



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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July 18, 2017

Mr. George Welsh  
Superintendent  
Cañon City Schools/Fremont RE-1  
101 N 14<sup>th</sup> Street  
Canon City, Colorado 81212

Re: Cañon City Schools/Fremont RE-1  
OCR Compliance Review Case Number: 08-14-5001

Dear Superintendent Welsh:

This letter advises you of the outcome of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Denver Office for Civil Rights (OCR), against the Cañon City Schools/Fremont RE-1 (the District). As indicated in our December 18, 2013 letter, the compliance review assessed whether the District is discriminating against students with disabilities. Specifically, the review examined:

- 1) Whether the District discriminates against students on the basis of disability by using restraint and seclusion more frequently and excessively for students with disabilities than students without disabilities, and, if so, whether the District has a legitimate, nondiscriminatory reason for the difference in treatment that is not a pretext for disability discrimination; and whether the District uses alternative behavior intervention strategies less frequently with students with disabilities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.
- 2) Whether the District's use of restraint and seclusion has denied students with disabilities an opportunity to receive a free appropriate public education (FAPE). 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130.
- 3) Whether inappropriate physical restraint of students with disabilities by District staff for conduct related to the students' disabilities has interfered with or denied such students the ability to participate in or receive benefits, services, or opportunities in the District's program, which can constitute disability harassment resulting in a hostile environment. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.
- 4) Whether the District's response to complaints of disability harassment is prompt and equitable. 34 C.F.R. § 104.7 and 28 C.F.R. § 35.107.

OCR initiated the compliance review under the authority of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. Title II prohibits discrimination on

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

the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

The compliance review included a review of information in response to our January 28 and March 18, 2014, requests for data, and our supplemental data requests of March 31, June 8, and September 10, 2015. In addition, we conducted a site visit in June 2014 where we interviewed the District's former Special Education Director, Principals, and toured the three schools. Subsequent to the on-site visit, we surveyed all teachers, administrators, and counseling staff in July 2015 to assess their knowledge of the use of restraint and seclusion techniques and the District's policies; the District's training on its use and any changes after the initiation of the compliance review; use of District reporting forms; the identification of its Section 504 Compliance Officer; and whether the District had received concerns regarding disability harassment of students and how the District responded to these concerns.

During our June 2014 visit, the District requested to enter into a Resolution Agreement regarding the issues of the compliance review. OCR's investigative procedures allow that an investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the issues of the case and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. However, where OCR has obtained sufficient evidence to support a finding with regard to any issue, OCR will proceed to make findings with regard to the specific issue. [See Section 302 of OCR's Case Processing Manual] In this case, OCR's analysis of the data supported entering into an agreement during the course of the investigation for Issue 1 that the District uses restraint and seclusion more frequently and excessively for students with disabilities than students without disabilities, and Issue 3 that the District's use of restraint and seclusion constitutes disability harassment by creating a hostile environment.

However, upon review of the evidence, OCR determined that there was sufficient information to find the District in violation of Section 504 and Title II for Issue 2 that the District's use of restraint and seclusion has denied students with disabilities an opportunity to receive a free appropriate public education (FAPE), and Issue 4 that the District's response to complaints of disability harassment is prompt and equitable. We also concluded that the District did not maintain appropriate records, did not have an adequate notice of its Section 504 and Title II Compliance Officer, and did not have adequate grievance procedures. The District entered into an agreement to resolve all four of the issues identified for investigation in this compliance review. The applicable legal standards, facts gathered, and the basis for our determinations are summarized in the remainder of this letter.

## **Background**

The District is a small public school district serving students from pre-school through high school. The District has seven elementary schools, one middle school, and one high school. The District uses "center based programs" for students with disabilities at three of its elementary schools (Lincoln, McKinley and Harrison) and reports that restraint and seclusion techniques are used in the center based programs. The District reported that center based programs are small classrooms with a special education teacher and numerous paraprofessionals designed to meet the specific learning

needs of moderate to severe special education students. These students typically have identified behavioral issues and many have limited communication abilities.

