



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
ARIZONA  
COLORADO  
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MEXICO  
UTAH  
WYOMING

April 30, 2019

Dr. Bill Wilson, Superintendent  
Brush School District RE-2J  
527 Industrial Park Road  
Brush, Colorado 80723

*via email only to XXXX@XXXX*

Re: **Brush School District RE-2J**  
OCR Case Number 08-19-1109

Dear Superintendent Wilson:

We have completed our investigation stemming from a complaint against Brush School District RE-2J ("District") alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the District, by placing students with disabilities at and providing substantial assistance to Converge Day Treatment Center ("Converge"):

- subjected students to different treatment on the basis of disability;
- denied students with disabilities a free appropriate public education (FAPE); and
- subjected students with disabilities to discriminatory discipline.

Prior to OCR issuing a final determination pursuant to Section 303 of our *Case Processing Manual* (CPM), the District expressed an interest in resolving the allegations. OCR determined that it was appropriate to resolve the allegations prior to completion of our investigation. Therefore, OCR sent the District a proposed resolution agreement ("Agreement"). On April 22, 2019, OCR received a signed Agreement from the District. The provisions of the Agreement are tied to the allegations and evidence obtained during the investigation, and will be consistent with applicable regulations.

This letter details the applicable legal standards, the status of our investigation, and the evidence prior to entering into an agreement.

**I. JURISDICTION**

The Office for Civil Rights (OCR) of the U.S. Department of Education ("Department") is responsible for enforcing: 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 District is subject to these laws and regulations.

**a. Methods of Administration**

Under 34 C.F.R. Section 104.4(b)(4) a recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration that: (i) have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (ii) have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity for individuals with disabilities; or (iii) perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State. The Title II regulations contain a similar provision applicable to public entities, at 28 C.F.R. Section 35.130(b)(3).

**b. Significant Assistance**

Under 34 C.F.R. Section 104.4(b)(1)(v), a recipient may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit or service to beneficiaries of the recipient's program or activity. The Title II regulations, which apply to public entities, contain a similar requirement at 28 C.F.R. Section 35.130(b)(i)(v). Under these provisions, if a recipient public school district provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the school district must take steps to obtain compliance from the organization or terminate its assistance.

**II. LEGAL STANDARDS**

**a. Different Treatment: Facility Location**

The Section 504 regulations, at 34 C.F.R. Section 104.4(a) and (b), provide that no qualified person 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)(5), and 28 C.F.R. Section 35.130(b)(4), a recipient public school district may not, in determining the site or location of facilities, make selections with the effect of excluding individuals, denying them benefits, or subjecting them to discrimination on the basis of disability. Selections also may not be made with the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the individual's disability.

**b. Denial of FAPE: Failure to Implement**

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. 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.

**c. Discipline: Failure to Conduct Manifestation Determinations**

The Section 504 regulations, at 34 C.F.R. Section 104.35(a), require school districts to evaluate any student who, because of disability, needs or is believed to need special education or related aids and services before initially placing the student and before any subsequent significant change in placement. Subsection (c) requires that placement decisions 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 that is carefully considered and documented. Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of students with disabilities with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a student with a disability without reevaluating the student and affording due process procedures. 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 act consistent with the Section 504 regulations in disciplining students with disabilities.

The exclusion of a student with a disability from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled 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 the conclusion as alleged.

#### **IV. INVESTIGATION TO DATE**

OCR requested, received, and reviewed extensive documentation and information from Converge and the District, Colorado Department of Education (CDE), and the Northeast and Centennial Boards of Cooperative Educational Services (BOCES).

#### **V. EVIDENCE TO DATE**

Converge was a private, nonprofit agency, a licensed day treatment center, and an approved facility school under the oversight of the Colorado Department of Human Services (DHS) and CDE. An approved facility school refers to an educational program that is operated by a licensed agency and that has been approved by CDE to receive reimbursement for education services for students placed in the program. Facility program types include residential, day treatment, and hospitals. Converge was not part of any local education agency (LEA) or part of CDE. The vast majority of Converge's funding came from CDE and sending LEAs.

