



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

REGION VIII

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September 8, 2022

Ed Smith, Superintendent
Pueblo County School District 70
301 28th Lane
Pueblo, Colorado 81001

By email only to: esmith@district70.org

Re: OCR Complaint No. 08-22-1255
Pueblo County School District 70

Dear Superintendent Smith:

This letter is to notify you of the disposition of the above-referenced complaint against Pueblo County School District 70 (the District) that the United States Department of Education (Department), Office for Civil Rights (OCR), received on March 14, 2022. The Complainant is a former employee of XXX (the School or XXX) and the parent of a former student of the School (the Student). She alleges that the School discriminated on the basis of disability by:

- a. Failing to evaluate the Student and provide him with an appropriate education for over two years (i.e., since third grade) despite knowledge of his disabling conditions, including but not limited to XXX, some of which have significantly impacted his attendance;
- b. Disenrolling the Student for the 2022-23 school year based on absence related to his unaccommodated disabilities and medical conditions;
- c. Retaliating against the Student based on the Complainant's continued advocacy for an evaluation and education services/accommodations for the Student by calling the police and threatening to take the Student's parents to truancy court; and
- d. Retaliating against the Complainant in her employment based on her continued advocacy for an evaluation and education services/accommodations for the Student by not giving her shifts/hours as a XXX for the School.

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

OCR Jurisdiction

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 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 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Individuals filing a complaint, participating in an investigation, or asserting a right under Section 504 and Title II are protected from intimidation or retaliation by 34 C.F.R. § 104.61, which incorporates 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Summary of OCR’s Investigation

OCR’s investigation included the following:

- a. An interview of the Complainant and several follow-up phone calls with the Complainant;
- b. Review of documents pertinent to the complaint allegations, including the School’s non-discrimination and grievance policies; Student-Parent handbook, which includes the School’s attendance and disenrollment policies; 504 packet; Employee Handbook; the Student’s attendance record for 2021-22; the Student’s health records, including visits to the nurse; documents from the Student’s IEP file; communications between the Student’s parents and School staff; doctor’s notes provided by the Student’s parents; information regarding other students with attendance issues; the Counselor’s file regarding her call to law enforcement about the Student in March 2022; and the Complainant’s personnel file;
- c. Review of 5 affidavits provided by the School from the Director of XXX, Assistant Principal, Counselor, one of its Exceptional Student Services (ESS) teachers (ESS Teacher 1), and the Student’s classroom teacher during the 2021-22 school year (Teacher) and a statement from the XXX;
- d. Review of a video of the March 9, 2022 evaluation meeting for the Student; and
- e. Interviews of 9 witnesses, including the School’s XXX, Director of XXX, Principal, Assistant Principal, Business Manager, Counselor, and Teacher, as well as a Pueblo police officer and the Student’s father.¹

¹ OCR also reached out to the Student’s occupational therapist from a private provider, but she declined to be interviewed. OCR also attempted to interview the School’s XXX, but he was unavailable due to a medical leave.

Prior to the conclusion of OCR’s investigation and the receipt of all documents responsive to OCR’s two data requests, the District and School expressed a willingness to resolve the complaint allegations. OCR determined that it is appropriate to resolve the allegations through a voluntary resolution agreement under Section 302 of OCR’s Case Processing Manual because OCR has identified several concerns to date regarding the Complainant’s allegations. As a result, OCR suspended its investigation and resolved the allegations through the enclosed resolution agreement.

Facts

A. The School’s Policies and Procedures

1. Non-Discrimination, Grievance, Anti-Retaliation, and 504 Policies and Procedures

The School provided OCR with a non-discrimination statement (Policy S1), a Conflict Resolution/Grievance Policy (Policy A1), a one page description of a grievance/appeals process, which is also contained in the School’s Student-Parent Handbook, and a Section 504 packet. The School did not provide OCR with a policy prohibiting retaliation.

a. Non-Discrimination Policies and Statements

The School’s non-discrimination statement, Policy S1, states: “it is the school’s policy that no person shall be excluded from participation in, be denied the benefits of, or be subjected to unlawful discrimination, intimidation, or harassment under any school program or activity on the basis of ethnicity or race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, genetic information, age, veteran status, or disability.” The policy further provides, “Any student, staff member or parent should report any discrimination or harassment to the XXX, Director of XXX, or XXX.” This policy is not included on the School’s website. There is also no mention on the School’s website of the identity or contact information for the School’s 504 coordinator.

