



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 11, 2017

Ms. Dianna Chrisman, Superintendent
Yuma School District
418 South Main Street
Yuma, Colorado 80759

Re: **Yuma School District**
OCR Case Number: 08-17-1066

Dear Superintendent Chrisman:

We write to inform you of the resolution of the above-referenced complaint, filed on November 16, 2016, with the Office for Civil Rights (OCR) of the U.S. Department of Education (“the Department”), against Yuma School District (“the District”), alleging discrimination on the basis of disability. Specifically, the allegations that OCR accepted for investigation were that the District and the Northeast Colorado Board of Cooperative Educational Services (BOCES) (collectively “the Recipients”) treated students differently on the basis of disability and denied students a free appropriate public education (FAPE) by: (a) failing to provide transportation services in a manner that affords the students equal participation; (b) failing to follow the students’ individualized education programs; and (c) failing to follow required procedures for changing the students’ placements.

OCR is responsible for enforcing: Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990, and its implementing regulation at 28 C.F.R. part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

During the course of our investigation, and before interviews were conducted and additional data was requested, the Recipients indicated their desire to voluntarily enter into an agreement to resolve all of the Complainant’s allegations pursuant to Section 302 of our *Case Processing Manual* (CPM). We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation. This letter details the applicable legal standards and the status of our investigation prior to receiving the Recipients’ request to enter into an agreement.

I. Legal Standards

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

a. Individualized Education Programs

Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the FAPE requirements. See 34 C.F.R. Section 104.33(b)(2).

b. Placement

The Section 504 regulations, at 34 C.F.R. Section 104.35(c), require that placement decisions (*i.e.*, decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

c. Different Treatment

Under the Section 504 regulations, at 34 C.F.R. Section 104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. Section 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. Section 104.4(b)(1) and 28 C.F.R. Section 35.130(b)(1), a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others.

II. OCR's Investigation

Our investigation involved requesting and reviewing special education, transportation, and other educational records for Students A and B, including records of communications among the Recipients and the parents of Students A and B. Additionally, we received information

regarding other District students who received special education transportation services from the District and the District's policies and procedures that apply to providing student transportation.

III. Evidence

Student A is a tenth grade student with a disability (autism) and an IEP. Student A began the 2016-2017 school year at Yuma High School ("the School"), and then started at Converge Day Treatment ("Day Treatment") on January 16, 2017. Student B is a ninth grade student with a disability (autism) and an IEP. Student B has attended Day Treatment since the beginning of the 2016-2017 school year. His base school is also the School. Both students receive special transportation services from the District to and from Day Treatment pursuant to their IEPs.

a. Student A

According to the District, the "original decision to shorten [Student A]'s day was made on XXXX by an IEP team during an IEP team meeting."¹ Student A's IEP from XXXX reads: "[Student A]'s educational program will begin at 7:30 a.m. and end at 2:30 p.m. Tuesday, Wednesday, Thursday and Friday. Monday is a shortened day (as per the school district calendar), 7:30 a.m. to 1:30 p.m." The District explained to OCR that the

team adjusted [Student A]'s arrival and departure times for two reasons: 1) to avoid sensory overload created by large numbers of other children entering and exiting the school at those times each day and 2) [Student A] [was] fatigued at the end of the day, which led to increased aggressive behaviors that significantly interfered with his ability to access the curriculum late in the day.²

However, according to the Complainant, Student A's shortened school day was not based on his individual needs. Instead, Student A left school early because his parents were told that 2:30 p.m. was the time that students "in the special education class" left school. Student A's parents went along with the shortened schedule because they believed the District had an unwritten policy that left them with no choice.³

Student A began the 2016-2017 school year, which started on August 23, 2016, at the School. According to the Recipients, at the beginning of the year,

Yuma Administration and parents agreed that [Student A] would arrive at school at 8:00 a.m. consistent with the arrival of other non-disabled peers since a private entrance was available and would assist in avoiding the sensory overload. There was no change to the departure time of 2:30 p.m. which had previously been established by the IEP team.⁴

¹ Recipients' narrative response to OCR on Feb. 17, 2017.

