



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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March 8, 2022

Mr. Brian Kingsley, Superintendent
Poudre School District
2407 LaPorte Avenue
Fort Collins, CO 80521-2297

via email only to XXXX@XXXX.XXX

Re: **Poudre School District**
OCR Case 08-22-1098

Dear Superintendent Kingsley:

We write to inform you of the resolution of the above-referenced complaint, filed on November 30, 2021, against Poudre School District (“District”), alleging discrimination based on disability. Specifically, the Complainant alleged that, during the 2021-2022 school year (SY), the District:

1. failed to implement the Student’s individualized education program (IEP);¹
2. improperly changed the Student’s placement;² and
3. failed to properly respond to a grievance alleging disability discrimination.³

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 based on disability in any program or activity operated by recipients of federal funds 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 based on disability by public entities, regardless of whether they receive federal financial assistance. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

We determined that OCR has the authority to investigate the allegations consistent with our complaint procedures and applicable laws. On January 24, 2022, we notified the District that OCR was opening an investigation of the allegations and we sent the District a data request. Prior to the data response deadline, the District expressed an interest in taking voluntary action to resolve the allegations in the complaint.

Section 302 of OCR’s *Case Processing Manual* (CPM) reads, “Allegations under investigation may be resolved at any time when, prior to the point when OCR issues a draft letter of findings under CPM

¹ Specifically, the Complainant alleged that the Student was not allowed to take breaks or go on walks, which were accommodations in the Student’s IEP.

² Specifically, the Complainant alleged that the Student was twice unenrolled from the School and subsequently not provided with educational services.

³ Specifically, the Complainant alleged that the District failed to properly respond to a grievance that he filed with the Superintendent on or about November 19, 2021.

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

Section 303(b), 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." OCR determined that, pursuant to CPM Section 302, resolving the allegations with an Agreement, without conducting any further investigation, was appropriate.

Investigation to Date

OCR interviewed the Student's father, who is the Complainant, and the Student's mother ("Mother"). OCR also reviewed records, communications, and other information provided by the Complainant and Mother. Additionally, OCR interviewed the principal at Centennial High School ("School"), requested and reviewed information from the District regarding the Complainant's grievance, and reviewed information on the School's website.

Policies and Procedures

OCR obtained the following facts prior to completing a full investigation and negotiating the Agreement in this case.

The Student has an IEP for a serious emotional disability. The Student started the 2021-2022 SY at the School. The relevant accommodations in the Student's IEP, dated December 14, 2020, read: "[The Student] needs opportunities for breaks when she requests to have a break, this can be a room of choice;" and "Opportunities to go on a walk when requested."

The School operates with six hexters (*i.e.*, six six-week grading periods) per year. In fall 2021, students attended the School on Tuesdays, Thursdays, and Fridays from 8:00 a.m. to 3:50 p.m.; and on Wednesdays from 8:00 a.m. to 3:00 p.m. There was no school on Mondays, except for one day of remote learning in each hexter.⁴

The School's attendance policy for the 2021-2022 SY reads, in relevant part:⁵

- "Students will receive a check-in call from their counselor after the second absence (E or U) in the same class."
- "Students will complete an attendance contract/problem solving after the third absence (U or E) in the same class."
- "Students will be dropped from the class when they get their fourth absence (E or U)."
- "Students can be dropped from 1st or 5th without losing their entire schedule."
- "Students dropped from 2nd, 3rd, 4th will lose their entire schedule. If this happens, they can enroll in Morning Program Classes, or work/volunteer and Attend Reentry Class on (Date TBD)."
- "Two tardies unexcused (TU) is equal to one absence (U)."
- "Once a student reaches 4 absences in any class they will be dropped. If all absences are excused, they may apply for a VARIANCE. If a variance is granted, they will have one additional absence (for a total of 5) before a drop."
- "Students who are dropped from all scheduled classes will enroll in Morning Program or complete re-entry prior to the start of Hexter 2. Reentry Date TBD."

⁴ <https://chs.psdschools.org/about-us/bell-schedule>

⁵ <https://chs.psdschools.org/academics/attendance>

- “An attendance contract is not necessary for enacting the CHS attendance policy; students can and will be dropped on their 4th absence without a Variance in place.”