##### **a. Closure**

On or about February 22, 2019, DHS ordered Converge to "not operate or allow any youth into placement at the facility without receiving prior approval from both CDHS and CDE." According to CDE's attorney, Converge "voluntarily closed its doors" on February 22, 2019. At 4:40 p.m. that same day, a Converge therapist/assistant teacher for secondary emailed the director of CDE's Office of Facility Schools (OFS), "As of 4:00 pm, February 22, 2019, and with the advice of legal counsel, Converge Day Treatment Center in Brush, CO will cease operation. The facility no longer has the finances to function." On February 25, 2019, CDE's Facility Schools Board (FSB) revoked Converge's approved status as a facility school, thereby cutting off the majority of Converge's funding.

##### **b. Student Population**

Converge was available to serve students ages five to 21, in kindergarten to twelfth grade, who have serious emotional disabilities or autism spectrum disorders. According to CDE's most recent "Approved Facility Schools Directory," the average number of students at Converge was 30 and the average length of attendance was six to 18 months.

However, from the beginning of the 2018-2019 school year (SY) to January 22, 2019, Converge served 26 total students. Four of the 26 students exited Converge by December 2018. During this time, Converge served students in all grades, except fifth, second, and twelfth. All of the students, except two, were identified as students with disabilities and had IEPs. As of January 2019, the lengths of time current students attended Converge ranged from two-and-a-half months to over four years.

According Converge's "Policy Manual," the admissions criteria were:

- the student is age five to 21;
- the student is "behaviorally and/or emotionally challenged" and meets the criteria for serious emotional disability or autism spectrum disorder;
- the home school district has exhausted all appropriate resources for the student;
- "protective and safety issues" for the student can be managed;
- the student has the ability to function in the community; and

- the student has the ability to function minimally in a structured group.

According to Converge's data response to OCR, placement of a student at Converge involved the following five steps:

1. The student's home district IEP team makes a referral to the Director. The referral involves completing a referral form and providing qualifying information, such as an IEP.
2. The Converge intake team – the Director, the family liaison, and a special education teacher – reviews the student's IEP and relevant data to determine if he or she is eligible for Converge (see admissions criteria below).
3. If the student is eligible, the Director schedules an assessment meeting consisting of, at a minimum, the student, the student's parent or guardian, home school district personnel, a special education representative (assuming the student currently has an IEP), the Director, and other Converge staff. The purposes of the meeting include educating the student and his or her family about Converge and determining if Converge can meet the student's needs.
4. If it is determined that Converge is an appropriate placement for the student, an intake meeting will be scheduled.
5. Converge works with the home district and parent to establish a mutually-agreed upon start date.

### **c. Facilities**

From its founding to December 2014, Converge was located at 324 East Railroad Avenue, Suite 500 in Fort Morgan, Colorado.

In January 2015, Converge moved to 400 State Street in Fort Morgan, Colorado. That location provided space for up to 15 or 16 students. Then, according to Converge, it decided to move from its State Street location because:

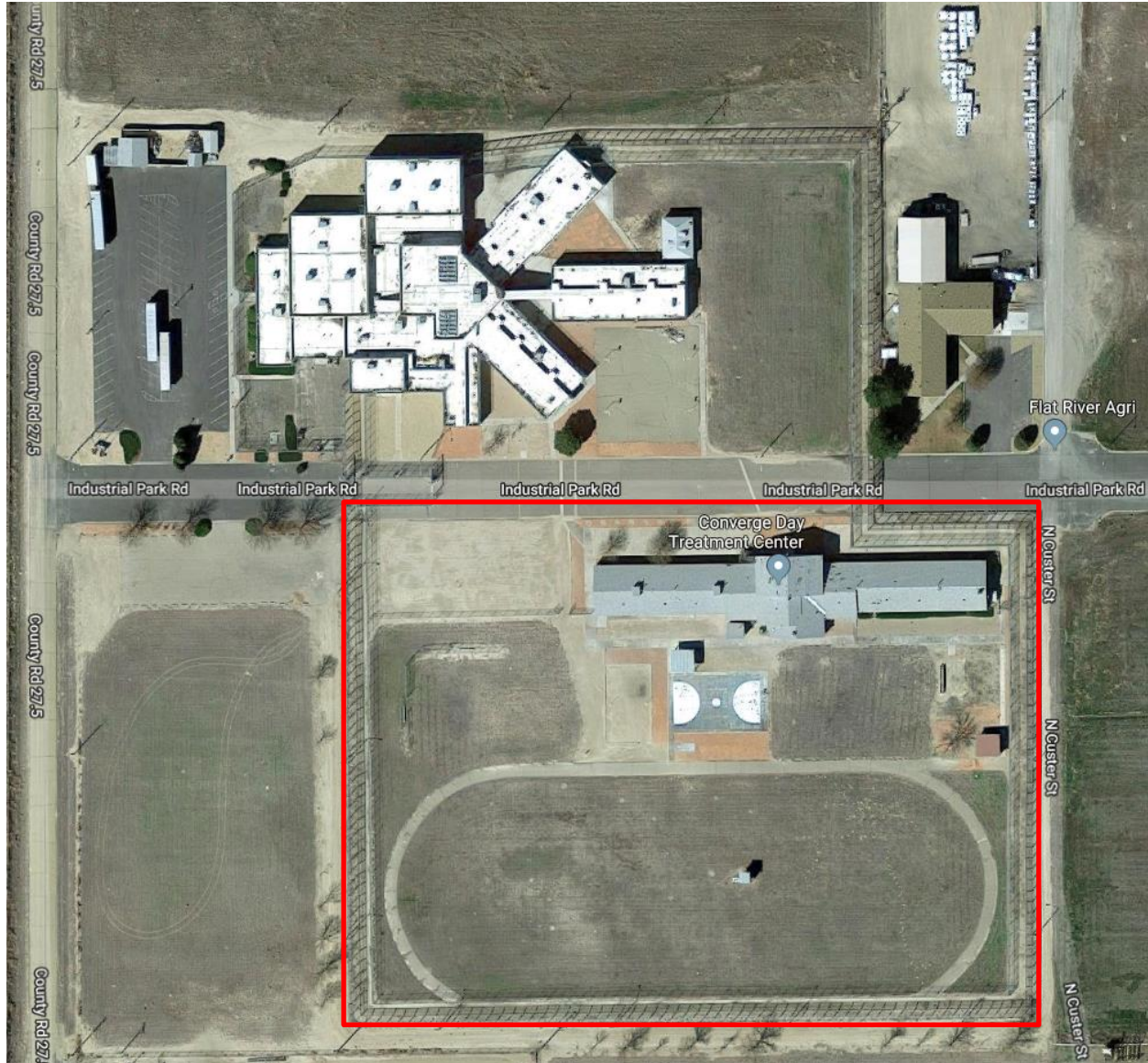
- the building and classrooms at State Street were too small given that Converge had a waitlist and sought to expand to middle and high school students;
- the property at State Street did not have a recess space, except a small parking lot; and
- the building at State Street had "significant concerns that had not been disclosed by the landlord, including an unsound roof."

Therefore, on June 6, 2016, Converge's program director ("Director") signed a lease for a building ("Truman Building") and land on the southeast portion of property at 718 Industrial Park Road in Brush, Colorado. The property was developed as a youth detention facility. The Truman Building was constructed in 1979. The youth detention facility closed in the early 1990s. The property remained vacant until 2004, when the site was repurposed to be a women's prison. The Truman Building was used for educational classrooms and housing of low-security prisoners. The prison closed in 2010, and the Truman Building was again vacant.

