



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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November 4, 2022

Ms. Charlotte Macaluso, Superintendent  
Pueblo School District 60  
315 W. 11<sup>th</sup> St.  
Pueblo, CO 81003

Via email only to [charlotte.macaluso@pueblocitieschools.us](mailto:charlotte.macaluso@pueblocitieschools.us)

Re: **Pueblo School District 60**  
OCR Case Number: 08-19-1238

Dear Ms. Macaluso:

This is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) with respect to the above-referenced complaint filed on February 19, 2022, against the Pueblo School District 60 (the District).

Specifically, the complaint alleged that during the 2018-19 school year the District discriminated against students based on their disabilities when the District:

- (1) did not provide a free appropriate public education (FAPE) to students with disabilities in that it lacked sufficient personnel to implement IEPs, including special education teachers, speech and language pathologists, psychologists and social workers, occupational therapists, physical therapists, and homebound instructors;
- (2) did not place students in the least restrictive environment (LRE) in that the District lacks adequate staff and placement options and therefore special education students in middle and high school are placed in the same class track and segregated from the general education population; and
- (3) makes placement decisions based on the availability of special education staff and school resources and not in conformity with 34 C.F.R. §§ 104.34 and 104.45.<sup>1</sup>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing

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<sup>1</sup> In addition, the Complainant alleged that the District retaliated against her when it placed her on administrative leave because she asserted the District had not provided FAPE to students with disabilities. During the investigation, OCR learned that the Complainant was deceased and therefore OCR is administratively closing the individual retaliation allegation pursuant to Section 110(m) of the *Case Processing Manual*.

regulation, 28 C.F.R. Part 35, which prohibit discrimination based on disability by recipients of Federal financial assistance and by public entities, respectively.

OCR reviewed documents provided by the School and the Complainant and interviewed the Complainant. As explained below, prior to completion of OCR's investigation, the District expressed an interest in voluntarily resolving the complaint and signed the enclosed Resolution Agreement to address the complaint allegations.

### **Legal Standards**

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, based on disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, based on disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, the relevant Section 504 standards apply in analyzing the Title II issues raised in the allegations.

### *Evaluation and Placement*

Section 504's implementing regulation at § 104.35(a) 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 §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. Under subsection (c), 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. A procedure consistent with the IDEA is one means of meeting this requirement.

The Section 504 regulation at 34 C.F.R. § 104.36 requires a recipient to "establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure." Compliance with the procedural safeguards of the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

### *FAPE*

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of an individualized education program (IEP) or Section 504 Plan is one means by which FAPE may be provided. 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.

### *LRE*

Pursuant to 34 C.F.R. Section 104.34(a), a student with a disability must be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. Recipient schools must place students with disabilities in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily.

### **Factual Findings**

The District serves approximately 17,000 students served by 34 schools: 18 elementary schools, 5 middle schools, 2 K-8 schools, 4 high schools, 3 magnet schools and 2 charter schools. Approximately 2,200 of these students (or approximately 13%) are students who receive special education and related services.

### *Policies and Procedures*

The District publishes a nondiscrimination policy (District Policy AC), the contact information for a no discrimination coordinator (District Policy AC-E-1), a Special Education Policy, promising the provision of appropriate educational opportunity (District Policy IHBA), and a policy regarding the discipline of Students with disabilities (District Policy JK-2).<sup>2</sup>

### *Continuum of Services*

At the outset of OCR's investigation, the District maintained a continuum of services for students in need of special education and related services.

