



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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April 3, 2017

Jean Chrostoski, Superintendent  
Goshen County Schools  
626 West 25th Avenue  
Torrington, Wyoming 82240

Re: Goshen County Schools  
Case Number: 08-17-1069

Dear Superintendent Chrostoski:

We write to advise you of the resolution of a complaint that was filed with our office against Goshen County Schools (“the District”). The complaint alleged that the District discriminated against the Complainant’s son (“the Student”) on the basis of disability. Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE) by failing to evaluate him in a timely manner after learning that he needed or was believed to have needed special education or related aids and services.

We investigated the complaint pursuant to 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 U.S. Department of Education (“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.

Our investigation established that the District discriminated as alleged. Upon being advised of this finding, the District voluntarily agreed to enter into a resolution agreement to resolve the matter. A signed copy of the agreement is enclosed with this letter. The reasons for our conclusions are set forth in this letter.

## **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

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

protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or *is believed to need* special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under Section 104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Section 504 contains a "child find" requirement; that is, it requires districts to annually "undertake to identify and locate every qualified [individual with a disability] residing in [the district's] jurisdiction who is not receiving a public education."<sup>1</sup> Because "child find" is an affirmative duty, a district's obligation to evaluate may be triggered even if the parent doesn't request an evaluation. The district's independent suspicions may trigger the duty.

A student's behavioral challenges could be a sign that the student has a disability and needs special education and related services.<sup>2</sup> When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause a teacher or other school personnel to believe or suspect that the student has a disability (*i.e.*, to suspect that the behavior is caused by or related to a disability), the district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. A student who experiences behavioral challenges in school may have a disability, even if the behavioral challenges are not accompanied by academic challenges. Some students, due to an as yet unidentified disability, may engage in behaviors that do not conform to school conduct codes because they are not receiving needed educational services, including services to address the student's needs related to his or her behavior. Evidence that the student's behavior is out of the expected range of behaviors of students that age could trigger a school district's obligation to evaluate that student for a disability and need for special education and related services.

## **II. Investigation**

Our investigation focused on obtaining the evidence necessary to determine whether the District complied with these legal standards, or whether the District engaged in disability discrimination as alleged. Specifically, our investigation consisted of interviewing the Complainant and others, and reviewing extensive documents submitted by the Complainant and by the District.

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<sup>1</sup> 34 CFR Section 104.32(a).

<sup>2</sup> See 20 U.S.C. Section 1401(3)(A)(i); 34 C.F.R. Section 300.8(c)(4)(i); 34 C.F.R. Section 104.3(j).

### III. Evidentiary Standards

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

### IV. Findings of Fact

Nearly all of the facts in this case are undisputed.

Discipline records provided to OCR by the District show that the Student has a long history of tardiness, truancy, disrespect, defiance, insubordination, use of profanity, and physical aggression. He had at least 65 disciplinary referrals between December 2005 and October 2016. He has been subject to parent notifications, student-staff conferences, loss of privileges, detentions, Friday school, in-school suspension (ISS), out-of-school suspension (OSS), and reassignment to alternative school. See Figure 1.

Figure 1: Summary of Student's discipline records  
X – table redacted – X

Attendance records provided to OCR by the District show that the Student was chronically truant and late to class. For example, a truancy list entry for XXXX reads, “[The Student] has 24 tardies to 1<sup>st</sup> hour.” The District convened an “Attendance Meeting” with the Complainant and Student on September 23, 2016. By December 22, 2016, the Student had accumulated 92 class period absences and 16 class period tardies during the 2016-2017 school year.

Transcripts provided to OCR by the District show that the Student struggled academically. For example, during the first semester of the 2015-2016 school year, he received six 2s and two 4s; and during the second semester, he received one 0, five 2s, and two 4s.<sup>3</sup>

On XXXX, the Department of Family Services (DFS) convened a six-month review Multi-Disciplinary Team (MDT) meeting for the Student.<sup>4</sup> The principal of the Student's school during the 2015-16 school year (“Principal A”), XXXX XXXX School (“the School”), attended the meeting. The team discussed the Student's traumas and excessive tardiness at school. The team decided to have the Student undergo a psychological evaluation. Notes from the meeting read, in part, that the “XXX Principal, stated that he would support the [DFS arranged] evaluation just to find answers.” According to the narrative response provided to OCR by the District, there was no specific discussion of a special education evaluation.

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<sup>3</sup> The District's “GPA Conversion Scale” is: 90-100% = 4; 80-89% = 3; 70-79% = 2; 60-69% = 1.