The Truman Building is on the south side of Industrial Park Road. On the north side of the Road is a larger building that made up the rest of the prison. The lower level/first floor of the Truman building is 17,525 square feet; the upper level/second floor is 2,460 square feet. See Figure 1.

In 2014, the owner of Colorado Farm Products Ltd. ("Owner"), purchased the property. The Owner attempted to use the property for a marijuana farm and shop. However, the Brush City Council voted against lifting its moratorium on local marijuana businesses.

Figure 1: Google Maps image of 718 Industrial Park Road in Brush, Colorado



According to Converge's narrative response to OCR, it chose to move to this location because: (a) the owner contributed "almost \$100,000 in required renovations to transform the building to meet all code requirements for a facility school;" (b) the building "had an entire wing of large classrooms, along with an upper floor with office space, that was ideal for therapy offices;" (c) the building was "complete with classrooms, cafeteria, therapy space, running track, outdoor basketball court, etc.;" (d) the property "is near the I-76 interstate, which allowed for easy access to students traveling from other counties;" and (e) in its "rural community, few commercial properties located in appropriate zoning areas were available for consideration."

Converge acknowledged “that the building’s location within a former correctional facility could be off-putting and have a negative context;” however, Converge reports that: (a) it “reached out to parents and districts and informed them of [its] proposal to relocate and disclosed both the pro’s and con’s, and set up a time for parents to come and view the property and provide feedback,” and that “the overall feedback was always positive;” and (b) “all security features (razor and barbed wire, security cameras, locked doors, etc.) were removed prior to [its] relocation.” In terms of alternative locations, Converge wrote to OCR, “We did consider both a church building and another larger former medical clinic. In both, classroom space was very small the facilities were considered inadequate to meet the needs of our students, and had many of same [sic] concerns in terms of space as our current location in Fort Morgan.”

On June 13, 2016, the Director emailed Converge’s board members that the owner had “agreed to take down all razor wire around the entire complex at his expense.”

On August 10, 2016, the FSB discussed Converge’s move. The notes from the meeting read, in part, “Expanding their program to up to 18 year olds and will be moving to space in Brush in January. They will be coming back to the board to present about their expansion ...”

On August 22, 2016, the Director emailed the FSB and representatives from various school districts, “Our new building is within the former women’s correctional facility in Brush (we are using the former blue, juvenile building), but it is being rezoned for a school, and the razor wire and the large external fence will be removed prior to our moving in, so it should look much friendlier than it does now!”

In a letter dated August 30, 2016, Converge’s board chair wrote to the FSB:

We are very excited to be expanding in two phases over the next school year. Our first expansion will be to add Junior High and High School to our program for the 2016-2017 school year. Our second phase will take place in January of 2017, when we will move into our new location at 901 Industrial Park Road in Brush, CO. This location will provide 8 full-size classrooms, a computer lab, a sensory integration room, five therapy rooms, a Taekwondo room, increased office space, and a library. In addition, we will have a large outdoor recreation area, including a running track, outdoor basketball court, baseball diamond, volleyball court, and a gardening area for our horticulture program.

On September 2, 2016, the Director sent a memo to the FSB, which, among other topics, explained the reasons for Converge’s move.

On September 7, 2016, the FSB meeting included a discussion of Converge’s expansion and relocation. The notes read, in part, “The lease for the new building in Brush, at the old juvenile detention site, starts in January.”

In October 2016, Converge hired Thorp Associates to adapt the Truman Building for use as a day treatment center. The plan was to use the upper level for one-on-one therapy sessions and staff offices; to use the west wing of the lower-level for classrooms; to use the central hub of the lower-level as the entrance; and to not use the east wing of the lower-level, except for a space for large school gatherings and groups.