The District informed OCR that it uses the Mandt system to address behavior in a positive manner and for determining when and how to use restraint and seclusion. The Mandt system is an approach to preventing, deescalating, and if necessary, intervening when the behavior of an individual poses a threat of harm to self or others. The District's former Special Education Director provided OCR with the following description of Mandt:

Mandt, a non-violent crisis intervention program, is utilized district-wide in all buildings as a way to deescalate students who find themselves in crisis, through the use of positive behavior supports. All teachers/support staff who work with students with disabilities, significant support needs, or behavioral difficulties must be certified in Mandt and recertified annually thereafter. Mandt is a recommended and available program to all district teachers and support staff. The main goal of Mandt is to deescalate students through the use of positive/relational techniques. Restraint/seclusion is only used in cases where the student may be in imminent danger of causing harm to self or others. Mandt has been used with students with disabilities and students without disabilities.

On May 15, 2012, the Department issued a resource document entitled "Restraint and Seclusion: Resource Document" (2012 Resource Document), which outlines principles for schools to consider regarding the use of restraint and seclusion. The 2012 Resource Document can be viewed as a compendium of best practices with regard to the issue of restraint and seclusion for students, but does not establish new legal standards in these areas. Those standards are discussed in the following section of this letter.

## **Legal Standards**

### **Issue 1 – Different Treatment Based on Disability**

Different treatment on the basis of disability is a form of disability discrimination prohibited by Section 504 and Title II. 34 C.F.R. § 104.4; 28 C.F.R. § 35.130. In evaluating an allegation of different treatment, OCR determines what action the recipient took against the alleged injured party, whether it followed its policies and procedures for taking such action, and whether similarly situated non-disabled individuals were treated differently. If the alleged injured party was treated differently, OCR determines whether the recipient has a legitimate, non-discriminatory reason for the different treatment and, if so, whether the stated reason is a pretext for discrimination.

### **Issue 2 – Free Appropriate Public Education (FAPE)**

The Section 504 regulation, at 34 C.F.R. Section 104.33, requires that recipients 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 of non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. Sections 104.34 through 104.36, pertaining to educational setting, evaluation and placement, and procedural safeguards including due process.

In addition, the Section 504 and Title II regulations, at 34 C.F.R. Section 104.4 and 28 C.F.R. Section 35.130, respectively, prohibit a recipient from, on the basis of disability, excluding a qualified person with a disability from participation in, denying the person the benefits of, or otherwise subjecting the person to discrimination under any of the recipient's programs or activities. Inappropriate physical restraint or seclusion of a student by a recipient's staff members for conduct related to the student's disability that interferes with or denies the student's participation in or receipt of benefits, services, or opportunities in a recipient's program can constitute discrimination in violation of Section 504 and Title II.

### Issue 3 - Disability Harassment/Hostile Environment

The regulation implementing Section 504, at 34 C.F.R. Section 104.4, states that a recipient may not, on the basis of a person's disability, exclude the person from participation in, deny the person the benefit of, or otherwise subject the person to discrimination on the basis of disability in any of its programs or activities. The regulation implementing Title II contains a similar provision at 28 C.F.R. Section 35.130.

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504, Title II and their implementing regulations, for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

In determining whether a hostile environment based on disability has been created, OCR evaluates whether or not the conduct was sufficiently serious to deny or limit the student's ability to participate in or benefit from the school district's program. Harassment can create a hostile environment if it is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or receive benefits, services, or opportunities in the school district's program.

### Issue 4 – Disability Harassment Grievances

Under Section 504, Title II, and their regulations, if a student is harassed based on disability by an employee, the recipient is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the recipient must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The recipient must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the recipient does not tolerate harassment and will be responsive to any student reports of harassment. The recipient also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7(b) and 28 C.F.R. §35.107(b)). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. 34 C.F.R. §104.7(a) and 28 C.F.R. §35.107(a).

## **Evidence**

### **The District's Restraint and Seclusion Policies and Procedures**

The District's restraint and seclusion policies and procedures were drafted to address all schools districtwide. However, we found that the application of the procedures was specifically intended for the three schools with center-based programs providing services exclusively to students with severe disabilities (Lincoln, McKinley and Harrison). OCR found a high number of restraint and seclusion incidents at these schools even though these three schools enroll a small number of students with severe disabilities. We also found that restraint and seclusion methods are used at two other schools (Canon Exploratory School and Washington Elementary) in addition to the three center-based schools identified initially by the District.