During an interview with OCR, the Principal confirmed the content of the School’s attendance policy. He added:

- Students may earn partial credit for time spent in a class before withdrawal.
- If a student is tardy to first period by more than 10 minutes, the tardy is counted as an absence.
- If a student is tardy to any other period by more than two minutes, the tardy is counted as an absence.
- To obtain a “VARIANCE,” students must be passing all of their classes and all absences must be excused and supported by paperwork (e.g., a note from a doctor).
- Students’ parents and guardians are notified via phone if their student is dropped; they do not receive paperwork regarding the drop.

Additionally, according to the Principal, the Morning Program is a credit recovery program that includes only second and third periods (from 9:15 a.m. to 12:00 p.m.) each day that the School is in session. Participating students have been dropped from the School but any credits recovered in the “Morning Program” will be applied if and when they return for the next hexter. Participating students who accrue more than three additional absences are dropped from the “Morning Program” for the remainder of the hexter.

The Principal explained to OCR that students who have IEPs are in an 85-minute, second period, “study skills” class with the School’s special education teacher/case manager (“Teacher”); and then in an 85-minute, third period class that involves independent work on a computer with a teacher present. He said that students with IEPs who are dropped after three absences are allowed to continue attending second and third periods (*i.e.*, to participate in the “Morning Program”) to enable them to continue receiving the services provided for in their IEPs. Finally, the Principal stated that students with IEPs who accumulate an additional absence are, in general, dropped from third period but allowed to continue with second period.

The Student

On August 13, 2021, the first hexter started.⁶ According to records that the Complainant provided to OCR, the Student had: unexcused absences on September 1, 13,⁷ 14, 15, and 16; unexcused tardies on August 17 and 19, and September 8 and 9; and excused tardies on August 18 and September 17. The Complainant alleged that the Student was unenrolled from the School, and consequently, not allowed to attend on September 21, 22, 23, and 24. The Principal confirmed for OCR that the Student was dropped on September 17.

On September 28, 2021, the second hexter started,⁸ and the Student returned to the School. Records that the Complainant provided to OCR show that the Student had: unexcused absences on September 30, and October 20 and 22; unexcused tardies on October 7, 8, and 25;⁹ and an excused tardy on October 6.

⁶ <https://chs.psdschools.org/Calendar>

⁷ September 13, 2021 was the remote learning Monday for the first hexter.

⁸ <https://chs.psdschools.org/Calendar>

⁹ October 25, 2021 was the remote learning Monday for the second hexter.

Additionally, according to the Complainant, on October 27, at the Student's request, the Complainant picked the Student up from the School at lunchtime. Later that day, the Student was admitted to a hospital for mental health reasons. On October 28, at 5:48 a.m., the Mother emailed School staff to notify them that the Student was hospitalized. The email read, in part, "It's too early to know exactly when she's going to be home. We will let you know more details once we have more information. How will this impact her attendance at [the School]? Will she get any credit for this Hexter? What do we need to do about school?" The Teacher replied, in part, "Yes they will get almost full credit for their classes if they were passing them. If [the Student] is up for 3rd hexter they will need to come to re-entry next Friday at 9 AM. Let's just plan on keeping in contact to see where all of you are at next week?" The Counselor replied, in part, "I can confirm with our Registrar how much credit [the Student] earned. Re-entry for 3rd Hexter is November 5th at 9am." For October 27 and 28, the Student was marked with unexcused absences.

The Student remained in the hospital until Monday, November 1. According to the Complainant, after being discharged from the hospital, the Student was not allowed to attend the School for the remainder of the second hexter because the Student was unenrolled from the School on October 28. Specifically, he alleged that the Student was not allowed to attend the School on November 2, 3, 4, and 5. The Principal confirmed for OCR that the Student was dropped on October 28. However, the District later wrote to OCR, "The Student was permitted to attend Morning Program on every school day after October 28. ... As the third hexter was scheduled to begin on November 9, the School notified the Student that [the Student] could have [the Student's] problem solving meeting on Friday, November 5. This did not mean [the Student] was disallowed from attending school between November 2 and November 5."