On October 17, 2016, the Owner submitted a petition for a special use permit to the Brush City Council. The petition read, in part:

Fencing – Security fencing, necessary when it operated as a correctional facility is an obvious aspect of the property. To reduce the impact of this element, we will be making the following changes to the fencing –

- Elimination of all razor wire (both fence structures).
- Elimination of the outside fence supports (chain link fencing to remain in most places).
- Elimination of all fencing on the eastern front of the building.
- Replacement of the “sally” gate at the west entrance to the property with a lower profile security gate.
- Elimination of security fencing at the east entrance to the property – replaced with a lower profile security gate.

On November 14, 2016, the Owner presented to the Brush City Council about his petition for a special use permit to the Brush City Council. The Owner’s presentation included a slide that indicated Converge would have ten full-size classrooms, five therapy rooms, a taekwondo room, a sensory integration room, a library and computer lab, and an outdoor recreational area with a running track, basketball court, baseball diamond, volleyball court, and gardening area. The presentation also included a list of improvements to the building: updating the mechanicals, updating the interior, removal of the security fencing, adding parking in front of the building, and cleaning up the exterior. The last slide read, “Vacant over 6 years, we see this use providing a giant step towards moving past the ‘prison’ perspective currently associated with the property.”

On November 16, 2016, the Brush City Council notified the Owner that the special use permit had been approved.

On November 22, 2016, the *Brush News-Tribune* ran a story, which read:

“We looked at several properties,” said [the Director] as she addressed members of the Brush City Council Monday evening as they hosted a public hearing regarding the site’s special medical clinic use permit.

“There are so many benefits attached with this property that rose it above all the others,” she explained. “It’s already structured as we would want, with classrooms, separated out therapy rooms and the outdoor recreation area. Space wise, this property lent itself to our purpose, while many others required lots of construction work. Because we bus many of our students from as far as 1 to 1.5 hours away,” she continued, “the proximity to the interstate is also a plus.”

...

The Truman Building, located at the south end of the former prison, will host Converge and offer 10 full-sized classrooms, five dedicated therapy rooms, a Taekwondo room, sensory integration room, library and computer lab, as well as an outdoor recreational



area with a running track, basketball and volleyball court, baseball diamond and even a gardening area.

“Our attempt is to move past the prison perspective currently associated with the property,” said [the Owner] as he addressed the Brush City Council with a presentation that outlined the potential of the site which he hopes to breathe new life into for the future.

On November 28, 2016, Converge’s Board approved the lease agreement for the Truman Building and property.

In December 2016, Converge disseminated a handout for parents, which read, in part:

Here is the one concern:

- It was formerly a juvenile center located within a correctional complex, and has a large fence securing the perimeter.

Here’s how we are address that concern:

- The complex will never be used for correctional purposes again.
- The nearby prison building will be used for housing or storage.
- We will have the razor wire on top of the fences removed.
- The two gates on either end will remain open all day for easy access.
- The inside will be painted with murals and made bright and cheerful prior to opening.

On December 2, 2016, Converge notified parents and guardians that December 16, 2016 would be an early release day so that Converge could start its move to its new location.

On December 8, 2016, Converge notified parents and guardians that the first day of classes in 2017 would be moved from January 3rd to January 9th, and consequently, the last day of school would be moved to June 6th.

In January 2017, Converge moved to the Truman Building at 718 Industrial Park Road in Brush, Colorado. Converge is presently located at this property.

On February 8, 2017, the FSB re-approved Converge.

On May 16, 2017, Converge held “the first Converge Superintendent’s Informational meeting” to, in part, “present” the new facility.

On August 1, 2017, Converge signed a promissory note to purchase the Truman Building and its 6.81-acre parcel.

In October 2017, Converge opened a sensory integration room in the Truman Building for students to “cope with dysregulation and emotional distress.” At some point during the 2017-2018 SY, Converge also opened a kitchen for students “to use in learning functional life skills and to increase their knowledge of nutrition.”

