September 29, 2021

Via E-mail
Dana Lesperance
Head of School
Community High School of Vermont
Dana.Lesperance@vermont.gov

Re: Compliance Review No. 01-13-5001
Community High School of Vermont

Dear Dana Lesperance:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) has completed the above-referenced compliance review of Community High School of Vermont (CHSVT). OCR thanks you for your patience and cooperation during the pendency of this compliance review, and apologizes for the delay in issuing this resolution letter.

OCR’s compliance review examined whether CHSVT was providing qualified students with disabilities within its jurisdiction a free appropriate public education; specifically, OCR assessed whether CHSVT was following appropriate procedures for the identification, evaluation, and placement of students with disabilities in its secondary educational programming. Before OCR completed its investigation and made any compliance determinations, CHSVT agreed to voluntarily resolve the compliance review as set forth in the enclosed Resolution Agreement, consistent with Section 302 of OCR’s Case Processing Manual.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq. (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance. Because CHSVT receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

OCR initiated this compliance review pursuant to our authority under the Section 504 regulation at 34 C.F.R. § 104.61, and the Title II regulation at C.F.R. § 35.172, which both incorporate by reference the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., at 34 C.F.R. § 100.7(a). This regulation authorizes OCR to periodically review the practices of recipients to determine whether they are complying with the laws OCR enforces.

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LEGAL STANDARDS

The Section 504 implementing regulation at 34 C.F.R. § 104.33 states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction.

Under 34 C.F.R. § 104.3(l)(2)(i), a “qualified person with a disability” includes persons of an age during which persons without disabilities are provided such services and/or are required to receive special education or related services under State law or the Individuals with Disabilities Education Act; and under 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.108, a student has a “disability” if the student (i) has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment. The regulation defines “physical or mental impairment” as “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or…any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” The ameliorative effects of any mitigating measures, except glasses/contacts, should not be considered when assessing whether an impairment substantially limits a major life activity.

The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an “appropriate education” as regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard. 34 C.F.R. § 104.33(b)(2).

As part of a recipient’s obligation to provide a FAPE to students with disabilities, the Section 504 regulation at 34 C.F.R. § 104.35(a) requires a recipient to evaluate any student who needs or is believed to need special education or related services due to a disability. A recipient must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. In addition, 35 C.F.R. § 104.35(b) requires a recipient to establish standards and procedures for the evaluation and placement of students with disabilities.

In interpreting evaluation data and making placement decisions, the Section 504 regulation at 34 C.F.R. § 104.35(c) requires that a recipient draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and ensure that the

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1 For purposes of this letter, entities over whom OCR may exercise jurisdiction under both Section 504 and Title II shall be referred to as “recipient(s).”
placement decision is made by a group of persons (commonly called a “team”), including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

The Section 504 regulation at 34 C.F.R. § 104.36(a) requires recipients to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II.

**INVESTIGATION TO DATE**

OCR’s compliance review examined whether CHSVT was providing qualified students with disabilities a FAPE; specifically, OCR assessed whether CHSVT was following Section 504 procedural requirements for the identification, evaluation, and placement of students with disabilities in its secondary educational programming.

As part of this review, OCR examined CHSVT’s student and staff handbooks, materials addressing CHSVT’s evaluation and placement policies and procedures, including guidance documents provided to staff about special education and related aids and services, from 2014-2020; and several years of annual reports concerning special education and Section 504 services.

OCR also reviewed a sample of CHSVT’s special education and Section 504 student files, interviewed CHSVT’s Superintendent, Principal, and Career & Technical Education Chief, and also interviewed XXXXXX special education teachers responsible for overseeing the delivery of special education and Section 504 services to students throughout CHSVT. At the time OCR conducted its initial interviews, the Principal and the Career & Technical Education Chief served as CHSVT’s Section 504/Title II Co-coordinators. The Superintendent has since left CHSVT and has been replaced by the Principal, under the title “Head of School.”