² *Id.*

³ Email from the Complainant to OCR on Mar. 21, 2017.

⁴ Recipients' narrative response to OCR on Feb. 17, 2017.

The District informed OCR that there was not an IEP team meeting at the time that Student A's starting time was changed.⁵ Instead, the Recipients wrote to OCR,

When the team prepared to transition [Student A] to [the School], they simply anticipated he would arrive on time for the start of the school day. His actual arrival time varied (he was the only student on his bus, so the driver would wait for him if he was running behind), so [Student A] usually made it to school on time, though on average he arrived closer to 8:00.⁶

The standard dismissal time for students at the School was 3:20 p.m. Therefore, Student A began the 2016-2017 school year arriving at school on time, but leaving school 50 minutes early.

According to the Complainant, on September 9, 2016, Student A's parent emailed notes to [the Program Director at Day Treatment] and [Student A's Special Education Teacher at the School]. The notes read, in part, "Must have in IEP ... Stay until 3:20 like the rest of students at high school. Shouldn't be a problem since they have their own entrance to school."

At Student A's IEP team meeting on September 12, 2016,⁷ his parent requested that the IEP team consider allowing Student A to stay "until 3:20 like the rest of the students at the high school[.]"⁸ Special education records provided to OCR by the Recipients do not indicate how the parent's request was handled; however, the meeting notes indicate that no changes were made to the IEP. Additionally, daily schedules provided by the Recipients to OCR show that the Student continued departing the School 50 minutes early until October 21, 2016.⁹

Student A's IEP team met again on October 19, 2016. The IEP (Service Delivery Statement) from that meeting notes:

[Student A] will receive daily, full-time specialized instruction by special education providers at [Day Treatment]. ... Until January 2, 2017, [Student A] will continue his current schedule at [the School] and will receive special education services within a self-contained and/or resource room setting. [Student A]'s current school day is 8:00 to 2:30, which is a shortened school day developed previously due to behaviors often occurring in the afternoon. The school will gradually increase time in 15 minute increments over a two-week period, when appropriate based on a review of behavioral information by BOCES/school staff and parents.

According to the Recipients, Student A's dismissal time for the remainder of fall 2016 became 2:45 p.m. on October 24, 2016; 3:00 p.m. on November 7, 2016; and 3:20 p.m. on November 28, 2016.

⁵ Phone call between the Recipients' attorney and OCR on Feb. 23, 2017; Email from the Recipients to OCR on Mar. 30, 2017.

⁶ Email from the Recipients to OCR on Mar. 30, 2017.

⁷ Student A's IEP, dated January 13, 2016, makes no mention of modified or shortened school day.

⁸ Meeting notes from Student A's IEP team meeting on Sept. 12, 2016.

⁹ Phone call between the Recipients' attorney and OCR on Feb. 23, 2017

The Recipients reported to OCR that Student A began attending Day Treatment on January 16, 2017.¹⁰ He started on a full-day schedule, which is from 8:00 a.m. to 2:15 p.m. at Day Treatment, and as of February 17, 2017, he continued to be on a full-day schedule.¹¹ Notably, according to the Complainant, Student A's parents "dispute that he needed to be placed at Day Treatment, and believe he should be on a full schedule" at the School.¹²

b. Student B

According to the Complainant, after being homeschooled, Student B returned to the District while he was in seventh grade during the 2014-2015 school year. Upon his return, Student B's IEP team determined that he needed to be in a special education classroom. Student B's parents were told that because he was in the special education classroom, he had to leave school early – at 2:30 p.m. – with the rest of the kids in the special education class. The District had an unwritten policy. The departure time did not appear to be open for discussion; thus, Student B's parents did not resist the decision. The Recipients dispute these assertions.