These services included:

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<sup>2</sup> <http://boe.pueblocitieschools.us/policies-and-procedures>

- Resource Programming. The District provides resource programming in neighborhood schools, within the general education classroom, in small groups both in and outside the general education classroom, and in special education classrooms. The District asserts that resource teachers maintain appropriate licensure to work with students in need of special education and related services.
- Center-Based Programming. The District identifies some schools at which it consolidates resources to meet the needs of students who require more services or support than is generally available at neighborhood schools.
- Center-Based Programming for Multiple Needs. The District provides center-based programming for students with a combination of cognitive, medical, or physical, communication, and adaptive behavior needs. The District asserts that teachers in CBPM centers have expertise in working with students with significant support needs.
- Center-Based Programs Autism. The District provides center-based programming for students with autism. The District asserts that teachers in CBP-Autism have expertise in working with students with autism.
- Center-Based Programs Deaf/Hard of Hearing. The District provides center-based programming for students who are deaf/hard of hearing. The District asserts that teachers in CBP-Autism are licensed teachers for the deaf.
- Center-Based Programs for Students with Significant Emotional Disabilities. The District provides center-based programming for students with significant emotional disabilities. The District states that these students have demonstrated a need for a more sheltered instructional environment with increased focus on daily, direct, behavioral improvement instruction.
- Intensive Behavioral Recovery. The District's IBR programming is designed to be a short-term intensive behavior skills improvement setting for students in need of specific positive behavioral supports, supervision, and reinforcements and for whom there have been documented interventions that have not allowed for reasonable progress.
- Day Treatment. The District places students in three local day treatment or residential programs for students whose disability does not allow for reasonable progress or success in less restrictive settings.
- Homebound Services. The District provides certified teachers to students whose physical or medical needs prevent them from regular school attendance for extended periods of time.
- Community Transition House. The District provides transitional services for 18-21 year old students in special education who choose to remain affiliated with the District after turning 18. The CTH provides life skills, college tutoring, employment preparation, community involvement, recreation, and referrals to other agencies.

During a May 2022 interview with OCR, the District's Executive Director of Special Education (Director) told OCR that the District is moving away from a center-based programming. The Director told OCR that the District will keep more disabled students in their home school, while still providing students a continuum of services, rather than send them to a center-based program that focuses on a particular disability.

### *Staffing*

Although the District has a Section 504 Coordinator, for a time during the investigation, the District's website was not up to date and did not accurately identify the 504 Coordinator or the current ESS staff. The District's website now identifies the 504 Coordinator.<sup>3</sup>

The District reported to OCR that during the 2018-19 school year it employed the following administrators in the ESS Office: 1 Executive Director, 4 ESS Specialists, and 1 Executive Director of Intervention and Student Support Services and Compliance Officer.

In addition, the District submitted information to OCR that show its special education staff during the 2018-19 school year. The following table identifies the total District staff by category and sub-category.

#### Special Education Staff

Category	Sub-Category	Count
Instructional Support	Special Education Teacher	117
Instructional Support	Instructional Program Consultant	2
Instructional Support	Teacher Mentor	2
Other Instructional Support	Registered Nurse	3
Other Instructional Support	Occupational Therapist	1
Other Instructional Support	Physical Therapist	2
Other Instructional Support	Psychologist	13
Other Instructional Support	Speech-Language Pathologist	9
Teaching Assistant	Special Education Teaching Assistant	173
Other Assistant	Student Monitor	10

Information provided by the District showed that during the 2018-19 school year, the District's Speech Language Pathologists and Psychologists served multiple schools, with most serving three or four schools. In addition, as the District had only 1 Occupational Therapist and 2 Physical Therapists for the 2018-19 school year, these employees necessarily served more than ten schools. OCR notes that the number of special service providers is not, in itself, sufficient to show that the District failed to provide FAPE to its students, failed to place students in the LRE, or failed to make individualized placement decisions. However, OCR observes that the number of special service providers, particularly the number of occupational and physical therapists, raises a compliance concern given the number of students in the District with IEPs.

OCR further notes that beginning in 2019, the District's Director has increased the number of special services providers and other ESS staff. The Director told OCR that, among other things, the District revised its Medicaid plan to enable it to hire four social workers, who focused on ESS students but served all students as the District returned to in-person learning after remote

<sup>3</sup> <http://www.pueblacityschools.us/administration/departments/exceptional-student-services/faculty-and-staff>

learning following the initial effects of the COVID 19 pandemic. The District has hired a board-certified behavior analyst and two behavior therapists to provide support to its ESS staff. Finally, in addition to the staff described above, the District has hired 2 occupational therapists, 2 psychologists, 2 speech-language pathologists, and 1.5 physical therapists. OCR recognizes the District's efforts to increase its special education staff to meet the needs of its students.