In fall 2019, OCR spoke with the Assistant Head of School about CHSVT’s academic programming. OCR also spoke with the Principal/Head of School in winter 2018 and spring 2019 about CHSVT’s intake procedures, and in spring 2020 and summer 2021 about CHSVT’s written procedures and recent steps CHSVT has taken to improve Section 504 compliance.

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2 For this reason, OCR will use the term “Principal/Head of School.” All references to the Principal/Head of School refer to the individual who served in this capacity through spring 2020.
FACTUAL FINDINGS TO DATE

CHSVT is a year-round academic and technical high school that operates under the Vermont Department of Corrections and is accredited through the New England Association of Schools and Colleges.

As of spring 2020, CHSVT operates at six Vermont correctional facilities, and additional probation sites, or “street sites,” for students on probation or parole. CHSVT operates within the Vermont Department of Corrections, and its students are under the custody of that entity; therefore, the programming in CHSVT is designed to balance public safety and security with the educational needs of students. CHSVT is an Approved Independent School, which under Vermont law is a school other than a public school that provides an elementary and/or secondary education upon application to and approval by the Vermont Agency of Education (AOE), pursuant to Vermont law at 16 V.S.A. § 166(b). 3

Under Vermont law at 28 V.S.A § 120(h), all individuals under the age of 23 who do not have a high school diploma and who are under the supervision of the Vermont Department of Corrections are required to receive educational programming. 4 According to CHSVT, this educational programming is exclusively provided through CHSVT. Upon their intake at a correctional facility, individuals identified as under 23 and without a high school diploma are automatically enrolled into CHSVT to begin their high school diploma curriculum. The Principal/Head of School confirmed to OCR in spring of 2020 that students 23 or older who do not have a high school diploma may also enroll in the high school diploma curriculum.

In addition to educational programming designed to attain a high school diploma, CHSVT also offers technical trainings and certification programs to enhance employment prospects. Students enrolled in the high school diploma curriculum may also participate in these programs and receive credits toward their diploma program.

CHSVT serves a highly transitory population. On average, CHSVT educates between 1,000 to 2,000 students over the course of a calendar year. At any given time, there are approximately 350 enrolled students, the vast majority of whom depart within several months. For example, in the 2015-2016 school year, 75% of the student population departed within three months and only 10% of the student population remained enrolled for over 180 days, and in May 2020 the Principal/Head of School represented to OCR that these percentages have remained relatively consistent through the present.


4 28 V.S.A § 120(h) provides: “All persons under the custody of the Commissioner who are under the age of 23 and have not received a high school diploma, or are assessed to have a moderate-to-high criminogenic need and are within 24 months of reentry shall participate in an education program. The Commissioner may approve the participation of other students, including individuals who are enrolled in an alternative justice or diversion program.”
Standards and Procedures for the Evaluation and Placement of Students with Disabilities

In June 2014, CHSVT staff acknowledged to OCR that they had not developed written standards and procedures for the evaluation and placement of students with disabilities. CHSVT subsequently developed a manual containing written procedures labeled “draft” for the 2014-2015 fiscal year (CHSVT Procedure Manual).

In January 2017, CHSVT represented that it provides all staff with the CHSVT Procedure Manual and a copy of the AOE guidance document, “Section 504 of the Rehabilitation Act and Vermont Schools: A Manual for Parents, Families, and Schools,” Fourth Edition – May 2010 (AOE 504 Manual), to assist them in their evaluation and placement of students with disabilities. The CHSVT Procedure Manual itself advises staff that “along with the following procedures[,] [staff should] refer to the State Vermont Special Education Rules June 1, 2013 Manual and/or [the AOE 504 Manual].”

In April 2020, CHSVT represented to OCR that the CHSVT Procedure Manual is distributed to staff annually.

**CHSVT Procedure Manual**

The CHSVT Procedure Manual addresses various evaluation and placement processes under Section 504. OCR discusses key features below.