Student B's IEP team met on XXXX. The IEP notes from the meeting read, in part:

The school will provide specialized transportation on school days and will pick [Student B] at approximately 7:35 every morning except for Thursday when [Student B] goes to Denver for appointments. Only one person will transport [Student B] to and from school. The IEP will be amended to reflect this. Also, [Student B]'s Respite Care Givers will pick up [Student B] occasionally at 2:30 p.m. The parent(s) will give the school staff the schedule as it is updated. [Student B] will be dropped off at home by the school following his weekly physical therapy appointments in Wray.

On April 13, 2016, Student B's IEP team met again for his annual review. The prior written notice from the meeting notes, "The IEP team chose to continue with a shortened daily schedule and partial attendance on M-T-W-F only to allow [Student B] to attend therapy session with a private psychologist arranged by the parents." According to the Recipients, Student B's mother requested that the District explore alternative settings for Student B. The team maintained Student B's placement at that time, but immediately began exploring alternative settings.¹³

Student B has attended Day Treatment since the beginning of the 2016-2017 school year.¹⁴ According to the Recipients, on May 4, 2016, Student B's parents, accompanied by an advocate, met with BOCES' Special Education Director and the District's Superintendent. They all agreed that Student B would, during summer 2016, attend Day Treatment's enrichment program for a few days on a trial basis, with the understanding that, if the trial basis went well, Student B

¹⁰ According to the District's calendar, students returned to schools on January 3, 2017.

¹¹ Recipients' narrative response to OCR on Feb. 17, 2017.

¹² Complainant's email to OCR on Apr. 6, 2017.

¹³ Recipients' email to OCR on Mar. 30, 2017.

¹⁴ Chart provided by the Recipients to OCR on Mar. 3, 2017.

would begin his full-time programming there in fall 2016.¹⁵ The summer enrichment went well; so, Student B continued at Day Treatment in fall 2016.¹⁶

According to the Complainant, Student B's mother "expressed that she had some concerns," but "agreed that she would discuss the option with her husband and then they would decide." A few days after the meeting, Student B's mother called the District's Superintendent and "said she was okay with them moving forward with placing Student B at Day Treatment." Student B's mother then "called [the Program Director] at Day Treatment and set it up so [Student B] could attend a few days a week during the summer in preparation of starting there in fall 2016. None of this was discussed during an IEP [team] meeting."¹⁷

On August 22, 2016, Student B started the 2016-2017 school year at Day Treatment.¹⁸ According to the Recipients, during the first semester at Day Treatment, Student B arrived at school at 8:00 a.m., which is the beginning of the school day at Day Treatment, and departed school at 1:45 p.m., which is 30 minutes prior to regular dismissal at Day Treatment.¹⁹ The Recipients explained to OCR that "the rationale for the shortened day was Parent reports that due to [Student B]'s struggles with sleep, [Student B] would be too fatigued at the end of the day if his total time out of the home (including transportation) was any longer."²⁰

However, according to the Complainant, Student B was not arriving at Day Treatment until approximately 9:00 a.m. because he lives about 76 miles away from Day Treatment and he was not being picked up by the school bus until 7:20 a.m.²¹ Additionally, the Complainant asserts that Student B "arrived and departed at different times each day. His arrival was sometimes as late as 9 am or later and his departure was sometimes as early as 1:30 [p.m.]" The Complainant provided OCR with "a handwritten log of [Student B]'s check-in and check-out times for the first semester of the 2016-2017 school year," which was provided by the Special Education Director at Day Treatment. The log shows that Student check-in times ranged from 7:55 a.m. to 9:50 a.m.; and his departure times ranged from 1:30 p.m. to 2:45 p.m. Finally, the Complainant added,

During the May meeting, [Student B]'s mom had asked [the Program Director at Day Treatment] about the possibility of napping because Student B will use it as a defense mechanism when he is overwhelmed. [The Program Director at Day