### *Students*

OCR reviewed data regarding the number of students at each school who had IEPs and the number of special education staff at each school. The data showed that the number of students on the caseload for ESS teachers varied tremendously by school. For example, two elementary schools, Baca Elementary and Beulah Elementary had 44 and 48 students with IEPs and one certified ESS teacher. In addition, OCR observed that schools with numerous students receiving instruction in special education classrooms between 20-60% of the school day or more than 60% of the school day had few ESS teachers. For example, Bradford Elementary had 3 ESS teachers serving 79 students with IEPs, 20 of whom were in the special education classroom between 20-60% of the school day; Columbian Elementary had 2 special education teachers serving 57 students with IEPs, 8 of whom were in the special education classroom more than 60% of the school day; Goodnight Elementary had 3 ESS teachers serving 81 students with IEPs, 6 of whom were in the special education classroom between 20-60% of the school day and an additional 12 of whom were in the special education classroom more than 60% of the school day; and Minnequa Elementary had 2 ESS teachers serving 68 students with IEPs, 11 of whom were in the special education classroom between 20-60% of the school day and an additional 2 of whom were in the special education classroom more than 60% of the school day. Other elementary schools, such as Haaff and Heritage had two certified ESS teachers for approximately the same number of students as were at Baca and Beulah. The ratio of students with IEPs to certified ESS teachers was more consistent at the middle and high school level, with most schools having between 15-18 students per certified ESS teacher.

OCR did not review student IEPs or interview ESS or general education staff to determine whether the services provided in the IEPs were limited or discounted due to the lack of availability of staff or assess whether students with IEPs were grouped together in similar classrooms to provide services in "bulk." Thus, OCR notes that the student to teacher ratio is not, in itself, sufficient to show that the District failed to provide FAPE to its students, failed to place students in the LRE, or failed to make individualized placement decisions. However, the number of special education staff, relative to the students with IEPs population, at multiple schools raises a concern in that the staff appear to be insufficient to provide the services in those students' IEPs.

In developing the Action Plan described below, the Director noted that its special education and general education staff needed training to ensure that students were placed in the LRE and received FAPE, and that the District needed to provide training and increase hiring to ensure the ESS Department was adequately staffed. The information provided by the Director to supplement the steps taken by the District pursuant to the Plan show that it has begun to address any potential deficiencies in staffing.

### *Action Plan*

After OCR opened this complaint for investigation, the District hired the Director to oversee its Exceptional Student Services Department (ESS Department). Upon arrival, the Director “learned that there had been a major disruption within the department that led to a general sense of disorganization and no clear leadership.” As a result, the Director initiated an audit of the District’s ESS Department. During the audit, the Director interviewed all site principals, several District administrators, special education teachers, special education specialists (e.g., Psychologists, Child Find Coordinators, etc.), and special education staff (paraprofessional, ESS office staff). In total, the Director interviewed 66 District staff.

The Director assessed the District’s ESS needs and noted, among other needs:

- Missing standard protocols and practices for ESS Department and IEP development
- Lack of common understanding and application of federal and state laws regarding ESS across District to ensure compliant IEPs;
- Need for training on IEP writing, expectation, and compliance;
- Misuse of paraprofessional due to no clear guidance of roles and responsibilities;
- Lack of understanding of ESS processes by general education teachers;
- Need for 504-specific professional development;
- Documentation of the provision of ESS services;
- Over-discipline of ESS students;
- Apparent excess of speech-only IEPs; and
- Lack of Participation of special service providers at IEP meetings.

To respond to these identified needs, the Director created an Action Plan, which contained numerous action steps. The goals in the action plan relevant to OCR’s investigation include:

- ESS Executive Director will work with Human Resources to ensure ESS Department is adequately staffed to meet student IEP goals and needs;
- Develop an Administrator Plan to ensure LRE and FAPE compliance; and
- Provide ongoing professional development to ESS staff.