There is a District non-discrimination statement at the bottom of the School’s home page, which states: “Pueblo County School District 70 does not unlawfully discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity/expression, marital status, national origin, religion, age, disability, need for special education services, genetic information, pregnancy or childbirth status, or other status protected by law in admission or access to, or treatment, or employment in its education programs or activities. Additionally, a lack of English language skills is not a barrier to admission or participation in activities. Inquiries about ADA, Section 504, Title VI, and Title IX may be addressed to the Superintendent of Schools, 301 28th Lane, Pueblo, Colorado, 81001. 719-295-6548 or XXX.”

Neither the School’s nor the District’s non-discrimination policies are included in the School’s Student-Parent Handbook. The Handbook states in the Student’s Rights/Responsibilities section that students have the following rights: education, to be free from discrimination, free speech,

free association and peaceful assembly, individual dignity, to be free from sexual harassment, not to be bullied, to privacy of student records, and rights relating to search, seizure, and interrogation.

The School’s Employee Handbook includes a non-discrimination statement in Section 3.3 that states “it is the school’s policy that no person shall be excluded from participating in, be denied the benefits of, or be subjected to unlawful discrimination, intimidation, or harassment under any school program or activity on the basis of ethnicity or race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, genetic information, age, military status, or disability.”

The School’s Kindergarten Entrance Age Policy includes the following non-discrimination statement: “XXX does not unlawfully discriminate on the basis of race, color, religion, national origin, gender, age, genetic information, or handicap (disability) in admission or access to, or treatment, or employment in its education programs or activities. Inquiries about ADA, Section 504, Title VI and Title IX may be addressed to XXX.”

b. Grievance Policies

The School’s grievance policy, Policy A1, states: “When a conflict arises between a parent and staff member of XXX, or if a decision is made by school personnel which parents or students consider unfair, in violation of school policies, or state or federal laws,” the parent should go to the staff member in question, and if the issue is not resolved, can meet with the Principal or XXX. The policy provides that if the issue is still not resolved, the parent may appeal in writing. The policy includes no mention of timeframes for the School to respond to concerns or for parents to file an appeal.

The grievance and appeal process contained in the School’s Student-Parent Handbook, which is available on the School’s website, states that “[d]ecisions made by school personnel which parents or students consider unfair, or in violation of school policies, or state or federal law, may be grieved through the proper chain of command,” which is listed and includes the classroom teacher, XXX Principal, XXX, XXX, District Superintendent, and District Board. The policy provides a timeline for the School to respond to written complaints and for complainants to file a written appeal “to the next higher level.”

c. Anti-Retaliation Statement

The only anti-retaliation statement provided by the School to OCR appears in the Employee Handbook in the Complaint/Reporting Procedure under Harassment in Section 4.3. and states:

XXX will not tolerate retaliation for opposing harassing behavior, for reporting instances of harassment, or for providing statements or evidence related to alleged harassment. Supervisors or management may not retaliate against a victim, reporter, or witness of harassment because of his or her report or other participation in a harassment investigation. . . .

d. Section 504 Procedures

The School did not provide OCR with any policies or procedures for compliance with Section 504, but did provide its Section 504 packet, which includes a Referral Form and Consent for Section 504 Evaluation (Consent Form). The packet references a “Notice of Parent Rights,” but that document was not included in the packet provided to OCR.

The Referral Form states that “[f]or a student to be eligible for a 504 plan, the student must meet all three of the following criteria and, because of his/her disability, must need accommodations to gain equal access to and/or benefit from school programs and services: [] A physical or mental impairment; [] That substantially limits; [] One or more major life activities.

The Consent Form states:

In many cases, the Section 504 evaluation may consist of the Section 504 Committee reviewing and interpreting existing school records, including anecdotal evidence, observations, prior testing, grades, standardized test scores, and other data, in order to determine if your child qualifies for accommodations in the regular classroom . . . In addition to reviewing the data described above, the district desires to conduct the following assessments...

The School’s Counselor, who is also the School’s 504 coordinator, told OCR that the School’s process when a parent or teacher requests a 504 plan for a student is as follows: The School gives the student’s legal guardian a 504 packet, which asks for any diagnosis the student may have and the accommodations the student is requesting.² Once the 504 coordinator receives the packet, she discusses it with the student’s classroom teacher and sets up a 504 meeting with the student, parent/guardian, teacher, an administrator, and sometimes the therapist or doctor who diagnosed the student to talk about if the student qualifies. If the student qualifies, the team develops a plan for the student.