The District's adoption of the Mandt system is designed to ensure that staff members know how to deescalate situations and recognize that restraint and seclusion is intended only for emergency situations where there is a threat to self or others. However, there were a number of incidents where staff members involved in the restraint and seclusion methods were not trained in Mandt. Further, the District used restraint and seclusion in non-emergency situations or when not called for in students' IEPs and BIPs, which is contrary to District policy and the Department's resource document. School administrators also stated that staff is not consistently providing notice to parents about restraint or seclusion incidents and recording when and how notice is provided.

OCR analyzed the District's Restraint and Seclusion Policies and Procedures that were revised after this compliance review was initiated and found that the District added many of the recommendations from the Department's 2012 Resource Document. However, we noted the following inconsistencies:

- The District's Restraint and Seclusion policies and procedures focus on restraint and often omit necessary references to seclusion. The District's Restraint and Seclusion policies and

procedures do not expressly state that every effort should be made to prevent the need for the use of seclusion, as suggested in the 2012 Resource Document's Principle 1.

- The District's Section 16 document states that there are conditions where the District allows mechanical restraint "to limit an individual's body movement to prevent or manage out-of-control behavior," which is contrary to the 2012 Resource Document's Principle 2, which states that "[s]chools should never use mechanical restraints to restrict a child's freedom of movement." Further, the Section 16 document is contrary to the District's Parent Handout because the Section 16 document seems to allow mechanical restraint while the Parent Handout prohibits use of mechanical restraint.
- The Section 16 document prohibits the use of chemical restraints. The District should clarify this prohibition to conform to the 2012 Resource Document's Principle 2, which allows the use of a drug or medication to control behavior or restrict freedom of movement when "authorized by a licensed physician or other qualified health professional."
- The 2012 Resource Document's Principle 3 states, "Physical restraint and seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective. . . ." The District's Section 16 document should also state that, like restraints, use of seclusion is only appropriate when necessary to ensure the student and others are safe.
- The District's Restraint and Seclusion policies and procedures do not expressly state that policies restricting the use of restraint and seclusion should apply to all students, not just to students with disabilities, as suggested in the 2012 Resource Document's Principle 4.
- The District should add that while a student is in seclusion, the student will be continuously monitored to be consistent with the 2012 Resource Document's Principle 11.
- The District needs to specify that after each incident, the students' parents will receive a written report in order to be consistent with the 2012 Resource Document's Principle 13.
- The District policy should state that following each incident of seclusion, the District will review the incident to determine whether an updated plan is necessary for the student to be consistent with Principle 14 of the 2012 Resource Document.
- The District policy should provide details on who, how, and when the District will collect data regarding its use of seclusion and how records will be kept to be consistent with Principle 15 of the 2012 Resource Document.

### **The District's Restraint and Seclusion Data**

The District documentation provided to OCR identified five schools (out of its nine total schools) that used restraint and/or seclusion with District students: 1) Canon Exploratory School, 2) Washington Elementary School, 3) Lincoln School of Science and Technology, 4) McKinley Elementary School, and 5) Harrison K-8. OCR analyzed the restraint and seclusion incidents from each of the five identified District schools for three consecutive school years (SYs 2012-13, 2013-14, and 2014-15) and noted the following concerns:

- At Canon Exploratory School and Lincoln School of Science and Technology, OCR found evidence of students who were subjected to restraint or seclusion for described behaviors that did not indicate the student was a harm to themselves or others (e.g., yelling, falling on the floor, refusing to make a choice).

- At Canon Exploratory School, Washington Elementary, and Lincoln School of Science and Technology, OCR found incidents where staff members, who were not trained in Mandt, were involved in performing restraint and seclusion with students.
- At Lincoln School of Science and Technology, McKinley Elementary, and Harrison, we found evidence of students who were in the seclusion setting and not receiving educational services between 7.5 and 40 hours during a school year.
- With the exceptions of one non-disabled student and one student who was being evaluated for a disability at the time of the incident, all other students who were subjected to restraint and/or seclusion were students with disabilities.
- While restraint and seclusion was nearly limited to just being imposed on students with disabilities, many of these students did not have any information in their individualized education programs (IEPs) that discussed the use of these techniques with the student. Only some students have such information in their IEPs.
- The District could not provide documentation that parents received notice, or signed acknowledgement paperwork, for the use of Mandt with their children. Also, parents and guardians were not consistently notified of restraint or seclusion incidents involving their child.
- During the course of this compliance review, the use of restraint and seclusion techniques significantly reduced in the District. In the initial 2012-13 school year, there were 319 reported restraint or seclusion incidents in the District and in the 2014-15 school year that number had dropped to 61 reported incidents.