The Action Plan identifies several steps to take to ensure adequate staffing, particularly regarding Speech Language Pathologists, Occupational Therapists, and Physical Therapists. It also includes review of student IEPs to ensure both that the IEPs are appropriate and meet the needs of the students. It calls for training for administrators, special education staff, both certified and non-certified, and general education staff on the Districts protocols and procedures and special education law.

The Director told OCR that as part of the Plan the District has made progress addressing many of the issues identified by the Plan and of concern to OCR. Among other things, the Director told OCR that, through implementation of the Plan, the District has:

- Reduced the number of students with speech-only IEPs;
- Moved away from center-based programming;

- Provided more professional development opportunities for staff, both general and ESS, to increase their knowledge of the District's ESS programs;
- Created a worksheet/flow-chart to guide building-level staff in the evaluation and placement process;
- Created record-keeping practices to ensure ESS teachers record services provided and document evaluation and placement process;
- Increased specialist staffing, as described in this letter's staffing section;
- Through both professional development and hiring, reduced number of staff on temporary endorsement exemptions;
- Collected data on the impact of newly-hired social workers;
- Ensured paraprofessionals are utilized appropriately;
- Reviewed existing IEPs to ensure goals, objectives, and special education and related services are tied to the needs of the students;
- Offered compensatory education services to students whose IEPs were found to be deficient during review or in due process proceedings; and
- Offered compensatory education services during the summer of 2021 and 2022 for any student with an IEP or 504 plan.

The District has regularly updated the Action Plan, including most recently in April 2022. OCR recognizes that the District has taken significant steps during OCR's investigation to address any potential compliance concerns. Among other things, the District:

- has reorganized the way ESS services are provided by
  - utilizing paraprofessionals appropriately;
  - moving away from center-based programs to distribute ESS students in the LRE and in a more efficient manner;
  - reduced speech-only IEPs so that ESS services are focused on students who meet eligibility requirements under IDEA)
- increased staff knowledge by
  - improving its documentation process;
  - providing professional development for general and ESS staff;
  - creating worksheets and flow charts for the evaluation and placement process
- increased staff capacity by
  - reducing staff on temporary endorsement exceptions;
  - hiring additional service providers (OT, PT, SW, SLP)
- addressed any student needs that had not previously been met by
  - reviewing all student IEPs to ensure they were adequate;
  - providing compensatory services where such need was indicated during IEP review or due process proceeding; and
  - creating a voluntary summer program to provide compensatory services for other students with IEPs/504 Plans.

In accordance with Section 302 of the OCR's Case Processing Manual, a complaint may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution



agreement. In this case, the District requested to resolve the complaint with an agreement. In light of the District's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement is appropriate. Subsequent discussions with the District resulted in the District signing the enclosed Agreement.

The District sent OCR the attached signed Agreement on November 3, 2022. When fully implemented, the Agreement will resolve the compliance concerns identified in this letter. The provisions of the Agreement are aligned with the allegations and issues raised by the Complaint and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statute and regulations.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-19-1238 and will send a letter to the District stating that the case is closed.

This letter sets forth OCR's determination in an individual 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.

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint with OCR and those participating in a complaint investigation. complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the District for being willing to voluntarily address the allegations raised by the complaint. We appreciate the District's attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions regarding this complaint, please contact Patrick Alexander, the attorney assigned to this case, at [Patrick.Alexander@ed.gov](mailto:Patrick.Alexander@ed.gov) or 303-844-3473.

Sincerely,

Sandra J. Roesti  
Supervisory Attorney

cc: Melissa Barber, Counsel, *by email to* [mbarber@celaw.com](mailto:mbarber@celaw.com)  
Dr. Sandy Gecewicz, Executive Director of Exceptional Student Services, *by email to* [mary.gecewicz@peublod60.org](mailto:mary.gecewicz@peublod60.org)