When OCR asked the Counselor if there is a point in the 504 process when the student is evaluated, the Counselor stated, “Once I get the 504 packet, I go into the class, meet with the teacher and watch and evaluate the student. It depends on the diagnosis. If the student has diabetes, I don’t need an evaluation process. If the student has ADHD, since there are so many types, I will go in and watch the student and get teacher and student input.”

The Counselor additionally told OCR that she needs information about a student’s medical diagnosis to start the 504 evaluation process. She further explained that a student needs a diagnosis that lasts for six months or more that impedes the ability to learn to qualify for a 504 plan. The Counselor said that this is how she was trained in prior years by the District and the

² There is no place in the 504 packet provided to OCR where a referring individual is asked for a diagnosis or suggested accommodations. The packet does ask the referring individual to describe the student concern and how the student meets the listed criteria for a Section 504 plan.

former counselor; there has been no 504 training this year.³ The XXX also told OCR that it is the School’s practice “based on District expectations” to obtain documentation from a medical professional prior to starting the 504 evaluation process.

2. Attendance Policies

The School’s attendance policy, which is Policy S11 and contained in the Student-Parent Handbook, begins with a statement about the importance of regular and punctual attendance for “school interest, social adjustment and scholastic achievement.” After defining what constitutes attendance for remote and in-person learning, the policy differentiates between excused and unexcused absences. The policy provides that, “The state of Colorado recognizes the following as excused absences: [t]emporary illness or injury; [a]bsence due to a physical, mental, or emotional disability. . .”⁴

The School’s attendance policy additionally provides that the School “*may* require notice and appropriate documentation to verify excused absences.” (emphasis added). The Principal told OCR that documentation is needed when absences “become a pattern,” and that absences related to a recurring health issue would be considered “excused” provided the health issue is verified by a doctor.

The attendance policy further provides that, “During the calendar year or school year, a student can have a maximum of ten (10) days of unexcused absences before judicial proceedings may be initiated to enforce compulsory attendance.” The policy then defines “chronically absent,” “truancy,” and “habitually truant” as follows:

Chronically Absent: A student who has a total of 10 days of unexcused absences in a school year, whether the absences are excused or unexcused, may be identified as “chronically absent” by the Principal or designee. Absences due to an approved severe or persistent injury/illness, suspension or expulsion shall not be counted in the total number of absences considered for the purposes of identifying a student as “chronically absent.”

Truancy: Truancy means a student is absent from school without a valid and verifiable excuse from the parent/guardian or the student leaves school or class without permission. This is synonymous with “unexcused absence.”

Habitually Truant: A habitually truant student is one who accrues 4 total days Of unexcused absences in a calendar month, or 10 total days of unexcused absences in a school year. . . .

³ OCR requested District 504 presentations but did not receive them prior to resolving the allegations.

⁴ Colorado’s attendance law, CRS § 22-33-104, provides that the attendance requirements in sub-section (1) do not apply to a child “(a) Who is temporarily ill or injured or whose absence is approved by the administrator of the school of attendance; . . . (c) Who is absent for an extended period due to physical, mental, or emotional disability.”

The Assistant Principal told OCR that “chronically absent” is the most severe designation of absences and that excused absences do not count towards being “chronically absent.”

The attendance policy additionally states that if a student is identified as “chronically absent,” the Principal or designee “shall develop a plan to improve the student’s attendance. The plan shall include best practices and research-based strategies to address the reasons for the student’s chronic absenteeism. When practicable, the student’s parent/guardian shall participate in the development of the plan.” The policy similarly states that “[a] plan shall be developed for a student who is at risk of being declared habitually truant with the goal of assisting the child to remain in school. The plan shall also include strategies to address the reasons for the truancy. When practical, the student’s parent, guardian, or legal custodian shall participate with school personnel during the development of the plan.” The policy further provides that “XXX will make all reasonable efforts to meet with the parent/guardian to review and evaluate the reasons for the student’s truancy and will work with local community services groups when developing a plan.”