## **Analysis and Discussion**

### **Issue 1 – Different Treatment Based on Disability**

Whether the District discriminates against students on the basis of disability by using restraint and seclusion more frequently and excessively for students with disabilities than students without disabilities, and, if so, whether the District has a legitimate, nondiscriminatory reason for the difference in treatment that is not a pretext for disability discrimination; and whether the District uses alternative behavior intervention strategies less frequently with students with disabilities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.

While the District's former Special Education Director stated that restraint and seclusion are used with both students with and without disabilities, based on the District's data, students with disabilities are subjected to restraint and seclusion almost exclusively. In our review of three years of evidence regarding recorded restraint and seclusion incidents, we found that the District used

restraint or seclusion with only one non-disabled student and one student being evaluated for a disability, and the rest of the students subjected to restraint and seclusion had disabilities.

The District's adoption of the Mandt system is designed to ensure that staff members know how to deescalate situations and recognize that restraint and seclusion is intended only for emergency situations where there is a threat to self or others. However, there were a number of incidents where staff involved in the restraint and seclusion methods used with students with disabilities were not trained in Mandt.

OCR analyzed the District's Restraint and Seclusion Policies and Procedures that were revised after this compliance review was initiated and found that the District added many of the recommendations from the Department's 2012 Resource Document. However, our review also identified inconsistencies in the District's Policies and Procedures, as described earlier. While it is important to note that such inconsistencies with the 2012 Resource Document do not equate to non-compliance with Section 504 or Title II, OCR does look to determine the impact of the inconsistencies on students with disabilities.

In June 2014, the District stated that it wished to resolve this issue with an agreement. OCR concludes that a Resolution Agreement to resolve this issue is appropriate at this time. In order to make a compliance determination with regard to this issue, OCR would need to conduct further interviews and closely examine specific incidents to determine whether there are legitimate reasons for an almost exclusive use of restraint and seclusion with students with disabilities. The District entered into a Resolution Agreement on November 29, 2016, to resolve Issue 1.

### Issue 2 – Denial of FAPE

Whether the District's use of restraint and seclusion has denied students with disabilities an opportunity to receive a free appropriate public education (FAPE). 34 C.F.R. § 104.33.

The Section 504 regulation at 34 C.F.R. § 104.4 provides that students with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, be afforded an opportunity that is not equal to that afforded others, or otherwise be subjected to discrimination in a public school district's programs and activities. The regulation further provides that a public school district may not otherwise limit an individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Title II at 28 C.F.R. § 35.130 contains similar provisions. OCR interprets these provisions to require that public school districts ensure that the school environment for students with disabilities is as safe as the environment for students without disabilities.

The District's data demonstrates that when the compliance review was initiated, a significant number of restraint and seclusion incidents occurred at five of its schools. Since the initiation of the compliance review, the number of incidents reported by the District has decreased. However, the District cannot demonstrate through the way in which it documents the use of restraint and seclusion that it is only using restraint and seclusion in situations when the student is a threat to self or others.

OCR noted in its review of students' IEPs and BIPs that restraint or seclusion is either not addressed in the IEPs and BIPs, or the use of restraint or seclusion is not authorized or done in a manner that is consistent with the IEPs and BIPs. This is especially clear when restraint or seclusion incident records indicate that restraint or seclusion was used even in situations when it seems the student is not a threat to self or others.<sup>1</sup>

District staff members stated that when students are restrained or secluded, educational services are limited to behavior intervention services included in the students' BIPs, thereby preventing students with disabilities to access the services required in their IEPs. Staff state that the seclusion rooms are used for recovery, no classwork, and are strictly for attempting to calm down.

