure to cover the full range of potential discriminatory actions, will make the procedure non-compliant, while the absence of other factors, such as timeframes, may not be a problem if the covered entity processes grievances promptly and the procedure itself does not contain steps that would serve as a bar to the timely processing of complaints.

In addition to the adoption of grievance procedures, OCR interprets 34 C.F.R. Section 104.7(b) and 28 C.F.R. Section 104.7(b) to require covered entities to respond timely, appropriately and effectively to information that is brought to their attention and that suggests that employees of the covered entities have engaged in discrimination. Covered entities have a duty to respond to such information regardless of whether they have formal grievance procedures, or the

information is formally filed as a complaint under the grievance procedures. OCR determines the adequacy of a covered entity's response to such information by assessing the timeliness and thoroughness of the covered entity's investigation of the information, the appropriateness of the conclusions reached based on the investigation, and the effectiveness of any remedies ordered by the covered entity.

Here, OCR initially assessed whether the District had a grievance procedure in place that met the requirements of Section 504 and Title II, and if so, whether the District followed its procedure with respect to the matters that you raised. If not, OCR would then assess how the District responded to your complaints, to determine whether the District acted promptly and effectively. In either case, a compliance determination is based on an assessment of whether you were afforded a process that was fair and timely.

A. The District's Grievance Procedures

Summary of Facts

OCR reviewed two documents relating to the District's procedures for complaints alleging discrimination based upon disability. First, in response to OCR's request for a copy of the District's 504 Grievance procedures, the District provided a document entitled TITLE IX SECTION 504 PROCEDURES (*Procedures*). They provide that any employee who has been discriminated against in violation of Section 504 may file a complaint, in writing, with the Compliance Administrator, who is identified by name, address and telephone number in the *Procedures* (the person named is also the District's Equity Officer). The *Procedures* further provide that the Compliance Administrator will cause the complaint to be reviewed, and will respond, in writing, to the complainant within ten days of receiving it. The Compliance Administrator will also send a copy of his response to the Superintendent. If the complainant is not satisfied, he or she may appeal to the School Committee within sixty days of receiving the Compliance Administrator's findings.

When interviewed, some District staff told OCR that, if an individual wanted to file a grievance, they could ask district employees, who would direct the individual to the principal's office to obtain a copy of the *Procedures*. Other District staff were unaware that the District had specific procedures; when interviewed, these staff members expressed their belief that an individual could file a grievance simply by going to see the Equity Officer. Some District staff, including the Compliance Administrator and the District's attorney, stated that the *Procedures* were available online. OCR asked where to find the *Procedures* on the web, but District staff were not sure. OCR reviewed each page of the District's website and the Barnstable High School's (High School) website, but did not find any link to, or listing of, the *Procedures*.

During the course of the investigation, OCR learned that the Equity Officer had also directed you to the Student Handbook for Barnstable High School (Handbook) for procedures to file your concerns, and so OCR also considered it in our investigation. The Handbook provides a few different processes. First, under the "Procedure for Filing a Complaint," students who believe that they have been victims of sexual harassment or "that their civil rights" have been violated, are advised that they "should" take the following steps "to ensure effective and timely results:"

- (1) report any incident to their housemaster immediately;
- (2) keep written notes of all relevant matters and make at least 2 copies for reference;
- (3) file a complaint, in writing, with the Equity Officer within 24 hours of the incident so that important information will not be forgotten; and
- (4) make an appointment with the Equity Officer “to review” the complaint as soon as possible.

In another part of the Handbook titled "Investigation," which seems to deal particularly with harassment, students are told to report any incidents of harassment to the Principal immediately.

Analysis

OCR assessed the two procedures that the District had in place to determine whether either met the requirements of Section 504 and Title II. OCR found that the *Procedures* had some elements that are important in order for a process to provide for an adequate response to grievances. Specifically, the *Procedure* had timeframes, identified the individual with whom a complaint should be filed, including his name, address and phone number, and stated that the complainant would be given notice of the response to the complaint. Though neither Section 504 nor Title II require this, the *Procedures* also provided for an appeal to the School Committee.