On December 4, 2017, the OFS conducted a monitoring visit at Converge. The monitor noted for the 'Educational Environment' section of the monitoring form:

The new school building is much bigger and includes access to a large outside area with a baseball field and eventually, a community garden. The building also includes a computer lab and sensory room. A kitchen will be added for life skills class. The classrooms are bright, welcoming and conducive to learning. Student artwork and word walls are displayed throughout the building and classroom rules and student friendly learning objectives were clearly posted in each classroom.

In March 2018, Converge opened a weight room/gym in the Truman Building.

In July 2018, the Truman Building was damaged by a storm. The Director emailed the OFS team leader, "Converge needs a whole new roof."

In 2018, Converge applied to the Leprino Foods Company Foundation for a "Community Impact" grant of \$12,500 to go toward a \$25,000 project to "transform" the "four acres of fenced-in recreational space" behind the school building. Specifically, the funds were requested for a playground and garden area.

On November 28, 2018, the day after the Complainant notified Converge of the complaint to OCR, Converge's assistant director emailed a district special services director:

In the filing allegations are made about our facilities not being up to standards, lack of a lab for science experiments, bullying, issues with the library, the lack of a playground and the gym.

Converge is located on a new site, (an old building) and we are addressing building issues as we become more financially stable. We just received a grant from Leprino for \$12,500.00 for a new playground and our maintenance is working on the library currently. In time we feel the site will be ideal for our program.

According to Converge's narrative response to OCR, it had made the following "modifications" to the facilities:

- removal of barbed wire, steel fencing, former prison gates
- painted the basketball court
- removal of weeds and burrs and prairie dogs in the 5 acre field adjoining the building
- repainting of most of the outside trim (ongoing project and near completion)
- new roof
- new heaters and air conditioner units on the main floor
- push doors on the two outside entrances
- painting in many classrooms
- chalkboard paint in quiet rooms
- gym equipment for circuit training and weight lifting in the room adjacent to the outdoor recreation area
- donated library materials and constructed wall-to-wall bookshelves

- murals in the cafeteria and down the classroom hallway
- new carpet upstairs in the play therapy room and hallway
- all classroom doors were modified to free-swing so they do not lock

Converge's narrative response to OCR noted that Converge had plans to: install playground equipment and a garden; replace the upstairs heating and cooling; carpet the downstairs hallways and common spaces; sodding the outdoor recreational areas; transform the commercial kitchen into a life skills area; and continue painting rooms.

Finally, Converge reported in its narrative response to OCR that it used facilities in the community, including a bowling alley, indoor pool, recreation center, horseback riding arena, public library, and area parks.

#### **d. Services and Programs**

Converge's 2018-2019 SY began on August 22, 2018, and was scheduled to end on May 29, 2019. The school year was scheduled to be 176 instructional days. Students arrived between 7:45 a.m. and 8:00 a.m. Classes began at 8:00 a.m. Students were released to buses at 2:30 p.m.

According to Converge's narrative response to OCR, Converge students and teachers followed the Colorado Facility School curriculum and had access to the i-Ready program for additional, individualized support in reading and math. Converge offered the following courses: English language arts, math, science, social studies, social studies, art, music, physical education, health, and transition/career planning.

According to Converge's narrative response to OCR, it also provided students with the following non-academic programming.

- *Food:* Converge students received meals daily from Brush High School or brought their own lunch. Converge participated in the U.S. Department of Agriculture's free or reduced-price lunch program.
- *Mental Health Services:* All students participated in at least one semester session of therapeutic horseback riding, weekly individual therapy, and weekly group therapy. A music therapist went to Converge once a week to work with referred students. Family therapy was offered to interested parents.
- *Field Trips:* Students had an opportunity to participate in fieldtrips. Examples of past trips include the Wild Animal Sanctuary, Six Flags, the Colorado Capitol Building, farms, and Barr Lake State Park.
- *Transportation:* Students' home school districts paid for and provided transportation services. The exception was for students from Weld County School District RE-8, for whom Converge provided transportation and was reimbursed by the District.
- *Related Services:* Students' home school districts paid for and provided related services.