We considered whether we can definitively point to any of the students we analyzed and state that they were denied FAPE when they were secluded for either non-emergency situations or in excessive amounts. The student information we have supports a FAPE violation for some of the students. For example, District records show that Student E was to only be restrained or secluded for emergency situations and we can see where the student was restrained and secluded for lesser situations and ultimately missed 600+ minutes of instruction time. Further, we found evidence showing that students are in the seclusion room for up to 2 hours a day. The evidence does also demonstrate that the seclusion incidents based on non-emergency situations declined through the years of this compliance review, and the latest restraint and seclusion forms generally indicated where there was harm to self or others in those incidents where restraint and/or seclusion was utilized. However, in the earlier years of our review, this was not the case. We found evidence of students being secluded for a significant part of the school day for non-emergency situations. We find the District violated Section 504 and Title II when it secluded students and denied them FAPE/educational time. The District agreed to enter into a Resolution Agreement to resolve this noncompliance determination.

### Issue 3 – Disability Harassment

Whether inappropriate physical restraint of students with disabilities by District staff for conduct related to the students' disabilities has interfered with or denied such students the ability to participate in or receive benefits, services, or opportunities in the District's program, which can constitute disability harassment resulting in a hostile environment. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.

OCR found that the District did not have specific policies and procedures regarding disability harassment. In those instances where school principals described incidents that may have been disability harassment situations, there were no records kept regarding the incidents and they were not reported to the District's Section 504/Title II Coordinator. According to the restraint and seclusion records produced by the District, students with disabilities are virtually the only students who are subjected to restraint and seclusion. We also know that parents did not consistently acknowledge that restraint and seclusion would be used for many of these students, and documentation was not provided that parents were consistently notified when restraint and seclusion was used, despite these being required by District policy. The District did not produce

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<sup>1</sup> Incident reports require staff members to indicate whether the student was a threat to self or others. Many of the incident reports do not indicate that the student was a threat to self or others.

documentation that complaints were made to the District about a hostile environment for students with disabilities based on the almost exclusive use of restraint and seclusion on that population or for any other reasons.

In June 2014, the District stated that it wished to resolve this issue with an agreement. OCR concludes that a Resolution Agreement to resolve this issue is appropriate at this time. The District entered into a Resolution Agreement on November 29, 2016, to resolve this issue.

#### Issue 4 – Response to Complaints

We considered whether the District’s response to complaints of disability harassment is prompt and equitable. The District reported receiving four disability-related discrimination complaints, and two of these complaints involved complaints filed with OCR against the District. None of the complaints allege concerns with restraint or seclusion.

We asked for the District’s policy and procedures regarding disability harassment. The District provided its Parent Guide to Section 504, Notice of Procedural Safeguards, and nondiscrimination notices, none of which were pertinent to our inquiry. The former Special Education Director admitted in 2014 that the District did not have policies and procedures regarding disability harassment. The former Special Education Director explained that if a parent makes a bullying complaint, these are investigated but not always investigated in the “narrow disability harassment framework.”

The District adopted disability harassment policies and procedures on March 10, 2014, after the initiation of this compliance review. The District disability harassment policies and procedures include almost all of the elements required by Section 504 and Title II. The “Nondiscrimination/Equal Opportunity” document also states that the District will promptly and impartially investigate allegations of unlawful discrimination and harassment, take steps to prevent the recurrence of discrimination and harassment, take steps to prevent retaliation, take steps to remedy discrimination and harassment, and maintain confidentiality. The “Nondiscrimination/Equal Opportunity (Complaint and Compliance Process)” document states that complaints may be made orally or in writing, establishes specific timeframes for the major phases of an investigation, and states that the District will provide notice to parties of the outcome of a grievance or complaint but does not state it will be in writing.

However, OCR noted the following problems with the District’s disability harassment policies and procedures: 1) there is insufficient notice of the Section 504/Title II compliance officer as required by 34 C.F.R. Section 104.7(a) and 104.8(a) and at 28 C.F.R. § 35.107; 2) its “Nondiscrimination/Equal Opportunity” provides a dispute resolution process in its Section 504 guide to parents that is not the same as the Nondiscrimination/ Equal Opportunity procedures; and 3) the District does not provide responses to complaints in writing.