¹⁵ There is conflicting information about whether the decision to place Student B at Day Treatment was made in an IEP team meeting. The Complainant alleges that the decision was not made in an IEP team meeting. Complainant's email to OCR on Apr. 6, 2017. In an email on March 30, 2017, the Recipients reported to OCR that the decision was not made in a formal IEP team meeting convened by the Recipients. However, the Student's education records include a form titled, "Colorado Facility Schools Individualized Education Program." The form lists a transfer date of "08/22/2016." The form reads, "The IEP dated 04/13/2016 from [the District] is not adopted." The form has a "Comparable Service Delivery Statement" that reflects placement at Day Treatment.

¹⁶ According to the Complainant, "It had already been decided that Student B would attend Day Treatment shortly after the May meeting, and was not because the summer went well." Complainant's email to OCR on Mar. 30, 2017.

¹⁷ Complainant's email to OCR on Apr. 6, 2017.

¹⁸ Recipients' email to OCR on Mar. 30, 2017.

¹⁹ Chart provided by the District to OCR on Mar. 3, 2017.

²⁰ Recipients' email to OCR on Mar. 30, 2017.

²¹ Complainant's email to OCR on Mar. 24, 2017.

Treatment] assured [Student B]’s mom that they keep students busy enough that he wouldn’t nap. It was discussed at this time that they could potentially have a later start for Student B if needed, but this was as far as the conversation went – [Student B]’s mom never requested a short day, but was simply seeking additional information should it become an issue once he started at Day Treatment.²²

According to the Recipients, Day Treatment evaluated Student B and then convened an IEP team meeting for him on September 21, 2016. The “Service Delivery Statement” in the IEP from the meeting notes that Student B was “not attending school on Thursdays because he goes to his therapist in Denver on that day.” The IEP also notes that Student B’s mother “mentioned that the time change for the bus was a difficult adjustment for him.” The Recipients further informed OCR,

At the IEP [team] meeting on September 21, 2016, a late start of 8:40 a.m. was discussed in response to parent input that ‘the time change for the bus was a difficult adjustment for him.’ This decision was discussed by the IEP team with the student’s parent and [Day Treatment] at the IEP meeting on September 21, 2016.²³

The Recipients also informed OCR that the arrival time was not changed – *i.e.*, it stayed at 8:00 a.m.²⁴ According to the Recipients, “Beginning on January 9, 2017, at the request of the parent, the transportation schedule was adjusted by [District] Administration so that [Student B] would arrive at school at 8:00 a.m. and depart at 2:15 p.m.”²⁵

However, the Complainant asserted the following facts. At the September 21, 2016 IEP team meeting, the discussion about him arriving at 8:40 a.m. was related to whether Student B could arrive during recess at 8:40 a.m. instead of in the middle of class at 9:00 a.m. Thus, the 8:40 a.m. arrival time would have had Student B arriving earlier than he was prior to the meeting. However, after the meeting, the 9:00 a.m. arrival time continued. His mother was told that Student B could not be picked up any earlier – and thus, he could not arrive at school any earlier – because they did not have any aides/paras available during the earlier hours. Student B continued to be picked up from home at 7:20 a.m. and dropped off at Day Treatment at approximately 9:00 a.m. until a new aide/para started later in fall 2016.²⁶ Further, according to Student B’s parent:

In our IEP meeting in September 2016, I asked why they had switched from picking [Student B] up at 6:20 a.m. to 7:20 a.m. and the response from [the Program Director at Converge] was that there was [sic] no aides available that early and [the Special Education Director at BOCES] & [the Principal at the School] both agreed that what [the Program Director at Day Treatment] said was right. I talked with [the Special Education Teacher at Day Treatment] and [Student B’s Bus Driver and Aide] and expressed my concerns about [Student B]

²² Complainant’s email to OCR on Apr. 6, 2017.

²³ Recipients’ narrative response to OCR on Feb. 17, 2017.

²⁴ Phone call between the Recipients’ attorney and OCR on Mar. 8, 2017.