#### **e. Staffing and Leadership**

Approved facility schools in Colorado must employ or contract in writing for: (a) a director of special education; and (b) a sufficient number of appropriately licensed and endorsed special education

teachers and staff to adequately carry out those functions for which it is responsible. According to Converge's narrative response to OCR, its staff consisted of:

- a licensed special education teacher who is also a licensed secondary social studies teacher;
- a licensed special education teacher who is also a licensed elementary teacher;
- a "consulting" special education teacher who works for ten hours per week to coordinate curriculum for the elementary school students;
- assistant teachers with substitute licenses;
- a special education director who is also a licensed psychologist; and
- psychology and counseling interns.

During the 2017-2018 SY, Converge's board included a: retired superintendent, retired special education director and psychologist, retired teacher, software engineer, representative from the CDE, representative from Northeast Colorado Broadcasting, superintendent from Akron R-1 School District, a deaf and hard of hearing specialist from Cherry Creek School District, and a private licensed professional counselor.

For the 2018-2019 SY, Converge submitted a personnel list to CDE that showed three professional/ licensed staff members – specifically, a psychologist/special education director and two special education teachers – as well as ten full-time teacher assistants, one half-time teacher assistant, and one secretary.

#### **f. Monitoring**

CDE's OFS is responsible for monitoring facility schools to determine compliance with stated requirements. Facility schools that receive funding from CDE must sign a "General Assurances for the Receipt of Public Education Funds and Maintenance of Approved School Status," which includes a commitment to comply with the IDEA, including provided a FAPE in the LRE.

On December 4, 2017, CDE conducted a monitoring visit at Converge. CDE found that Converge met federal and/or state requirements for 155 out of 155 practices listed in CDE' "Monitoring Checklist/ Report")

On February 5, 2019, OFS sent a team to Converge for a "modified site visit." According to the report, "There were several things that were concerning; however, the two most pressing were the fact that 27% of IEPs were out of compliance for being overdue, and the lack of procedures or processes to ensure safety and learning for the students." The report noted:

- "loud outbursts and aggressive behaviors that were not addressed;"
- "lack of monitoring and follow up in regards to students' unsafe behaviors;"
- "loud and chaotic" transitions;
- students "able to run into empty classrooms without supervision;"
- "minimally observed" content instruction;
- "minimal routines or structures;"
- "excessive, unstructured downtime;"
- "differentiation was not observed;"
- "lower level therapeutic interventions were not utilized;" and

- “no positive supports or feedback provided” (except in music class).

On February 7, 2019, the OFS required – in a “Notice of Noncompliance under Rules for the Administration of the Facility Schools Act” – Converge to ensure all of its students’ IEPs were current and to develop a plan to improve instructional practices by March 15, 2019.

On February 20, 2019, the OFS conducted a follow-up sit visit. Regarding the visit, the FSB’s “Order of Revocation of Approved Status” reads, “Of six outdated IEPs, only four had been updated. Most of the student-safety concerns were unimproved – with no obvious consequences for students who were threatening and unsafe. Converge’s staffing level appeared wholly inadequate.”

## **VI. Conclusion**

We thank the District for being willing to voluntarily address the allegations raised by the Complainant. A copy of the signed Agreement is attached. 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 written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. We will inform the Complainant of the status of the monitoring, including providing the Complainant with copies of our monitoring responses.

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 above and should not be interpreted as a determination of the District’s compliance or noncompliance with Section 504 or Title II, or any other federal law in any other respect.

This letter is a letter of findings 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 your attention to this matter and the District's cooperation. If you have any questions, please contact Jason Langberg, the attorney assigned to the case, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

cc: Beth Friel, Attorney for the District  
Katy Anthes, Colorado Commissioner of Education  
Complainant