In its initial response to OCR’s request for District records of any disability discrimination complaints that were filed with the District during SYs 2012-13 and 2013-14, the District responded that it had not received any such complaints. Upon further inquiry by OCR, the District’s administration reported receiving four disability complaints. However, OCR learned that two of the identified complaints were actually OCR complaints that had been handled many years earlier and

the other complaints concerned a parent who raised allegations regarding physical therapy for her son's physical disability. There were no district records for any of these situations and none of the complaints that OCR has received regarding the District allege concerns with disability harassment or restraint and seclusion.

When OCR further inquired about student on student harassment incidents, the principals recalled meeting with students and bringing them together to talk and determine if there was a disability harassment claim; however, the District produced no specific documentation of the incident or of any investigation that may have been conducted.

The staff survey results demonstrate that administrative staff received more complaints regarding disability discrimination than were reported in the District's data responses. Interviews with school principals demonstrate that they received disability discrimination complaints from parents and did not use the District's grievance procedures and did not notify the District's Section 504 Coordinator of the complaints. The District's response to the disability complaints is not in compliance with Section 504 or Title II.

The District requested to resolve this issue through a Section 302 Agreement. However, based on the evidence collected and reviewed, we have determined that the District is in violation of Section 504 and Title II regarding its handling and documenting of disability discrimination complaints, its incomplete grievance procedures, and notice of its designated employee responsible for coordinating Section 504 and Title II compliance. In making this determination, we recognize the good faith efforts by the District to adopt and implement appropriate grievance procedures and provide adequate notice of its Section 504 Coordinator. These actions were significantly more comprehensive than the District's previous policies and procedures, but still raise compliance concerns. Through an agreement, OCR will require that the District revise its policies and procedures to OCR for review and approval.

## **Conclusion**

When we initiated the compliance review, the District was using restraint and seclusion frequently, virtually only with students with disabilities according to the District's records, and in circumstances not consistently called for in their educational plans. Moreover, the restraint and seclusion was done by staff not always qualified by District standards to do this. There has been some progress since then, such as the number of Mandt trained staff increasing and the number of reported restraint and seclusion incidents decreasing. However, circumstances warrant accepting the District's offer to enter into a Resolution Agreement to address the issues of different treatment and harassment on the basis of disability for deficiencies that became apparent during the course of the review. Further, OCR's investigation established that the District violated Section 504 and Title II by denying FAPE to some students because of the seclusion meted out, and there are procedural violations regarding the District's inadequate responses to disability harassment complaints, recordkeeping, and inadequate Title II notice of the District's Title II Coordinator.

For Issue 1, the District will revise its policies regarding the use of restraint and seclusion in District schools; create and use a tracking system for incidents involving the use of restraint and seclusion techniques; and provide annual training on the policies and procedures to all school staff members. For Issue 2, the District will hold an IEP team meeting for each of the students with disabilities

subjected to restraint and seclusion between the 2012-2013 and 2015-16 school years to consider whether the students require any compensatory services for FAPE or other instructional services missed as a result of the cumulative restraint or seclusion. For Issues 3 and 4, the District will develop a notice of non-discrimination, notice of compliance officer, and grievance policy and procedures to address allegations of disability discrimination, in accordance with Section 504 and Title II requirements and provide notice to all parents, students, administrators and staff of the OCR-approved notices, policy, and procedures.

This concludes the investigation of this compliance review. OCR's determination on this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

The letter sets for the 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.

Individuals participating in our compliance review process are protected from retaliation by Federal law.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will seek to protect to the extent provided by law, any unwarranted invasion of privacy.

Thank you for your and the District's cooperation in resolving this compliance review. Please refer to the above-referenced case docket number in any contacts with this office. If you have any questions, please contact Ms. Heidi Kutcher, the Attorney assigned to the case at (303) 844-4572, or by email at [heidi.kutcher@ed.gov](mailto:heidi.kutcher@ed.gov). You may also contact Ms. Angela Martinez-Gonzalez, Supervisory General Attorney by telephone at (303) 844-6083 or by email at [angela.martinez-gonzalez@ed.gov](mailto:angela.martinez-gonzalez@ed.gov).

Sincerely,

/s/

J. Aaron Romine  
Regional Director

Enclosure

cc: Ms. Lynette Steinhoff  
Director of Special Education/Section 504 Coordinator

Dr. Katy Anthes  
Commissioner of Education  
Colorado Department of Education