The Student did not attend the Morning Program after the Student accumulated too many absences and was dropped during the first and second hexters. The Complainant alleged that School staff never notified him that the Student was being dropped or that the Morning Program was available to the Student. The Principal told OCR that the Student's parents were notified of the Morning Program, either by himself or a dean of students, and that he does not know why the Student did not attend the Morning Program.

On November 9, the third hexter began and the Student returned to the School.¹⁰ According to the Complainant, after a morning assembly, the Student was sent home (*i.e.*, suspended) for the rest of the school day after the Student was found loitering in a restroom with friends, and marked with an excused absence. On November 10, according to the Complainant, the Student returned to the School, but before school day even began, the Student was suspended for conduct during a mandatory re-entry meeting with the School's dean. The Principal confirmed for OCR that the Student was out-of-school suspended for the two school days.

According to the Complainant, the Student did not return to the School after November 10. According to the District, the Student returned to the School on November 11, but during a "problem solving meeting" that morning, the Complainant informed School staff that he did want the Student to return to the School. The Complainant applied for the Student to be transferred to Rocky Mountain High School (RMHS), another school in the District.

¹⁰ <https://chs.psdschools.org/Calendar>

On November 17, the District's Assistant Superintendent of Secondary Schools denied the Student's transfer to RMHS because that school was "beyond capacity for 11th grade students with an IEP" and "would not be able to provide the supports [the Student] need[ed]."

On November 19, the Complainant applied for the Student to enroll at Fossil Ridge High School (FRHS) and sent a letter to the Superintendent. The letter read, in part:

... In fact, informal complaints have previously been made when [the School] ignored or failed to adequately accommodate the provisions of [the Student]'s IEP. ... That bears repeating: [The Student] has an IEP for an emotional disability, was hospitalized for her emotional disability, and upon discharge from the hospital, discovered that she had been kicked out of school for being absent while in the hospital.

...

... But being suspended from the balance of the second semester and losing credit because of being in the hospital is a clear violation of federal law. ...

[The Student] becomes overwhelmed and requires a safe space to regain composure. This is provided for in her IEP. However, [a dean] regularly suspends [the Student] whenever she finds [the Student] outside of class. ...

...

... [The Student]'s IEP has been repeatedly violated. [The School] has dis-enrolled [the Student]. Poudre School District has denied [the Student] re-entry. [The Student] is being denied access to education. [The Student] has been denied access to education because of her emotional disability.

... More to the point, we demand support pursuant to US Title 20 Chapter 33. ...

Regarding the letter, the District wrote to OCR, in relevant part, "In sum, the grievance came in as part of a transfer request packet. The District missed the grievance within the transfer request, and believed the problems were resolved when the transfer issue was settled."

The District enrolled the Student at FRHS. From November 22 to November 26, FRHS was on fall break.¹¹ On or about November 29, the Student started at FRHS.

Conclusion

On February 8, 2022, we sent the District a proposed Agreement with terms that are tied to the allegations and evidence OCR obtained to date, and that are consistent with applicable regulations. The District sent OCR a fully executed Agreement on March 8, 2022. Attached is a copy of the signed 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. OCR will monitor

¹¹ <https://frh.psdschools.org/frh/about-our-school/calendars-schedules>

implementation of the Agreement through reports from the District demonstrating that the terms of the Agreement have been fulfilled. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the Agreement terms and will promptly require actions to address such deficiencies. The Complainant will receive a copy of OCR's monitoring letters. If the District fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions.

This concludes OCR's investigation of the allegations and should not be interpreted to address the District's compliance with any law or regulatory provision, or to address any issues other than those addressed in this letter.

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

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 resolution process. If this happens, the individual may file another complaint alleging such treatment.

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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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 District's prompt attention to this matter and cooperation. If you have any questions or concerns, you may contact me, the attorney assigned to this case, at XXX-XXX-XXXX or XXX@XXX.XXX).

Sincerely,
/s/
Jason Langberg
Designated Team Leader

Attachment: Resolution Agreement

cc (via email): Mike Roberts, Principal of the School
Sarah Belleau, District Director of Integrated Services
Robert Montgomery, Outside Counsel for the District
Autumn Aspen, Legal and Policy Counsel for the District
Katy Anthes, Colorado Commissioner of Education