



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 16, 2022

Jim Parr, Executive Director of Academic Student Services
Montezuma-Cortez School District Re-1
P.O. Box R
Cortez, Colorado 81321-0708

via email only to XXXX@XXXX.XXX

Re: **Montezuma-Cortez School District Re-1**
OCR Case 08-22-1137

Dear Mr. Parr:

We write to inform you of the resolution of the above-referenced complaint, filed on December 3, 2021, against Montezuma-Cortez School District Re-1 ("District"), alleging discrimination based on disability.¹ Specifically, the complaint alleged that the District failed to implement the Student's Section 504 plan and failed to designate an individual to coordinate its compliance with Section 504.

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 19, 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 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.

¹ The case was referred by the U.S. Department of Justice to OCR.

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

Investigation to Date

OCR reviewed records, communications, and other information provided by the Student's attorney ("Attorney"). Additionally, OCR interviewed the Student's school counselor ("Counselor").

Facts

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

On September 30, 2020, the Student's school counselor ("Counselor") emailed the Student's mother ("Mother"), in part, "Unfortunately, the gentleman who held this job last year did not actually create a 504 plan for [the Student], according to our database that keeps those records. ... I want to apologize for my predecessor, as I've only been in this position for about a week."

On October 6, 2020, the Student's Section 504 team met and created a new Section 504 plan for the Student. The plan included the following accommodations:

- [The Student] will be given time-and-a-half for assignments and tests/quizzes. In addition, he may need a quiet place to take tests/quizzes.
- Seat student near teacher -in the front row and away from distractions whenever possible.
- Allow time-and-a-half to complete assigned work.
- Break long assignments into smaller segments, each with a deadline
- Shorten assignments or work periods whenever possible
- Pair written instructions with oral instructions
- [The Student] will use his phone to track assignments, and test dates. Teachers can cue [the Student] to ensure he is using his phone planner.
- Give advanced notice about upcoming projects and reports
- Give review summaries for math exams
- Teachers will check [the Student]'s understanding of new concepts
- Classwork, tests, and quizzes can be finished in Content Mastery class
- Parents will be notified if [the Student]'s grade drops below a D
- Parents will be invited to join google classrooms
- [The Student] will be allowed to use his phone to take pictures of notes on the board or the teacher will provide [the Student] with a copy of notes.
- Give [the Student] a verbal signal when important information is about to be provided
- If [the Student] needs to call home please allow him to do so. Sometimes he needs their support and assurance.

On April 8, 2021, and again on September 15, 2021, the Mother emailed the Counselor to express concerns about implementation of the Student's Section 504 plan, or lack thereof.

On October 5, 2021, the Student's Section 504 team met. The Mother alleged that, during the meeting, one of the Student's teachers said that she was unaware of the Student's Section 504 plan. The team developed a Section 504 plan that included the exact same accommodations that were in the Section 504 plan created on October 6, 2020. Also on October 5, 2021, the Counselor emailed the Mother, in part, "I have been informed that the district does not currently have a 504 Coordinator, but you can direct your questions to our Assistant Superintendent"

According to the Attorney, with regard to the alleged failure to implement the Student's Section 504 plan, the Mother was most concerned about the District allegedly not breaking up assignments or providing extra time for the Student, and allegedly not providing her with notifications regarding the Student's declining grades.

According to the Counselor: (a) he emails students' Section 504 plans to relevant staff after each team meeting in which a plan is created or revised; (b) he does not know whether the Student's Section 504 plan was implemented; and (c) the Student was offered opportunities for additional time on assignments and tests/quizzes before and after school and during the School's "content mastery period." Additionally, the Counselor told OCR that: (a) from the start of the 2021-2022 school year until she retired in early December 2021, the District's former Assistant Superintendent was the District's Section 504 Coordinator; (b) from early December 2021 until she was placed on leave by the school board in early January 2022, the District's Superintendent was the District's Section 504 Coordinator; and (c) from early January 2022 until present, the District's Executive Director of Academic Student Services has been the District's Section 504 Coordinator. The Counselor said that he was mistaken in his October 5, 2021 email to the Mother and was informed shortly thereafter that the Assistant Superintendent, at the time, was the District's Section 504 Coordinator. Finally, the Counselor orally shared with OCR examples of emails, sent in November and December 2020, in which School staff notified the Mother of the Student's missing assignments and grades.

Conclusion

On January 26, 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 February 15, 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 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 Student's attorney and Mother will be copied on 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 XXXX@XXXX.XXX).

Sincerely,

/s/

XXX

Designated Team Leader

Attachment: Resolution Agreement

cc (via email): Eric Chandler, Principal (XXXX@XXXX.XXX)
Melissa Barber, Caplan & Earnest (XXXX@XXXX.XXX)
Katy Anthes, Colorado Commissioner of Education (XXXX@XXXX.XX)