The School’s “Attendance Protocol and Procedures,” which is also contained in the Student-Parent Handbook, states that the School will contact a student’s parent/guardian as follows:

- 4 days Letter of concern sent by the Principal, or designee
- 8 days 2nd Letter of concern is sent and the Principal, or designee, completes a corrective plan of action
- 10 days 3rd Letter, notice of non-compliance may be sent by the Principal, or designee
- 10 days A truancy petition may be completed, and the Principal, or designee, may complete a Truancy Intervention Summary in accordance with terms of notice of noncompliance.

The School’s attendance policy additionally provides that, “Federal and state special education laws prevail over state laws and regulations for attendance. When applying attendance policies to students qualifying for an IEP or 504 Plan, the school must consider those special education rights first.”

The XXX told OCR that while the School’s policies allow for the completion of a truancy petition after 10 unexcused absences, the School has never in the past 12 years referred a student to truancy court because it is a “waste of time,” “antagonistic,” and “does not help get a kid in school.”

3. Continuing Enrollment Policy

The School’s Continuing Enrollment policy, which is also contained in the Student-Parent Handbook states:

XXX is a XXX school and any student enrolled shall be allowed to remain enrolled in the school through the end of the school year unless: the student is expelled from the school or is habitually disruptive to the learning environment, continues to have poor attendance missing 10 days or more per semester, and/or continues to have poor academics, with 2 or more failing grades.

If a student has one or more of the conditions above at semester, the student will be placed on probation for the following semester. If discipline continues, lack of academic performance and/or poor attendance continues, then the student may be disenrolled and asked to attend his or her home school.

Although the School’s continuing enrollment policy does not distinguish between excused and unexcused absences, the Principal and Assistant Principal told OCR that the School would not place a student on probation based on excused absences. The XXX, Principal, and Assistant Principal told OCR that no student has ever been disenrolled from the School based on poor attendance.

4. Abuse/Neglect Reporting Policy

The School’s abuse and neglect reporting policy, which is contained in the Student-Parent Handbook, states in relevant part: “Any school employee that has reasonable cause to know, or suspect, that a child has been subjected to abuse or neglect, is required by law to report this to local law enforcement or to the Department of Social Services (DSS) immediately.” A similar policy for reporting child abuse/child protection is contained in the School’s Employee Handbook. The Counselor told OCR that she is typically the person to call law enforcement and/or DHS for the School, and that she has discretion to determine whether to call.

B. The Student’s School Experience

1. School Years Prior to the 2021-22 School Year

The Student began attending school in the District in kindergarten. His health records from first grade indicate that he has XXX issues. The Student began attending school at XXX in August 2018 when he was in second grade. His health records from second grade similarly indicate that he has “XXX” Beginning in third grade, the Student’s health records indicate that he has XXX in addition to XXX. The Complainant told OCR that when the Student began third grade, she also informed his teacher about his XXX and XXX issues and said that he may need to have things repeated or sit in the front of the classroom.

On February 3, 2021, when the Student was in fourth grade and attending school online,⁵ the Complainant emailed the Counselor and wrote the following: “[The Student’s teacher] had given me your email to see about maybe getting my son some help with his school work? He has XXX

⁵ The Student attended school online for the entire 2020-21 school year.

and XXX. I've just done the best I could because I didn't think either of those qualified for iep."⁶ The Counselor told OCR that this was the first time she learned about the Student's disabilities. She and the XXX explained that only the school nurse and registrar have access to the above-referenced health forms; this information is not typically shared with the Counselor or teachers.

That day, the Counselor reached out by email to the Student's teacher to gain some background information about the Student. The Student's teacher responded by email that the Student is struggling with grades, attendance, and failing to turn in assignments, and that the Complainant told her last week that "he's struggling to get assignments completed due to his XXX." The teacher told the Complainant "it might benefit [the Complainant] to reach out and ask about a 504, not an IEP" and that "if she had a doctor's diagnosis, he might qualify for an accommodation such as 'extra time' if it truly is affecting his ability complete work." The teacher concluded her email to the Counselor with: "I'm not sure what to believe at this point because he is very bright!"

On February 9, 2021, the Counselor responded to the Complainant. Her email states, in relevant part, "We can look into IEP testing if that is something that you are interested in? If you have recent diagnosis information from his PCP we can look into a 504 if you think the extra time is all that he would need. When I looked up his grades it appears attendance and some missing assignments are impacting him currently. Thoughts?"