The CHSVT Procedure Manual states that Section 504 protections extend to any “student with a disability … if an evaluation by a multidisciplinary team establishes” that a student “has a physical or mental impairment that substantially limits one or more of his or her major life activities, including one or more of the disabilities recognized as such under the IDEA; has a record of such an impairment; or is regarded by the school entity as having such an impairment, unless the impairment that the student is regarded to have is transitory and minor.”

The manual includes a non-exhaustive list of “major life activities,” and defines “physical or mental impairment” as “a developmental, physiological, or environmental origin, or any cosmetic disfigurement or anatomical loss, that has an objectively observable effect on the ability of an otherwise qualified student to access or participate in some aspect of the academic, non-academic, extracurricular, or ancillary programs.” The manual expressly “exclude[es]” from this definition “conduct disorders or similar sociopathic disorders.”

Regarding the identification of students with disabilities, the CHSVT Procedure Manual has a section titled “special education eligibility (Child find)” that discusses steps CHSVT would take upon the registration of a student to assess the need for possible “special education services”; the document does not clearly state that this process applies for students who may require “related aids or services.”

The steps identified include reviewing available student data and new enrollment forms; contacting families for additional information as appropriate; holding discussions with case workers and attending mental health and truancy meetings; sending the names of all new
enrollees to the AOE to determine if the student has a prior special education history in Vermont; calling and writing previously attended schools to request education records of students who are suspected to have a special education history; and reviewing students’ self-reports and conducting in-depth interviews to verify a history of special education.

When discussing Section 504 referrals, the CHSVT Procedure Manual states an evaluation may take place when a parent or student requests a referral, and that CHSVT may initiate the process “during or at the culmination of” four scenarios: “(1) instructional support or intervention, or any academic remediation, to which the student fails to respond at expected rates or levels; (2) group or individual counseling or behavior interventions that are part of the regular student services program and to which the student fails to respond at expected rates or levels; (3) referral to outside agencies as part of a student assistance or similar process, when such referrals fail to have expected effects on school functioning or performance; or (4) when such activities do not, or are unlikely to, result in referral of the student for a multidisciplinary team evaluation under the IDEA.”

The CHSVT Procedure Manual also addresses how CHSVT will address existing IEPs or Section 504 Plans for incoming students. The document states that for incoming students from another CHSVT campus, the plan will be implemented immediately. For incoming students from another district, the plan will be implemented “to the extent possible until a new IEP/504 Plan is developed,” to take place “no later than 30 school days after the student’s enrollment in CHSVT.”

The CHSVT Procedure Manual appears to distinguish between students with disabilities who may require special education services, and students with disabilities who may require related aids or services. Evaluations for students “thought to have a disability and to require special education” shall be “sufficiently comprehensive to determine” eligibility, and shall “draw upon information from a variety of sources, including, when relevant, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.” Evaluations for students “thought to have a disability but not to require special education” shall “document either… a review of the written results of tests or assessments conducted by appropriately certified or licensed third party professionals, or…tests and assessments conducted by or through the school district at no cost to the parent or adult students or the student.”

As to the team process itself, the CHSVT Procedure Manual states that placement determinations shall be made “by a group of qualified professionals who are able to interpret the meaning of testing and assessments administered or reviewed, at least one of whom is familiar with the student.” Elsewhere in the document, the CHSVT Procedure Manual suggests that only two people may be required for a placement decision: a CHSVT representative and either the adult student or the parent.

The CHSVT Procedure Manual addresses when Section 504 services may be discontinued, and states that “[a] 504 Plan shall remain in effect through the earliest date on which: any adaptation, modification, or service is scheduled to end; any condition for terminating any adaptation, modification, or program is satisfied; any physician’s order upon which any aspect of the 504
Plan is based expires, and in no case shall a 504 Plan remain in effect longer than three years.” The document does not state whether a reevaluation is required before discontinuing Section 504 services or include the term or definition for “significant change of placement.”