There were a number of problems with the *Procedures* and the Handbook that result in both procedures raising compliance problems under Section 504 and Title II. Specifically, neither process makes any reference to coverage of matters under Title II. The District, therefore, does not have Title II procedures. OCR further found that the District did not provide adequate notice of its grievance procedure under Section 504 to ensure that students, parents, employees and third parties knew how to file and what the process would be once they did so. The *Procedures* were not published or disseminated in any manner, and a number of staff believed the *Procedures* were only available upon request from the principal's office. In addition, many District staff were unaware of the *Procedures* and were unable to provide adequate information and direction to individuals seeking to file a grievance. Although District officials indicated to OCR that parents, students or third parties could use the *Procedures*, the *Procedures* are not clear as to who may, in fact, file. The *Procedures* only explicitly mention employees, so it appears that only employees may file complaints using this process. The Handbook also appears to be limited to covering complaints raised by students. While a district may have separate procedures covering employees, students and third parties, it must also have procedures that, when taken together, afford students, parents, employees and third parties access to a process to address any matter under Section 504 and Title II. Here, the *Procedures* and the Handbook do not meet this standard because the scope of coverage is unclear and neither process appears to be available to parents or third parties.

While the procedures in the Handbook are published and widely disseminated, so that they would meet some of the elements of notice required by Section 504 and Title II, OCR found that those procedures focus almost exclusively on harassment-based discrimination, so that individuals with other discrimination concerns may not feel that they can use this process to have their concerns addressed. Further, the procedures in the Handbook are not clear as to whom complaints should be made. At various steps in the process, students are told to go to the Equity

Officer, the principal or their housemasters, to report an incident. It is also unclear whether an investigation of a grievance is triggered and if so, at what stage. The procedures in the Handbook also call for reports to be made within 24 hours of the alleged incident; it is not clear whether this is intended to simply encourage prompt reporting, or whether this means that a report of potential discrimination that is made after 24 hours have elapsed will not be considered. While a covered entity may have timeframes for reporting incidents, and may encourage timely reporting, 24 hours is far too short a period within which to require an individual to file a complaint. The Handbook also does not provide for notice to the complainant of the outcome, which OCR generally considers to be an essential component of an effective procedure.

In addition, both the *Procedures* and the Handbook require complaints to be in writing. Covered entities are obligated under Section 504 and Title II to respond to notice of possible discrimination, regardless of whether a formal grievance is filed. As illustrated below in the discussion of the process afforded to you, requiring an individual to put a complaint in writing before a district responds to an allegation of discrimination may cause the district to fail to address possible discrimination in a timely and effective manner.

In sum, OCR found that, due to the problems identified above, neither the *Procedures* nor the Handbook meet the requirements of Section 504 and Title II.

B. Your Complaints

Summary of Facts

OCR next considered how the District responded to the complaints that you raised, to determine whether, even in the absence of appropriate grievance procedures, it nonetheless afforded you with a prompt and equitable resolution. To make this determination, OCR first sought to establish when you asked the District to investigate a potential violation of Section 504. We then looked at what actions the District took in response, and in what timeframe.

On October 31, 2006, during an individualized education plan (IEP) eligibility meeting, you expressed your concerns that the Student was being discriminated against on the basis of disability because, you felt, the Student's 504 Plan was not being implemented. You stated to the Team, which included the Equity Officer/ Compliance Administrator and the Student's guidance counselor, that you were specifically concerned that accommodations relating to communication for missing work, upcoming deadlines and misbehavior, were not being followed. The Guidance Counselor responded that a 504 Team meeting was better suited to address those concerns. You then requested a 504 Team meeting.

On November 8, 2006, you hand-delivered a letter to the Acting Vice-Principal in which you alleged that the District was violating Section 504; the letter was titled, "3 day OSS [out of school suspension]/ 504 Plan Violation." In it, you stated that you believed that the Student's "504 rights have been violated" because the District did not implement the portions of his 504 Plan that were designed to address the impulsivity and distractibility that characterized his disability, and that could lead the Student to act out when not addressed. You also faxed a copy of this letter, with additional documents, to the District's attorney.

On November 20, 2006, the District held the 504 meeting that you had requested on October 31. There, you again expressed concern that the District was not complying with Section 504 because, you alleged, key provisions of the Student's 504 Plan relating to communication with you were not being implemented. The Team responded that your concerns were "noted." The Team also agreed that the Student should be sent to the Equity Officer's office when the Student misbehaved, where positive behavior strategies would be emphasized.