The Complainant responded by email on February 14, 2021. Her email states, in relevant part:

Not sure about attendance, he goes everyday. . . He's been diagnosed with XXX and I could get his doc to send something probably but he hasn't been to the doctor since last year. . . It just takes him so long to do his assignments. We spend hours a day doing homework. His art is definitely a struggle . . . Everything else extra like Xtra math, spelling, I was told he should be able to do independently but he can't . . . I appreciate this has been hard on everyone but I don't know what else to do. . . If you have any suggestions I'd appreciate it.

On February 23, 2021, the Counselor responded by email as follows: "Based on his diagnosis I would reach out to your PCP and see what recommendations they have regarding accommodations. There are so many different levels of XXX and it would be helpful to know which kind of XXX he is. Once you meet with your PCP (since its been a year) ask them for a referral to the XXX. They can help with different evaluations, occupational therapy, etc. They have also helped us with figuring out which accommodations would be helpful for each individual." The Counselor told OCR that she emailed the Complainant the 504 packet that day, but there is no indication of that in the emails provided to OCR.

The Counselor forwarded her correspondence with the Complainant to the Student's classroom teacher, who responded by email: "[The Student] may not be absent often, but he is consistently

⁶ Health records were not filled out when the Student was in fourth grade due to COVID.

tardy to our live sessions, specifically about 10-15 minutes to our morning (8am) session, which causes many interruptions. . .”⁷

In early April 2021, the Counselor had an in-person conversation with the Complainant about 504 services. The Complainant said that she was looking into additional diagnoses for the Student because she thought “there was more going on.” The Counselor told the Complainant to “keep her posted.” The Counselor told OCR that she did not start the evaluation process during the 2020-21 school year because she was waiting to receive the completed 504 packet from the Complainant with information about the Student’s diagnoses from a physician. The XXX told OCR that she was aware in the Spring of 2021 that the Counselor was awaiting documentation to begin the 504 process for the Student.

2. 2021-22 School Year

a. The Complainant’s Continued Requests for an Evaluation and Support for the Student

On July 17, 2021, the Complainant reached out again to the Counselor by email. The Complainant’s email states: “The doctor said I need a form from you for her to fill out for the IEP or 504? Finally got him a doctor that is actually experienced with XXX . . . We are getting speech and OT from a different provider on telehealth right now.”

The Counselor responded to the Complainant on July 21, 2021. Her email states, in relevant part: “if you are requesting an IEP, you can do that with [an ESS teacher] . . . She can better explain how that process works. If you want to go with the 504 route attached is the 504 referral packet. If you could complete this, then when school gets back in session we will schedule a 504 meeting if he qualifies and develop a plan.”

The same day, the Counselor sent an email to ESS Teacher 1 with the Complainant copied introducing the two. The Complainant responded that day that she was not sure which would be better between an IEP and 504. The Counselor responded on July 21, 2021, “It’s really up to you. I would suggest looking at an iep first, see if he qualifies, then if not look at a 504. It really depends though on what type of interventions-accom they are suggesting.” The Counselor asked the Complainant for the Student’s diagnoses, and the Complainant responded, “He has XXX.”⁸

According to an affidavit from ESS Teacher 1 provided to OCR, ESS Teacher 1 received word of the Complainant’s request for an evaluation when she returned from summer break and emailed the Complainant to introduce herself and schedule a meeting. She then had a conversation with the Complainant at back-to-school night on August 5, 2021, during which the Complainant asked about how to get an ESS evaluation for the Student. The Complainant told ESS Teacher 1 that she was concerned the Student may have XXX.

⁷ The XXX told OCR that the Student had attendance issues for several school years. OCR could not confirm this information because the School provided attendance records for only the 2021-22 school year.

⁸ The Student’s health record for fifth grade includes XXX, as well as XXX.

According to the ESS Teacher 1’s affidavit, she told the Complainant that the School could not medically diagnose a student with XXX but could do an educational assessment. She additionally stated that she “could ask the District ESS team to put [the Student] on the District 70 XXX list to be tested, but this could take several months.” She then told the Complainant, “it might be beneficial instead for [you] to seek outside testing first, to gain a diagnosis. This is usually the quickest route,” which is what ESS Teacher 1 understood the Complainant was going to do.

On August 6, 2021, the day after back-to-school night, the Complainant sent another email to ESS Teacher 1 stating, “Just following up on [the Student] and getting an iep started.” The Complainant received no response.