**AOE 504 Manual**

As noted above, the CHSVT Procedure Manual advises staff to refer to the AOE 504 Manual and/or the Vermont Special Education Rules Manual for guidance. In February 2018, the Principal/Head of School explained to OCR that in more recent years, CHSVT has grown aware of and seeks to follow the AOE 504 Manual when applicable, so the Principal/Head of School circulates this document to staff in addition to the CHSVT Procedure Manual.

The AOE 504 Manual is a comprehensive, 112-page document that addresses Section 504 obligations, and includes hypothetical examples and discussions about case law and administrative agency determinations. As to evaluation and placement procedures for students with disabilities, OCR identified several examples where the AOE 504 Manual lists different standards than the CHSVT Procedure Manual. For example, when discussing the definition of a “student with a disability,” the AOE 504 Manual defines “physical or mental impairment” identical to the Section 504 regulation. In addition, the AOE 504 Manual does not exclude “conduct disorders or other sociopathic disorders” from this definition, like the CHSVT Procedure Manual does, as discussed above.

The AOE 504 Manual states that evaluations will take place “if a student ‘needs or is believed to need special education or related services’… prior to initial placement in a regular or special education program and before any ‘significant change in placement.’” This criterion is different from the language in the CHSVT Procedure Manual, which describes referral practices that are limited to parental or student requests, and four scenarios in which CHSVT may trigger the process itself. Relatedly, the AOE 504 Manual states that “Section 504 requires a reevaluation before any significant change in placement,” which it defines as “a substantial and fundamental change in a student’s educational program.” The CHSVT Procedure Manual addresses circumstances when Section 504 services may be discontinued but does not state that reevaluations are required prior to this or any significant change in placement.

**Vermont Special Education Rules Manual**

As noted above, the CHSVT Procedure Manual advises staff to refer to the Vermont Special Education Rules Manual and/or the AOE 504 Manual for guidance. The Vermont Special Education Rules Manual is a comprehensive, 168-page document that focuses exclusively on IDEA obligations and processes. The document only briefly addresses Section 504 when discussing evaluation procedures. It states that if “an Evaluation Placement Team determines that the student has a disability, but is not eligible for special education, it may proceed to operate as a Section 504 team to determine whether the student is eligible for reasonable accommodations under Section 504.”
Notice of Procedural Safeguards

In addition to discussing the standards and procedures for the evaluation and placement of students with disabilities, the CHSVT Procedure Manual also contains a section addressing procedural safeguards. In spring 2020, CHSVT represented to OCR that although the CHSVT Procedure Manual is distributed to staff, some staff may choose to distribute the document to their students. In addition, CHSVT represented that since at least 2010, its staff have circulated to students and/or parents two other notices to accompany any Section 504 or IEP Team meeting invitation: Notice of Adult Student Rights, and the Parent Rights Notice.

In June 2014, when OCR interviewed special education teachers and administrators, it was not apparent that the teachers were aware of either notice; and as of spring 2020, it remained unclear what the protocol was for circulating any notice to students and/or parents. CHSVT represented in spring 2020 that it is currently revising these documents to create a new notice of procedural safeguards, which CHSVT plans to add to its website as part of a larger website overhaul.

OCR’s review of the materials in effect as of spring 2020 indicate that, with some variation, the two notices provide the following information, which is generally consistent with the information listed in the CHSVT Procedure Manual: a statement that notice is being provided pursuant to any decision regarding identification, evaluation, and placement; a statement that the individual has the right to examine records relating to this decision; and a statement that the individual has the right to request an impartial hearing and participate directly and/or through an attorney.