You and the Equity Officer all told OCR that you verbally raised your concerns to the Equity Officer again in December 2006. He responded that you had to use a particular form to file a grievance alleging a violation of Section 504. He also stated that he could not handle any concerns relating to discipline, because the Principal handled those concerns. When OCR interviewed the Principal, she explained that she did address discipline issues, but that she did not handle Section 504 matters, even if they involved discipline. She said that the Equity Officer handled all Section 504 concerns.

You then filed a form on February 2, 2006, alleging that the District was not complying with Section 504, because it was targeting the Student for discipline in a manner that, you alleged, was inconsistent with his 504 Plan. On February 14, 2006, you followed up by requesting a status on your "formal complaint" from the Equity Officer via email. Subsequently, the Equity Officer saw you at the high school, and he verbally responded to your status request by telling you that you had used the wrong form, and by providing the form that he said should be used. You told OCR that in December, when you expressed your concerns to the Equity Officer, he had given you the form that you filed in February. The Equity Officer told OCR that he provided the appropriate forms to you in December; however, he said, you filed a different form in February instead. He also told OCR that you did not file a 504 grievance until March, and he further stated that he could not handle any issues relating to discipline, including issues involving disability discrimination and discipline; instead, any issues relating to discipline had to go through the Acting Principal.

On March 26, 2007, you filed again, using the new form, alleging, among other concerns, that the District was violating the Student's Section 504 rights, in addition to claiming violations including: "# 1 Harassment/overcharging/targeting[,] violation of Privacy Rights . . . [and] file abnormalities." You stated that since the beginning of school, staff had been harassing the Student and targeting him for discipline. You noted that teachers were not sending the Student to his guidance counselor for help, and that teachers were continually writing the Student up for behavior (as noted above, the Student's 504 team agreed in November that the Student should be sent to the Equity Officer to work on positive behavior strategies when the Student acted up). Additionally, you expressed that documents had been removed or replaced, abnormally, in the Student's file, after you began raising your concerns.

At a disciplinary appeal hearing on May 1, 2007, and at a Team Meeting on May 18, 2007, which were both attended by you and the Equity Officer, you again expressed your frustration that, for the entire year, you were not receiving updates about the Student's assignments, tests, or behavior as provided in the 504 Plan, and that the Student continued to be punished for misbehavior rather than having positive behavior strategies be used.

At the May 18, 2007 meeting, the Equity Officer stated that he believed the teachers were communicating with you regarding the Student's academic progress, through "edline," an on-line program by which teachers share information on student progress and grades. The Equity Officer stated that, because some of the Student's teachers used "edline," you should have the information contemplated by the accommodation that you receive weekly progress information. Echoing concerns that you had raised in meetings in October, November and January, you stated again that not all of the teachers used edline; that edline grouped assignments together for a general grade and therefore did not provide information about particular missing assignments; and that the teachers who did use edline did not always do so weekly, so that you might not learn of any problems until long after the problem had arisen and too late for the teacher to allow the Student to make up missing work. Your educational advocate noted that the plain language of the 504 Plan called for communication via telephone or email, not by edline.

At the same meeting, you asked the Equity Officer for a status of your complaint. According to a tape of the meeting, to which OCR listened, the Equity Officer first responded that you would have his response when you were done appealing the Student's discipline. Later in the same meeting, the Equity Officer stated that he would have a written response to you within 30 days. You asked whether that meant 30 days from when you filed or 30 days from "today." He responded, "30 days."

On May 24, 2007, the District sent you a written response to your March 26, 2007 grievance (Response), in which the District acknowledged that portions of the Student's 504 Plan had not been implemented. The Response, authored by the Equity Officer, stated that he had reviewed the Student's educational records and had spoken with you, the Student, the Student's housemasters, guidance counselors, BHS administrators, some of the Student's teachers and the District's attorney. From that information, the Equity Officer concluded that the District had not complied with the Student's 504 Plan in two ways: (1) that some teachers had not communicated weekly with you, as the Plan indicated, and (2) that positive behavior strategies were not used on a regular basis by BHS staff, due in part to the retirement of a housemaster who had worked with the Student the previous year.

The Response recommended prospective actions to address the lack of compliance, suggesting the "following corrective action to remedy non-compliance issues:"

- a. Teachers would communicate with the Student or his parents by sending emails to his Guidance Counselor on a weekly basis regarding academic performance or behavior infractions.
- b. Staff who teach or work with disabled students will receive information regarding specific disabilities of Section 504 and IEP students, which information will be determined by the Equity Officer and the Director of Student Services;
- c. Staff will receive state and Federal recommendations for positive behavioral strategies for working with students; and
- d. Conferences with parents about the Handbook's disciplinary policies specifically relating to out of school suspensions should be clarified.