<sup>4</sup> The Student was involved in a juvenile delinquency case. Wyoming statutes require the juvenile court to appoint an MDT in all delinquency cases within ten days of the filing of a petition. Pursuant to the statutes, MDTs shall review school records, among other records, and any other pertinent information. *See Multidisciplinary Team Guidebook*, Wyoming Supreme Court, Children's Justice Project Publication, p. 1 (2001).

On XXXX, the Student was evaluated at XXX per the decision of the MDT. The evaluation included information – specifically, Behavior Assessment System for Children (BASC) 2 teacher ratings – from two of the Student’s teachers. The evaluation report noted:

- “A teacher who has known [the Student] for one year (English) produced responses that earned [the Student] Clinically Significant range scores on a composite index measuring Externalizing of Problems on subscales measuring Hyperactivity, and Attention Problems.”
- “Both teacher ratings showed mainly Clinically Significant range scores composite scores measuring Behavior Regulation and the cognitive process to successfully guide active, systemic problem solving, and appropriate self-regulation.”
- “The school behavior reports show a consistent pattern of defiance of authority and a capacity for aggression noted since elementary school years continuing through high school and culminating in the violent incident in XXXX.”

The evaluation report further noted:

Behavior records show a number of tardies in February and March of this year. Prior to the assault charge from XXXX for which [the Student] received a Five Day Out of School Suspension, there were several incidents of disrespectful behaviors toward teachers, including defiance and insubordination in the 2014-2015 school year including rudeness and use of profanity and repeated refusal to put away electronic devices in accord with school policy. In the 2012-2013 school year there were 13 incidents ranging from disruptive behaviors tardies, and refusal to follow directions to blatant disrespect, use of profanity, lying, and one incident of mooning a teacher XXXX. Aggressive behaviors were noted beginning in elementary school with multiple incidents of physical aggression toward classmates, non-compliance and arguing. Disruptive behaviors continued through 2005-9 with increasing disrespect and defiance seeming to escalate in 2009-2010.

Additionally, the evaluator reported:

[The Student] shows the most significant pattern of behavioral disturbance taking place in the school setting. This pattern suggests [the Student] is most prone to defiance when faced with demands for compliance by an authority. The school behavior reports show a consistent pattern of defiance of authority and a capacity for aggression noted since his elementary school years continuing through high school and culminating in the violent incident in October 2015. ... He has had numerous consequences through-out his school career for defiance, aggression and disruptive behaviors.

The evaluator’s “diagnostic impressions” were “Conduct Disorder” and “Narcissistic and Antisocial Personality Traits.”

According to discipline records provided by the District to OCR, on XXXX, the Student “refuse[d] to stay awake and do his work.” The next day, the Student yelled at a teacher, walked out of class, and cursed. The School’s new principal for the 2016-2017 school year (“Principal B”) issued the Student a ten-day OSS. In a letter dated XXXX, Principal B informed the Complainant that the Student must undergo a mental health evaluation before returning to the School.

On XXXX, at the Complainant’s request and in response to the letter from Principal B,<sup>5</sup> XXXX faxed the Student’s evaluation report to a counselor at the School.<sup>6</sup> During an interview with OCR in December 2016, the Complainant claimed that the evaluation report was sent to the school before the end of the 2015-2016 school year – specifically, in May 2016. However, during a subsequent interview in January 2017, the Complainant indicated that she had spoken with a school resource officer (SRO) and an assistant principal at the School about the results of the evaluation, and that the Student’s DFS probation officer said he sent the evaluation to the School, but she could not be certain that the probation officer actually sent the report to the School. In its narrative response to OCR, the District denied ever having received the evaluation prior to XXXX.

In an interview with OCR, the DFS probation officer indicated that the School pushed for the Student to receive a psychological evaluation and that he had spoken with the assistant principal (at the time) at the School about the evaluation results at the end of the 2015-2016 school year.<sup>7</sup> Additionally, in an interview with OCR, a school resource officer (SRO) assigned to the School during the 2015-2016 school year, reported that, although the District did not evaluate the student itself, the District requested, on multiple occasions, that the MDT arrange for an evaluation of the Student,<sup>8</sup> and members of the MDT were very concerned about the Student’s mental health needs.

On XXXX, a “disciplinary meeting” for the Student took place after the 10-day OSS ended. The District sought to place the Student in an alternative program.<sup>9</sup> Specifically, the District sought to place the Student at XXXX, a day treatment program that focuses on youth with mental health and behavioral issues.<sup>10</sup> The meeting took place at XXXX.<sup>11</sup> At the meeting, the Complainant formally requested, in writing, an evaluation of the Student by the District.<sup>12</sup> The same day, a

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<sup>5</sup> According to the Complainant, a new evaluation would not be covered by insurance because an evaluation had already been conducted within the prior six months.