As to differences across these materials, OCR’s review indicates that the CHSVT Procedure Manual – which is consistently circulated to staff but not to students or parents/guardians – is the only document that provides information about the review procedure for any impartial hearing decision (specifically, that “[a]n appeal may be taken from the decision of the hearing officer to a court of competent jurisdiction”). In addition, although the CHSVT Procedure Manual states that informal conferences may be held prior to formal due process hearings, this information is absent from the two notices. The CHSVT Procedure Manual also states that notice shall be provided at least once a year and whenever CHSVT requests permission to conduct Section 504 “evaluations or reevaluations” of its students; however, the two notices are broader, and state that notice shall be provided pursuant to any decision regarding the identification, evaluation, and placement of a student with a disability. Finally, the two notices contain different information on how to request an impartial hearing: the Notice of Adult Student Rights states that hearing requests may be directed to CHSVT’s Section 504 Coordinator, whereas the Parent Rights Notice states that requests may be directed to the Vermont AOE.

Implementation of Evaluation and Placement Procedures, and Review of Case Files

According to OCR’s investigation to date, including interviews with CHSVT special education teachers and administrators, and documentary information, individuals entering the Vermont Department of Corrections system are asked to identify any disabilities they may have so

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5 OCR also notes that the Notice of Adult Student Rights lists contact information for OCR’s regional enforcement office in Cleveland, Ohio; OCR’s regional office in Boston, Massachusetts, however, has jurisdiction over CHSVT.
CHSVT can assess the need for educational adjustments and services. OCR’s investigation to date also indicates that CHSVT administers a series of standard diagnostic tests to all students at intake – even those who do not self-identify as having a disability – primarily to measure basic academic and vocational skills, which may also indicate a previously unidentified disability.

Upon students’ self-identification, CHSVT requests educational records from the AOE, including students’ IEPs and/or Section 504 Plans. OCR’s interviews with CHSVT special education teachers and administrators indicate that there was no set timeframe for the process of receiving and reviewing educational files from AOE, but they sought to do so immediately. During a February 2018 interview with OCR, the Principal/Head of School expressed the importance of timely receiving these materials from AOE in light of the short timeframes many students are enrolled at CHSVT (usually under three months); however, he also noted that there were sometimes delays in obtaining these educational materials.

At the beginning of OCR’s review, CHSVT special education teachers emphasized to OCR the importance of reviewing each student’s IEP or Section 504 Plan record with a team including at least a special education teacher, the student, and one regular education teacher; however, they noted that a special education teacher was not always available to attend team meetings due to staffing limitations. At the time of these interviews in 2014, the special education teachers informed OCR that teams might lack the resources and knowledge to develop and implement needed interventions, like positive behavior support plans, but noted that they had access to a list of outside specialists if needed. CHSVT administrators provided examples of outside clinicians being invited to team meetings but noted that ongoing budget cuts had made the process challenging.

OCR’s interviews with CHSVT special education teachers in 2014 suggested that, at the time, evaluations were infrequently conducted and focused on academic skills, as opposed to behavioral and/or emotional services. One of the special education teachers said that she would likely conduct a new evaluation for a student if it were “out of date,” that is, four or more years old. She also noted that “it used to be every correctional site had a special educator, at one point we had twelve [in CHSVT as a whole]. Now it is just the XXXXXX providing services, working with some regular education teachers – approximately [XXXXXX] or so – who also have special education certification through the State.” Another teacher stated to OCR, “I cannot remember the last time I had a case requiring a new evaluation.” A XXXXX teacher indicated to OCR that CHSVT, because of budget cuts, was “moving away from a specialized services model,” and evaluations and reevaluations involving new testing were “rare.”

The special education teachers explained to OCR that these practices were due to a variety of factors, including a lack of training or resources to sufficiently identify behavioral services that may be incorporated into an IEP or 504 Plan, but also the belief at the time that students may not require ongoing specialized services. For example, all XXXXX special education teachers noted that small class size, high interaction between students and teachers, and a strong overall educational support system may explain why Section 504 related aids or services were not necessary. One special education teacher also commented that every student received some form of specialized instruction due to the unique setting and small classroom size at CHSVT. Subsequently, in February 2018, the Principal/Head of School represented to OCR that, in more
recent years, he has specifically emphasized to staff the need to conduct new evaluations as appropriate for each student, rather than rely on dated evaluations, even when constrained by resources.