The Response did not discuss whether the Student had been harmed by the District's failure to implement his Section 504 Plan, nor did it recommend any actions that might remediate any past harm that the Student may have had from the year-long failure to implement his 504 Plan.

Analysis

OCR must first determine when you filed a complaint or otherwise provided sufficient information of possible discrimination to the District to trigger its obligation to investigate and respond. Here, your complaints were that the District failed to provide services that you believed were required by the Student's 504 Plan. In many cases, these types of complaints could and should be appropriately addressed through the Team process or other less formal means. Every complaint about a failure to implement a service would not necessarily trigger a district's grievance process or legal duty to respond. In this case, you did initially bring your complaints to the Team, but those complaints were not resolved, even though you raised the same concerns repeatedly.

OCR determined that as early as December, the District was aware that you wanted to file a complaint of possible discrimination under Section 504. The Equity Officer also was aware of the substance of your concerns, because he had been at the Team meetings. The Equity Officer, however, unnecessarily delayed initiating an investigation, despite his knowledge of potential discrimination, while waiting for you to file a particular form. OCR concluded that while the Equity Officer's response that you had to fill out a particular form in order to file a grievance may have been appropriate under the District's formal grievance process, it does not justify the District's continuing delay in investigating and responding to your allegations of discrimination.

Next, OCR assessed whether the process that the District did follow provided you with a prompt and equitable resolution of your complaints, as the District's actions were not consistent with the process outlined in either the *Procedures* or the Handbook. OCR found that, with the exception of concerns relating to discipline as discussed below, the Equity Officer adequately investigated the complaints, by speaking with the relevant individuals, such as Team members and teachers, and considering most of the issues that you raised.

OCR also found, however, that once the Equity Officer accepted the complaint on behalf of the District, the scope of its investigation was improperly limited so that not all of the alleged possible violations of Section 504 and Title II were addressed. In particular, the Equity Officer told you that he could not address any issues related to discipline, although you were alleging concerns relating to both Section 504 and discipline; instead, any matter involving discipline had to be addressed by the Principal. The Principal told OCR that she did not handle any Section 504 concerns, however, even if they involved discipline, because the Equity Officer handled Section 504 matters. This left you without an avenue by which to have your concerns about discipline and Section 504 addressed. OCR found the District's response to your complaint inadequate because it did not address your concerns with respect to discipline and implementation of the Student's Section 504 plan.

OCR further found that the Response's recommended corrective actions were not adequate, because they were limited to prospective actions only. The Response did not address whether

the Student may have been harmed by the District's past failures to implement his 504 Plan, nor whether any compensatory services were necessary to address the loss of services to the Student.

Finally, the District's Response was not timely overall. The District did not respond to your grievance until May 24, 2007, five months after you raised concerns in a manner that should have triggered an investigation and response from the District. You had been raising the same concerns for more than two months prior to your indication in December, 2006 that you wanted to file a complaint of discrimination. OCR determined, therefore, that the District's delayed response after December 2006 was not timely, nor was the delay justified.

Conclusion

In sum, OCR found that the District did not promptly and equitably respond to your complaints of discrimination, in violation of Section 504 and Title II. The District did not provide adequate notice of their grievance procedures, nor how to use them. The grievance procedures also did not meet the procedural requirements of Section 504 and Title II. As a result, in this case, you were unable to identify the proper process or individual to whom to complain. Furthermore, with respect to your complaints, the District did not respond promptly or completely to notice of possible discrimination; did not adequately remedy the discrimination found; and did not process the complaint promptly as required by the Section 504 and Title II regulations.

The District agreed to take the steps identified in the enclosed Resolution Agreement to remedy OCR's non-compliance concern. The steps include drafting new grievance procedures that provide adequate notice and clear instructions as to how to file a grievance and how the grievance will be processed by the District, as well as training staff about the new procedures and the requirements of Section 504 and Title II.

ISSUE NO. 2

Whether the District denied the Student a FAPE by failing to implement his 504 Plan, in violation of 34 C.F.R. Sections 104.33 (a) and (b) and 28 C.F.R. 28 Section 35.130.

