



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WYOMING

August 15, 2018

Mr. Simon Raubenheimer, Principal  
Endeavor Hall Charter School  
2614 Decker Lake Lane  
West Valley City, UT 84119

*via email only to XXXX@XXXX*

Re: **Endeavor Hall Charter School**  
OCR Case Number: 08-18-1451

Dear Principal Raubenheimer:

We write to inform you of the resolution of the above-referenced complaint, filed on May 29, 2018, with the Office for Civil Rights (OCR) of the U.S. Department of Education ("Department"), against Endeavor Hall Charter School ("School"), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the School denied his son ("Student") a free appropriate public education (FAPE) by failing to implement his individualized education program (IEP) regarding the provision of speech services.

We investigated the allegations pursuant to: Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 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 ("Title II"), 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 School is subject to these laws and regulations.

Our investigation established, by a preponderance of the evidence, that the School discriminated as alleged. Upon being advised of the violation finding, the School voluntarily entered into a resolution agreement to resolve the matter. A signed copy of the agreement is enclosed with this letter. The reasons for our conclusion are set forth in this letter.

**I. Legal Standard**

The Section 504 regulations, at 34 C.F.R. Section 104.33, require public schools to provide 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 students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. Sections 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the procedural requirements cited above is one means of meeting the FAPE requirement. 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 public schools to provide a FAPE at least to the same extent required under the Section 504 regulations.

## **II. Investigation**

Our investigation focused on obtaining the evidence necessary to determine whether the School complied with these legal standards. Specifically, our investigation consisted of requesting and reviewing documents and information from the Complainant, School, and eLuma, a private, for-profit company that contracts with the School to provide speech-language services for the School's students.

## **III. Evidentiary Standard**

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 or is insufficient to support the conclusion.

## **IV. Evidence**

### **A. Background**

During the 2016-2017 school year (SY), the Student was in XXXX at another school in a traditional school district. He had an IEP, dated XXXX, with his area of eligibility as speech language impairment. The IEP specified that the Student was to receive 20 minutes per week of "Language Skills" in "General/Special Education." No other special education or related services were specified.

For XXXX, the Student began the 2017-2018 SY attending the School. The first day of XXXX at the School was XXXX. The Complainant hand-delivered a copy of the Student's IEP to the School's Special Education Director prior to the start of the XXXX school year.

The Complainant withdrew the Student from the School on XXXX.

### **B. Facts**

The School did not convene any IEP team meetings, including an annual review, for the Student during the 2017-2018 SY. The School confirmed that it did not make any changes to the Student's IEP from his previous school. Therefore, the IEP we considered to be in effect for purposes of this case was the one dated XXXX.

The School arranged for the Student's speech services to take place on XXXX. Services were not provided on other days. The table below provides a summary of the service delivery logs created by eLuma and provided by the School to OCR.

Friday Dates	Services (min)	Explanation
XXXX	0	No entry in service log
XXXX	15	---
XXXX	0	No entry in service log
XXXX	0	No entry in service log
XXXX	20	---
XXXX	20	---
XXXX	20	---
XXXX	0	"Session was canceled/rescheduled due to an approved school holiday." <sup>1</sup>
XXXX	20	---
XXXX	20	---
XXXX	0	"Clinician out of town."
XXXX	0	"School hearing screenings"
XXXX	0	"Session was canceled/rescheduled due to an approved school holiday." <sup>2</sup>
XXXX	20	---
XXXX	0	No entry in service log
XXXX	0	"Absent"
XXXX	0	"Session was canceled/rescheduled due to an approved school holiday." <sup>3</sup>
XXXX	0	"Session was canceled/rescheduled due to an approved school holiday." <sup>4</sup>
XXXX	0	"Clinician absent, make up days available in spring"
XXXX	0	"Early release day" <sup>5</sup>
XXXX	20	---
XXXX	20	---
XXXX	20	---
XXXX	0	"Changed schedule due to IEP meeting, went to pull student and class was gone from room"
XXXX	0*	No entry in service log
XXXX	20*	---
XXXX	0*	"XX absent"
XXXX	20*	---
XXXX	20*	---
XXXX	0	"XX absent"

\* The first log provided to OCR read, for these five days, "Services were provided. Speech therapist is out of town and has supporting data and can share when she returned in July 2018." However, information subsequently submitted by the School to OCR shows that, in fact, no services were provided on two of the days.