<sup>6</sup> XXXX is the date on the fax cover sheet to the District and the date handwritten on the last page of the evaluation report.

<sup>7</sup> According to records from XXXX, the evaluation results were provided to the DFS probation officer on XXXX and on XXXX.

<sup>8</sup> She said that an evaluation “was the number one thing the school wanted” from the MDT.

<sup>9</sup> According to the Complainant, a representative of the District indicated that the Student had behavioral issues since kindergarten.

<sup>10</sup> OCR phone call with the XXXX’s day treatment program director on XXXX.

<sup>11</sup> On XXXX, the District’s OSS Counselor wrote in an email to other staff, “His suspension will end on XXXX and he will begin attending XXXX on XXXX. ... On XXXX, I would like to meet with [the Student] and his mother at No. 34 to talk about conducting a social/emotional assessment[.]”

<sup>12</sup> Emails provide to OCR by the District show that staff began emailing about a “social/emotional assessment” on XXXX.

“Referral – Special Education” form was completed by the District’s Director of Special Services. It read:

Spring 2016 [the Student] was on probation for assault and battery against a male peer at XXXX School which occurred on XXXX. School Discipline Records: [The Student] has received ISS and OSS for primarily disrespect, defiance, and insubordination behaviors ranging from walking out of class without permission, work refusal, refusal to follow adult direction, and speaking to adults in a disrespectful manner. [The Student] has also has school attendance issues. He had an attendance meeting earlier this year. ... [The Student] has a significant history of discipline referrals since fall 2008.

According to the Complainant, prior to XXXX, the Complainant had never requested a special education evaluation of the Student,<sup>13</sup> and the District had never attempted to initiate a special education evaluation of the Student. This assertion is supported by the lack of an evaluation in the District’s data responses to OCR.

On XXXX, the District’s Director of Special Services emailed the School’s nurse to notify her of the special education referral and to ask her to complete a hearing and vision screening of the Student. The nurse attempted to complete the screening; however, the Student was regularly absent from school.

The Student’s last day attending school in the District was on or about XXXX. Recently, a judge ordered the Student to participate a residential program where he will earn his high school diploma. According to the Complaint, the Student does not plan to return to the District as a student.

## **V. Conclusion**

In reviewing the documentation, information, and facts that we uncovered in our investigation, OCR determined that the weight of the evidence supported the Complainant’s allegation. A preponderance of the evidence shows that the District should have suspected the Student may have been eligible for services under IDEA or Section 504.

First, the Student had a long, well-documented history of inappropriate behaviors at school, as well as difficulty maintaining appropriate interpersonal relationships with staff and peers. For years, he was repeatedly punished with detention, ISS, and OSS. The District acknowledged the Student’s history of behavioral problems explicitly in the “Referral – Special Education” form and implicitly in its attempt to reassign him to an alternative program (XXXX) that focuses on youth with mental health issues and behavior problems.

Second, although he was passing most of his classes, the Student had low grades. During 2015-2016, he had eight end-of-semester class grades below 75.

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<sup>13</sup> According to the Complainant, she did not request an evaluation sooner because she was not aware of IDEA and Section 504 until late October or early November 2016.

Third, since staff at the School were part of the Student's MDT, the District was aware, as early as April 2016, that the Student was referred for a psychological evaluation. In fact, the Student's DFS probation officer and the School's former SRO asserted that the District pushed for a psychological evaluation during the MDT process. No one from the District then sought out a copy of the psychological evaluation, even after the Student's probation officer claimed to have informed the School's former assistant principal of the results. Notably, even after ordering the Student to obtain a psychological evaluation before returning to school, and after receiving a copy of the April 2016 psychological evaluation report from XXXX on October 27, 2016, the District did not initiate the evaluation process until after the Complainant, with the help of legal counsel, made a formal request in writing over two weeks later. Based on the totality of these circumstances, the District should have initiated the evaluation process for the Student before the Complainant's formal request on XXXX.

We thank the District for voluntarily entering into an agreement with OCR to resolve this issue. OCR is closing the investigative phase of this case effective the date of this letter.

The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the District demonstrating that the terms of the Agreement have been fulfilled. We will provide the District with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. 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. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the District's compliance or noncompliance with Title II, Section 504, or any other federal law in any other respect.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual may file another complaint alleging such treatment.

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 you and your staff extended to us during the investigation of this case. If you have any questions, please contact Jason Langberg, the attorney assigned to the case, at 303-XXX-XXXX or XXXX@ed.gov. You may also contact me at or me at 303-XXX-XXXX or XXXX@ed.gov.

Sincerely,

/s/

Stephen Chen  
Program Manager

Enclosure: Resolution Agreement

cc: Trina Nichol, the District's Director of Special Services (via email)