Legal Authority and Standards

At 34 C.F.R. Sections 104.33 (a) and (b), the regulation implementing Section 504 requires districts to provide a FAPE to each qualified student with a disability (qualified student) who is in the district, regardless of the nature or severity of a student's disability. FAPE is defined as the provision of regular or special education, and related aids and services ("services"), that are designed to meet the individual needs of qualified students as adequately as the needs of non-disabled students are met. One way that districts meet this obligation is by convening a team of persons knowledgeable about a student, any evaluative data and the placement options, and having that team create a plan of the regular or special education, and related aids and services that will meet that student's individual needs; in other words, a 504 Plan. OCR interprets Title II at 28 C.F.R. Section 35.130 to require districts to provide a FAPE at least to the same extent that Section 504 requires.

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When determining if a district met its FAPE obligation to a particular qualified student, OCR does not evaluate whether the aids and services called for by a student's 504 Plan are appropriate. Instead, where non-implementation of a 504 Plan is alleged, OCR considers whether a district provided the educational services required by a student's 504 Plan. If OCR finds that a district did not implement the services in a student's 504 Plan, OCR then considers whether the lack of services was so significant as to deny the student a FAPE. Such a denial constitutes discrimination based upon disability, in violation of Section 504 and Title II. If a district has not met its FAPE obligation to a student, Section 504 and Title II require that the district consider how the student was affected by the denial; whether compensatory services need to be provided in order to remedy the effects of the past denial of FAPE and, if so, what services; and what, if any steps need to be taken to ensure that the student will be provided with a FAPE going forward.

During this investigation, OCR learned that the District acknowledged that it had not implemented some portions of the Student's 504 Plan, in its Response to your complaints. OCR investigated whether the District denied the Student a FAPE by failing to implement the Student's 504 Plan, and if so, whether the District provided appropriate corrective actions to meet its FAPE obligations.

Summary of Facts

The Student's 504 Plan for 2006-2007 included the following accommodations:

1. Provide outlines for projects and tests.
2. Allow extra time to complete assignments, tests and quizzes.
3. Check to make sure tests are complete, redirect the Student and check his work.
4. Break down long term assignments into specific dates and deadlines. Indicate to parents via email when deadlines are not met.
5. Communicate weekly with parents via email or telephone when work is missing, upcoming tests or if his behavior becomes a problem.
6. Refocus and cue the Student when he gets distracted.

At a 504 meeting on November 11, 2006, the Student's Team also agreed to the additional accommodation that, when the Student misbehaved, he should be sent to the Equity Officer who would work with the Student to emphasize positive behavior strategies.

Your complaints focused on the items in the 504 Plan regarding communication home for academic and behavioral issues. In regards to behavioral issues, you were particularly concerned that you were not always notified when the Student acted up, so you were not able to address his misbehavior timely to when the misbehavior had occurred. When the Student misbehaved, he would receive a pink slip about his behavior, and a disciplinary action, such as detention or suspension, might be imposed days and/or weeks after the misbehavior had occurred. OCR noted that the Student's 504 Plan did not require that the Student be held to a different disciplinary system than the one in the Handbook, to which all BHS students are subject. Rather, the Student's 504 Plan simply required that you also be notified, on a weekly basis, if the Student's behavior became a problem. OCR found that the District generally did not implement

this part of the Student's 504 Plan, because you were sometimes notified of misbehavior three or four weeks after it had occurred, and on occasion, you were not notified at all.

OCR found that confusion among District staff as to who was responsible for this notification may have contributed to the District's failure to implement this accommodation. For instance, at a meeting on November 3, 2007, one teacher said that she informed students' housemasters when students acted up, as the housemasters are responsible for disciplining students. She did not contact you because she understood that part of the 504 Plan to be an administrative task, not one assigned to teachers. When OCR interviewed the Student's fall housemaster, however, he stated that he did not contact you for every behavior incident, and that he did not know whether teachers were informing you about behavior incidents when the teachers referred such incidents to him. OCR also learned from the Equity Officer that he did not oversee discipline, so he would not necessarily be the person who would make sure this accommodation was being implemented. He also stated that there was ambiguity as to who was supposed to communicate, and how often.