²⁵ Recipients’ narrative response to OCR on Feb. 17, 2017.

²⁶ Complainant’s email to OCR on Mar. 24, 2017.

showing up an hour later than everyone and how it affected him. They both agreed and [the Special Education Teacher at Day Treatment] said that it was [the Program Director at Day Treatment]'s and her wishes that they would come earlier but it was up to [the District]. Yuma hired [the New Aide/Para] and then they were able to move the pick up time back to 6:20 [a.m.] but still left school early (1:40 [p.m.]). I wanted [Student B] to go all day and talked to [the Special Education Teacher at Day Treatment] about it because she is who I talk to everyday about [Student B]. I do know that [Day Treatment] wanted the kids to stay all day[,] but again[,] they told me that it was up to [the District] and that [the Program Director at Day Treatment] was talking to them about it. That is the last I heard from anyone on the subject. Then[,] [Student B] started in January when they went back from Christmas break. [January 9, 2017] was the 1st day back[,] and when the bus showed up later than usual, I asked [Student B's Bus Driver and Aide] about being later and she said that she received the new bus schedule and that they are going all day now. I didn't know that because no one communicated that to me[:] so[,] that was the 1st I had heard of them going all day.²⁷

c. Other Students

OCR requested from the Recipients information about all other students who received special transportation from the District. The Recipients notified OCR that, during the 2016-2017 school year, seven students receive special transportation, including Student A and Student B.²⁸ According to the District,²⁹ since the beginning of the 2016-2017 school year:

- Student C has arrived at school at 7:30 a.m. – 20 minutes before the tardy bell – and his parent has picked him up from school;³⁰
- Student D has arrived at school at 7:32 a.m. – 18 minutes before the tardy bell – and has departed from school between 3:10 p.m. and 3:12 p.m. – three to five minutes before the dismissal bell – in order to avoid crowded hallways;
- Student E has arrived at school at 7:35 a.m. – 20 minutes before the tardy bell – and has departed from school at 3:40 p.m. – 20 minutes after the dismissal bell; and
- Student F has been in a residential placement, and received transportation to arrive at the school at 5:45 p.m. on Sundays and to depart the placement at 5:15 p.m. on Fridays.

Finally, according to the District, Student G departed school 30 minutes early during the fall 2016, and then attended school for a full day during the spring 2017 semester.³¹ The District asserted to OCR that the shortened school day during the first semester was an IEP team decision.³²

²⁷ Complainant's email to OCR on Mar. 20, 2017.

²⁸ Recipients' narrative response to OCR on Jan. 23, 2017.

²⁹ Chart provided by the District to OCR on Mar. 3, 2017.

³⁰ The District confirmed to OCR, via phone, on March 7, 2017, that Student C's parent picks him up from school.

³¹ Chart provided by the District to OCR on Mar. 3, 2017.

³² The District confirmed to OCR, via phone, on March 7, 2017, that Student G's IEP team made the decision.

As discussed previously in this letter, during the course of our investigation and before interviews were conducted and additional data was requested, the Recipients indicated their desire to voluntarily enter into an agreement to resolve all of the Complainant's allegations. OCR determined that it was appropriate to pursue resolution of the complaint in this manner and negotiated a Resolution Agreement with the Recipients.

IV. Conclusion

We thank the District for being willing to voluntarily address the allegations raised by the Complainant. A copy of the signed Resolution Agreement is enclosed. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. We will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of this complaint and 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 case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, stating that this case is closed.

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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Individuals filing a complaint or participating in our resolution 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 that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation that you and your staff extended to us during the investigation of this case. If you have any questions regarding this letter or the monitoring of this case, please contact the assigned attorney, Jason Langberg, at (303) XXX-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

cc: Elizabeth Friel, Attorney for the District, Caplan & Earnest LLC (via email)
Dr. Katy Anthes, Colorado Commissioner of Education

Enclosure: Resolution Agreement