As to the implementation of Section 504 Plans and IEPs, one CHSVT special educator told OCR in 2014 that staff in general do the “best [they] can,” but observed that at times “regular educators may feel that students are placed in that [disability] category when they are actually just misbehaving” and that “there is resistance” to “convince them otherwise.”

OCR also reviewed a sample of 33 student files for the 2014-2015 academic year. Given CHSVT and OCR’s decision to proceed with a Section 302 resolution, OCR did not conduct follow-up interviews to fill in information gaps with respect to specific case files. Rather, based on the 2014-2015 case files alone, OCR made the following observations.

As to identifying students with disabilities, OCR identified case files where the documentation indicates that the CHSVT team may not have applied the correct standard for determining Section 504 eligibility. For example, in one case file, the documentation indicates that the team did not reference “substantially limits” or consider major life activities beyond that of learning, and may have inappropriately considered the ameliorating effects of mitigating measures. Relatedly, OCR found few cases overall where CHSVT conducted a reevaluation of a student upon entry into CHSVT, even when the last evaluation was done as many as seven years before, which in turn served as the basis for determining related aids and services. OCR also identified several case files where the team did not document the evaluative basis for certain disability classifications (specifically, emotional disturbance).

OCR identified a number of case files where students may have been exited from IEPs and/or Section 504 Plans – and for some students not exited, certain services may have been terminated – without a team of knowledgeable persons convening to determine if a change in services was appropriate, and/or based on dated or little to no evaluation data. For example, in one case file, CHSVT determined that a student with an intellectual disability was no longer eligible for an IEP because “he has made significant improvements in many areas.” This determination was apparently based on a review of a special education evaluation conducted over four years earlier, by another educational institution, that found below-average cognitive functioning and “deficits in adaptive behavior”; there was no documentation in the case file illustrating any “significant improvements.”

Relatedly, for case files where the documentation reflects that CHSVT conducted evaluations and reevaluations, OCR’s review found that these re/evaluations tended to focus on academic skills only. For example, in several cases, the CHSVT team would review a student’s previous evaluation – or note that such evaluative information was missing – and proceed to administer an assessment focused only on academics and agree to only academic-based goals. This occurred with regularity in case files that OCR reviewed for students with emotional disturbance: according to documentation in these files, the CHSVT team appeared to have focused exclusively on special education or related services for academic performance, such as written
expression, math calculation, writing/spelling, and also transition to employment, but did not address emotional and/or behavioral services.

In recent years, CHSVT has made changes to improve its identification, evaluation, and placement of students with disabilities. In February 2018, the Principal/Head of School represented to OCR that, beginning in July 2017, CHSVT established a Special Services Team to conduct the evaluation process. The Special Services Team convenes within one week whenever CHSVT receives new educational files from the AOE, or whenever any CHSVT personnel raises concerns that a student may have a disability requiring special education or related services, to initiate the evaluation process.

In May 2020, the Principal/Head of School informed OCR that the Special Services Team has been reviewing students’ current IEPs and Section 504 Plans and reviewing the files of students who previously were exited from these plans, to make sure eligible students are receiving the appropriate services. There has been an increase in the number of CHSVT students placed on Section 504 Plans due to these improvements.

The Principal/Head of School also reported that CHSVT has taken steps in recent years to help ensure that regular educators are aware of the contents of student plans and the need to enforce them. In May 2020, the Principal/Head of School informed OCR that in July 2018, CHSVT implemented a new layer of supervision for its staff, creating a special education supervisor position and providing each of its campuses with its own on-site education supervisor. The special education supervisor and the campus supervisors meet biweekly with the Principal/Head of School and the Assistant Head of School, who jointly serve as CHSVT’s Section 504 Co-Coordinators and the campus supervisors, to make sure staff at their facilities are aware of and implementing students’ plans. The Principal/Head of School also informed OCR that CHSVT is taking steps to hire more licensed special educators to develop and implement appropriate services.