You also repeatedly complained to the District, throughout the school year, that it was not implementing the 504 Plan's requirement of weekly communications, by telephone or email, when the Student was missing work, when he had tests coming up, or when deadlines were not met. In Team meetings, you expressed that this accommodation was particularly important because it addressed the Student's difficulty with organization, task completion and impulse control, which characterized his disability. You expected to use these weekly communications from the District to reinforce organization, task-completion and behavior rules from home; to redirect him from bad behavior, and to monitor the effectiveness of certain medications. As noted in the discussion of Issue 1 above, when you raised these concerns throughout the year, the District responded that you had access to this information via edline and therefore the District was complying with this accommodation. The District continued to say this despite statements from you and your advocate about the inadequacies of edline as a tool for implementing these accommodations.

As with the discipline issues, District staff were not clear as to who among them was responsible for assuring implementation of the Student's 504 Plan. The Student's fall guidance counselor stated that she was responsible for the paperwork associated with 504 Plans, such as making sure that teachers received students' plans at the beginning of each year, and that teachers signed a form indicating that they received the plans. She stated that parents could directly address teachers if they felt a plan was not being implemented, though they could also come to either her or the Equity Officer with any 504 issues. When OCR asked about the alleged non-implementation here, however, she had no information as to whether or not the 504 Plan was implemented.

As described under Issue 1, the District acknowledged in its Response that it had not complied with the Student's 504 Plan. The Response stated that the 504 Plan had not been implemented in two ways: (1) that some teachers had not communicated weekly with you, as the Plan indicated, and (2) that positive behavior strategies were not used on a regular basis by BHS staff, due in part to the retirement of a housemaster who had worked with the Student the previous year. As also noted above, the Response recommended prospective corrective action to remedy these non-compliance issues.

The Response did not address whether the District's failure to implement the Student's 504 Plan denied the Student a FAPE, nor did it provide any assessment of how the Student may have been harmed by the year-long failure to fully implement his 504 Plan, or any recommendations for any corrective action to address any such past harm. OCR also listened to tapes of the two Section 504 Team meetings held in late spring of 2007, and reviewed documents from these meetings. OCR did not find evidence of any discussion of how the District's failure to implement the Student's Plan had affected him, nor how to remedy any negative effects the failure to implement may have caused.

On June 4, 2007, the District held a manifestation hearing, because the Student had been given a number of out-of-school-suspensions. At the hearing, the Team could not agree on whether or not the Student's misbehavior, which led to the suspensions, was caused by, or substantially related to, the Student's disability. The Team did agree, however, that the Student's misbehavior resulted from the District's failure to implement his 504 Plan. According to the tapes of the hearing, to which OCR listened, the Team did not consider how the Student had been harmed by the District's year long failure to implement various portions of his 504 Plan. The next day, the Director of Pupil Services authorized ten hours of tutoring for the Student as "a result of [sic] manifestation meeting," "to help make up missing work before end of the year." OCR did not find any evidence that this tutoring resulted from consideration of how the Student was affected by the District's failure to implement his 504 Plan for the entire school year.

Analysis

OCR found that the District failed to provide the services in the Student's plan for a significant period in 2006-07. OCR's investigation confirmed the Equity Officer's determination that the 504 Plan's accommodations for communicating with you had not been implemented. In particular, OCR found that the District generally had not provided weekly communication to you, via phone or email, for missing assignments; upcoming deadlines and for some behavioral incidents, nor were you informed when deadlines were not met. OCR also confirmed that the Student was not sent to the Equity Officer to work on positive behavior strategies when the Student misbehaved, as the Team had agreed in November 2006. OCR concluded that the District's failure to provide these services for a student struggling with organizational skills, time management and behavior control, for the length of almost an entire school year, was significant enough to constitute a denial of FAPE.

OCR also found that the District's failure to implement the Student's 504 Plan was caused in part by confusion among District personnel, among teachers, house masters and administrators, as to who was responsible for implementing some of the services in the 504 Plan, including informing you when the Student's behavior became a problem. OCR found that there was also confusion regarding who was responsible for ensuring that 504 Plans are implemented, which contributed to the District's failure to provide the Student with a FAPE.

Finally, OCR found that the District did not fully address or remedy the effects of its failure to implement the Student's 504 Plan. OCR did not find evidence that the District considered how the Student was harmed by the failure to implement the accommodations in his 504 Plan nor that

the District considered whether compensatory services should be provided to compensate for any such harm.