With regard to XXXX, XXXX, and XXXX – three dates on which there were no service entry logs – eLuma's President and CEO ("CEO") wrote:

<sup>1</sup> School was out of session for fall break from October 19-20.

<sup>2</sup> School was out of session for Thanksgiving break from November 22-24.

<sup>3</sup> School was out of session for "Christmas Break" from December 21 – January 1.

<sup>4</sup> School was out of session for "Christmas Break" from December 21 – January 1.

<sup>5</sup> School was out of session after 12:45 p.m.

Indirect service time was provided on the dates X/XX, X/XX, and X/XX. These days were spent doing necessary work to prepare the entire speech caseload for the year. This work included going through files to determine speech services, receiving new student files, reviewing existing student files, organizing files, meeting with Sped team, unpacking the room, organizing IEP/ReEval, making a schedule, and receiving class lists and schools schedules.

With regard to XXXX – the day on which the log indicated that only 15 minutes of services were provided, instead of the 20 minutes required by the IEP – the CEO wrote:

[The Student] was seen on X/XX because he was a new student to the speech caseload and it was necessary to meet him to understand how we could best provide services for him before we started seeing him weekly beginning on X/XX.

...

This session was to meet [the Student], establish rapport, and collect data on his current speech abilities because he was new to our caseload. This was a "Get-to-know-you" type session. We had not yet seen speech students for their regular time or minutes.

With regard to the holidays and early release days (*i.e.*, October 20, November 24, December 22, December 29, and January 12), the CEO wrote, "Speech sessions are not scheduled for when the school is not in session due to holiday or early release, therefore make up sessions are not necessary and were not provided."

With regard to the days on which the clinician was absent (*i.e.*, XXXX and XXXX), the CEO wrote:

We do our best to make up sessions due to our being gone. This is difficult because we only work at a given school on the days they contract us for, in [the School]'s case, Thursday and Friday. However, a make up day would have been possible to provide [the Student] with make up time after [the School]'s spring break and we anticipated doing this. Another school we work at had a different spring break schedule which gave us time to make up sessions on XXXX. However, it was reported to us that XXXX.

Finally, with regard to the days on which the Student was absent or otherwise unavailable (*i.e.*, XXXX, XXXX, XXXX, and XXXX), the CEO wrote, "Make up sessions are not provided for when students are absent or otherwise unavailable."

## **V. Analysis**

The Student's IEP that was in effect during his time as a student at the School (*i.e.*, XXXX to XXXX) mandated that the School provide the Student with 20 minutes per week of speech services. The School wrote to OCR, in its narrative response, "Services were provided for 20 minutes each week, as indicated by the speech therapy log." However, out of the 30 weeks that the Student attended the School (see the table above), the School provided 20 minutes of speech services for only 12 of the weeks.

The explanations provided by eLuma do not justify the failure to provide services during several weeks. Speech services providers being absent (as occurred in this case on XXXX, XXXX, and XXXX) or otherwise preoccupied (as occurred in this case on XXXX, XXXX, and XXXX; and XXXX) are not adequate justifications for failing to provide services required by an IEP. Additionally, early release days (as

occurred in this case on January 12) and one-day holidays/breaks when students are in school during the rest of the week (as occurred in this case on October 20) are not adequate justifications for failing to provide services required by an IEP. Finally, service logs provided by the School to OCR do not indicate that any services were provided on XXXX or XXXX.

The School repeatedly asserted to OCR that the Complainant was happy with (or at least appeared to be satisfied with) the Student's services and did not complain to the School. Prior expressions of dissatisfaction or complaints from a parent are not prerequisites to a parent filing a complaint with OCR. Additionally, schools have an affirmative duty to implement a student's IEP, and are responsible for any failure to implement an IEP, regardless of whether the student's parent raises concerns.

Therefore, a preponderance of the evidence exists demonstrating that the School failed to adequately provide the speech services required by the Student's IEP.

## **VI. Conclusion**

We thank the School for being willing to voluntarily address the violation found. A copy of the signed Resolution Agreement is attached. When the Agreement is fully implemented, the allegation 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 School about the status of the Agreement terms. We will provide the School written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. If the School 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 School'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 School 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 School, 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 and resolution of this case. If you have any questions, please contact Jason Langberg, the attorney assigned to this complaint, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

Attachment: Resolution Agreement

cc (via email): Sydnee Dickson, Utah Superintendent of Public Instruction  
Brittany Cummins, Board Chair for the School