On August 7, 2021, the Student’s classroom teacher wrote an email to the Complainant, with the Assistant Principal and Counselor copied, explaining that for the last two days the Student said he had not received his XXX medication and was struggling to XXX in class. The classroom teacher asked the Complainant for strategies that are successful at home so that the Student can be “as effective as [he] can in helping [the Student] this year.”

On August 11, 2021, the Counselor sent an email to ESS Teacher 1 with the classroom teacher copied asking about the status of the special education referral for the Student. She wrote, “I talked to the [Student’s classroom teacher] and it sounds like he is out of control in the class and not taking his [XXX] meds regularly.” The Counselor forwarded the entire chain of her communications with the Complainant since February 14, 2021, regarding support for the Student. In another email to ESS Teacher 1 that day, the Counselor wrote, “I’m not sure how we should go forward with this student???” The Counselor told OCR that she did not know how to move forward based on the “different diagnoses” for the Student, including a potential XXX diagnosis.

ESS Teacher 1 responded that she has talked to the Complainant, and that the Complainant told her the Student may have XXX. She wrote, “I told her to start with the pediatrician and I would check into putting him on the D70 XXX team so they can evaluate him; but this process takes months!!” In a subsequent email to the Counselor that day, ESS Teacher 1 wrote:

Hmmm. Well I talked to his Speech therapist, or OT? And mom and they agreed to have mom check with the Pediatrician about getting an XXX diagnosis. AND I will start the XXX “track” here. I have to collect data and put him on the waiting list for D70’s XXX team. Can he be put on a 504 for the XXX first, so he gets accoms while we wait for the XXX team? . . .OR we can evaluate him for ESS, (the problem right now with initial evals is that we don’t have a psychologist and they will have to test.), but it won’t include anything about XXX. (we can change the label later).⁹

⁹ The XXX told OCR that there was a period of time during the 2020-21 school year when the School had no psychologist, but that the School now has someone in that position who can meet the School’s needs.

The Counselor responded, “I’ll just write another 504.” ESS Teacher 1’s affidavit states that she believed that the Complainant had decided to get an XXX diagnosis through the Student’s pediatrician and a 504 “for the diagnosis of XXX.” The Counselor told OCR that she did not develop a 504 plan for the Student at that time because she was still awaiting information regarding his diagnoses from a provider.

The Student’s classroom teacher told OCR that the Complainant also reached out to him in September 2021 to ask about IEP services for the Student. The teacher’s affidavit states, “We discussed possible alternative such as a 504 to help until IEP services were available. I understood at that time the school was still lacking proper [medical] documentation from [the Student] to provide more services.” The Counselor and teacher told OCR that they implemented some informal accommodations for the Student, including preferential seating and small group instruction, while they were awaiting the “documentation.”

Approximately three months later, on November 15, 2021, the Complainant sent an email to ESS Teacher 1 stating, “I was wondering if anything had happened with the iep waiting list yet,” to which ESS Teacher 1 responded, “Last I heard was [the Counselor] was putting [the Student] on a 504 while we are waiting for your pediatrician to see about a diagnosis of XXX. Has this happened yet?”

The Complainant responded to ESS Teacher 1, in relevant part, “I haven’t heard anything since August. His doctor doesn’t do XXX diagnosis. I was told the school evaluates for education and I’m trying to figure out who I’m supposed to talk to for medical diagnosis.” The same day, the Complainant sent an email to the Counselor stating, “I’m trying to figure out who I’m supposed to talk to for medical diagnosis. [The Student’s] therapist suggested a place but they have a waitlist . . . Any luck with the 504 or iep?” The Counselor responded the following day, “Does he have any current documented diagnosis? Can his therapist write you something with the concerns and any suggested accommodations? Based on diagnosis, I can [give] you a better idea of which route to take.” The Complainant wrote, “Yes I can have his therapist do that. I was just trying to find out where we were as far as getting him evaluated at the school also. He has XXX. Im trying to get him evaluated for X – phrase redacted - X.”

The Counselor responded on November 16, 2021, “It’s hard to start either evaluation process until we have some of this information, especially on the 504, front. If you are requesting an IEP, a request will need to be made to [ESS Teacher 1]. I included her to this email. Typically, having diagnosis information is helpful when trying to determine which route is best to start with.” The Counselor’s email concluded with recommendations on private providers in the area that do evaluations.