Conclusion

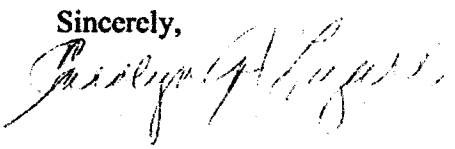
OCR found that the District failed to provide the Student with a FAPE for a large portion of the 2006- 2007 school year, and had not taken sufficient steps to address the harm that may have been caused by this failure. The District agreed to take the steps identified in the enclosed Resolution Agreement to remedy OCR’s compliance concerns. These steps include reconvening the Student’s Team to determine how the Student was harmed by the denial of FAPE, and whether compensatory services should be provided, to remedy the compliance concerns identified above.

SUMMARY

OCR found sufficient evidence to support a compliance concern regarding the District’s Section 504 and Title II grievance processes, which led to further compliance concerns with respect to how your particular complaints were handled. OCR also found sufficient evidence to support a compliance concern regarding the District’s obligation to provide the Student with a FAPE. The District agreed to take the steps listed in the enclosed Resolution Agreement in order to remedy these compliance concerns.

As is OCR’s standard practice, we will monitor the District’s implementation of the enclosed Agreement. By fulfilling the terms of the Agreement, OCR will consider the District to be in compliance with Section 504 and Title II with respect to the issues raised in this complaint. The determinations contained in this letter are not intended, and should not be construed, to cover any other issues regarding compliance with the regulations implementing Section 504 and Title II that may exist but are not discussed herein. Please note that you may file a private suit, in court, pursuant to Section 203 of the Americans with Disabilities Act.

We thank your family for the cooperation that you extended to us during this investigation. If you have any questions about the disposition of this matter, please contact Ms. Meighan McCrea at (617) 289-0052 or by electronic mail at Meighan.McCrea@ed.gov; Esther Walters at (617) 289-0022 or Esther.Walters@ed.gov; or Michael Joyce at (617) 289-0059 or by electronic mail at Michael.Joyce@ed.gov. You may also contact me directly at (617) 289-0011.

Sincerely,


Carolyn Lazaris
Acting Regional Director

**Voluntary Resolution Agreement
Barnstable Public Schools
OCR Complaint No. 01-07-1188**

To resolve the compliance concerns that OCR identified under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act and its implementing regulations at 28 C.F.R. Part 35 (Title II), the Barnstable Public School District (District) agrees to take the actions outlined below.

A) GRIEVANCE PROCEDURES

1. Develop Procedures.

By 9/9/08, the District will develop grievance procedures for addressing discrimination based upon disability, which are consistent with the requirements of Section 504 and Title II. Specifically, the procedures will include

- A process that students, parents, teachers, and staff can each use (this may be more than one procedure);
- Notice that the procedures apply to any action that may violate Section 504 and/or Title II;
- An option that complaints need not be in writing;
- Clear and prompt timeframes for major stages of the process;
- A statement that complainants will not be retaliated against for filing a complaint alleging discrimination;
- An alternative process for complainants who allege discrimination stemming from the person who is generally responsible for investigating such complaints; and,
- Notice of the outcome of the investigation.

2. Training.

After OCR's approval, the District will train its faculty and administrators on the requirements of Section 504 and Title II and on the new grievance procedures

3. Publication and Dissemination.

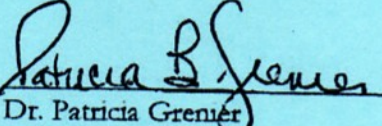
The new procedures will be published and disseminated to parents, teachers, staff and other parties no later than 30 days after OCR's approval of the new procedures.

B) FAPE

1. The District will develop a process and/or procedure for monitoring the implementation of Section 504 plans and will identify the personnel responsible for such monitoring.
2. The District will re-convene the Student's Team to consider whether the Student is entitled to compensatory services as a result of the District's failure to implement the Student's Section 504 Plan from October 2006 until the end of that school year.

C) REPORTING

1. By 9/15/08, the District will submit the new procedures to OCR for review and approval.
2. Within 60 days of OCR's approval of the new procedures, the District will submit information to OCR attesting that it has completed the training; publication; and, dissemination requirements of Section A of this agreement.
3. By 9/15/08, the District will provide to OCR: Minutes of the Team meeting at which the compensatory services issue is considered and copies of any documentation considered at the meeting. Further,
 - a) If the Team determines that the Student is not entitled to compensatory services, provide an explanation of why services are not needed, including references to and copies of, all information that the Team considered; or,
 - b) If the Team determines that compensatory services are due, the District shall provide to OCR documentation showing when, where and by whom the services were provided.


 Dr. Patricia Greiner
 Superintendent

9/17/08
 Date