CHSVT has also represented that it has taken steps in recent years to provide training to its staff on implementation of Section 504’s requirements with respect to identification, evaluation, placement, and plan implementation. In February 2018, the Principal/Head of School informed OCR that since June 2017, he and XXXXX special education teachers had participated in several trainings on their Section 504 and Title II responsibilities to enhance their knowledge of the evaluation and placement processes overall. In May 2020, the Principal/Head of School further informed OCR that CHSVT is currently completing a three-part training for all its teachers regarding the requirements of Section 504 and, among other topics, the training specifically addresses ways to assess and track teachers’ implementation of students’ Section 504 Plans.

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6 The Special Services Team consists of XXX people, XXXX of whom are licensed special education teachers. The Principal/Head of School – who also serves as the Section 504/Title II Co-coordinator – is also one of the Special Services Team members.

7 OCR notes that the Principal/Head of School also informed OCR that CHSVT has been working more broadly with the Vermont Department of Corrections to increase awareness of students’ Section 504 needs, and cited anecdotal information about how students with disabilities are benefitting from this collaboration.
SUMMARY OF CONCERNS

Regarding CHSVT’s published standards and procedures for the evaluation and placement of students with disabilities, OCR is concerned that the CHSVT Procedure Manual expressly states that “conduct disorder” is not a disability. Under 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.108, a student has a “disability” if s/he (i) has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment. The title or name of a disability that otherwise meets the standard defined in the Section 504 and Title II regulation(s) is not relevant to this determination.\(^8\)

OCR is also concerned whether the CHSVT Procedure Manual identifies evaluation bases too narrowly. According to this document, evaluations may take place upon a student or parent referral or “during or at the culmination” of four specific scenarios. While these bases may serve as helpful examples of when an evaluation may be required, the Section 504 regulation more broadly states that a school “shall conduct an evaluation … of any person who, because of handicap, needs or is believed to need special education or related services.” 34 C.F.R. § 104.35(a). Relatedly, OCR is concerned that the CHSVT Procedure Manual does not address the requirement to conduct reevaluations before any significant change in placement, see 34 C.F.R. § 104.35(a), including when discontinuing special education or related services, and/or exiting students from Section 504 Plans or IEPs.

OCR is also concerned that the CHSVT Procedure Manual includes inconsistent information about the composition of the group of persons charged with making placement determinations for students, and what evaluation materials they will review. The document contains definitions that at times comport with the language in the Section 504 regulation, and at times includes language that appears to be narrower in scope than the Section 504 regulation – for example, as to team process, the document suggests that the team may consist of only one CHSVT representative; and as to evaluative information, the document suggests that this may be limited to written tests or assessments only.

OCR is concerned too about conflicting information in the CHSVT Procedure Manual as compared to the AEO 504 Manual. The AEO 504 Manual contains information consistent with Section 504 in some but not all areas where OCR identified concerns with the CHSVT Procedure Manual. Specifically, the AEO 504 Manual does not exclude “conduct disorders” from the definition of a “disability”; the AEO 504 Manual explains that a reevaluation is required before any significant change in placement; and the AEO 504 Manual includes information that is internally consistent and compliant with Section 504 about the team process and the scope of evaluation materials that may be relied upon for placement decisions. However, OCR is concerned that circulating the AEO 504 Manual may not provide staff with the specificity and guidance needed to appropriately implement the evaluation and placement procedures at CHSVT, in light of CHSVT’s unique educational setting and highly transient student population – especially for topics where the AEO 504 Manual is inconsistent with or contradicts the

\(^8\) See also Title II regulation at 28 CFR 35.108(c)(1)(i), defining major life activities to include “interacting with others.”
CHSVT Procedure Manual. Given CHSVT’s and OCR’s decision to proceed with a Section 302 resolution, OCR did not conduct additional interviews to fill in information gaps with respect to what practices CHSVT staff follow when and whether the procedures in these guidance documents may conflict with one another.9

Regarding CHSVT’s procedural safeguards, OCR is concerned whether CHSVT is providing a notice of procedural safeguards that contains all of the information required by the Section 504 regulation and that is consistently circulated whenever there is an action regarding the identification, evaluation, or placement of students who need or are believed to need special education or related aids or services. Specifically, OCR is concerned that CHSVT’s two notices do not contain information about the review procedure or about informal resolution options, which are only found in the CHSVT Procedure Manual. Finally, OCR is concerned that the two notices contain conflicting information on how students or parents may request a formal impartial hearing.

Regarding CHSVT’s implementation of its standards and procedures in practice, including OCR’s review of student case files, OCR is concerned whether evaluations followed appropriate standards under Section 504. Based primarily on interviews and case file reviews conducted in 2014, OCR is concerned that teachers may have implemented IEPs or Section 504 Plans on file without a reevaluation, and instead relied on incomplete and/or dated evaluative information; that overall, re/evaluations were conducted infrequently and appeared to focus on academic goals only (versus behavioral or emotional supports); that students may have been exited from IEPs or Section 504 Plans, or had their specialized services discontinued, on the basis of incomplete and/or dated evaluative information, and/or through a team process that may not have included individuals knowledgeable about the student or the meaning of the evaluation data; and that there were concerns whether specialized services were actually being implemented in the general education setting. While OCR acknowledges CHSVT’s representations about the changes made beginning in 2017 to enhance identification, evaluation, placement, and implementation practices in these areas, OCR is concerned whether and how these changes have been applied in practice to comport with Section 504 requirements, particularly in light of OCR’s concerns with CHSVT’s written procedures.

RESOLUTION AGREEMENT

OCR recognizes CHSVT’s work to enhance its evaluation and placement procedures during the course of OCR’s review. For example, after acknowledging in June 2014 that it did not have written standards or procedures for the evaluation and placement of students with disabilities, CHSVT subsequently drafted and disseminated procedures effective fall 2014. CHSVT has also consistently taken steps through spring 2020 to enhance its understanding and practices.

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9 The CHSVT Procedure Manual also advises staff to review the Vermont Special Education Rules Manual; however, that document pertains only to the IDEA and contains no Section 504-specific information besides a statement that Section 504 provides students with “reasonable accommodations.” OCR notes that this standard is not accurate in elementary and secondary academic programs, where the standard instead is “free appropriate public education.”
Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s Case Processing Manual, CHSVT expressed an interest in resolving this compliance review, and OCR determined that it would be appropriate to resolve the concerns that OCR had identified. The Vermont Department of Corrections – which exercises control of CHSVT – volunteered to participate in these discussions. These discussions resulted in the enclosed Resolution Agreement, which CHSVT signed on August 14, 2019.

The Resolution Agreement requires CHSVT to comprehensively revise its standards and procedures for the evaluation and placement of students with disabilities under Section 504; to provide training to staff about these revised standards and procedures and Section 504 requirements; and to identify and provide remedial services, as appropriate, for students who may have been improperly denied Section 504 special education or related aids or services.

CHSVT has been taking action and submitting data pursuant to the Resolution Agreement. In April 2020, CHSVT revised its evaluation and placement procedures, and proposed further revisions in July 2021, which OCR is reviewing as part of its continued monitoring of the Resolution Agreement. OCR shall continue to monitor CHSVT until OCR determines that CHSVT has completed all actions required under the Resolution Agreement to come into compliance with Section 504.

CONCLUSION

This concludes OCR’s investigation. This letter should not be interpreted to address CHSVT’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that CHSVT must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

Adrienne M. Mundy-Shephard
Acting Regional Director
Enclosure