The following day, the Student’s occupational therapist (OT) wrote an email to the Counselor with copies to ESS Teacher 1 and the Student’s speech therapist, stating that the Student currently has a medical diagnosis of XXX, and that she and the Student’s speech therapist are assisting the Complainant with getting a medical based assessment set-up to evaluate him for XXX, which will take time given wait lists. The OT concluded the email with:

We are strongly recommending [the Student] be assessed for supports in the educational environment to determine if a 504 or IEP would be appropriate for his current needs. Although exceptionally bright and high functioning, [the Student] has several areas that could be further addressed and supported.

On November 17, 2022, ESS Teacher 1 wrote to the Complainant, “I talked to our District boss and she said that whereas we can’t ever medically diagnose XXX, we can do some evaluating to see if he qualifies for ESS services under another disability OR if as a team we come to a conclusion that he does probably have XXX, we can at that point refer him for more testing at the District. . .” She provided the Complainant with a consent to evaluate form, which she received signed from the Complainant on December 6, 2021.

On December 7, 2021, the Counselor wrote to ESS Teacher 1 and asked, “Do you think we should go forward on an IEP or 504 with this case? Did you get the email from the OT?” ESS Teacher 1 responded that the Complainant has already signed the consent for an ESS evaluation. She added, “I heard from [the Student’s teacher] that his absences are extreme!” The Counselor responded, “[The Student’s teacher] is correct,” and included the Student’s attendance record. The Counselor told OCR that she asked ESS Teacher 1 whether she was proceeding with an IEP or whether the Counselor should develop a 504 plan because the Counselor now had the information she needed to start the 504 process (i.e., a diagnosis from a provider with “direct care of a student” based on assessments).

b. The Student’s Attendance

The Complainant told OCR that, in addition to the diagnoses of XXX, the Student has XXX. She told OCR that the Student has been seeing a XXX specialist, who is running tests but has not yet diagnosed the Student’s XXX condition; for now, the doctor has labeled the issue as XXX. The Complainant explained that when the Student has a XXX flare up, he stays in bed the whole day because of the pain and misses school. When she sends him to school, he sometimes asks to go home because he doesn’t feel well. The Complainant additionally told OCR that often the School nurse would not let the Student go home because he had missed so much school, which caused the Student even greater anxiety. He worried about going to school because he feared that he would not be able to come home if he was in pain.

Records provided by the School to OCR indicate that the Student visited the nurse 10 times during the 2021-22 school year and that at least 7 of those times were due to a XXX (and sometimes other symptoms as well, including a XXX). On one of those occasions, the Student was sent home.

The Complainant additionally told OCR that, at the beginning of the 2021-22 school year, she called the Principal and told him that the Student was having a lot of “XXX issues,” which his doctor was trying to diagnose, and that it was affecting the Student’s attendance. The Principal also told OCR about this phone conversation, which he believes occurred in November or December of 2021. The Principal told OCR that he responded, “let’s keep an eye on it.” The Principal additionally told OCR that he subsequently had another conversation with the

Complainant in person in the Fall, during which the Complainant told him that the Student's XXX issues were persisting and that it was getting harder to get him to school.

The Principal told OCR that he believed there were definitely XXX issues going on with the Student that were affecting the Student's attendance, but that he did not consider whether to evaluate the Student for a health or 504 plan based on the XXX issues because "it was hard to decipher whether anything was different than any other student with a physical ailment." The Principal additionally told OCR that he shared the information that he learned about the Student's XXX issues with the Assistant Principal responsible for second through sixth grade truancy, and that the Student's attendance was discussed during administrative meetings.

The Student's classroom teacher stated in his affidavit that "the [S]tudent's health in [his] class was challenging to understand. Often he complained of XXX issues. During this time, [the teacher] would attempt to use mints, water, snacks, or rest to help him feel better. . . If these did not help [the] Student at any time, [the teacher] would send him to [the] school nurse." The Student's teacher told OCR that he had one phone call with the Complainant in the Fall of 2021, during which they discussed the Student's absences. The Complainant said that some of the Student's absences were related to his XXX condition; there were other days when one of his siblings was sick or had a doctor's appointment and she could not get the Student to school. The teacher told OCR that he emphasized the importance of getting the Student to school and told the Complainant that if the Student has a medical condition, she needs to get documentation to support it.

The Assistant Principal told OCR that she was aware from conversations with the Student's classroom teacher that the Student sometimes complained about his XXX hurting and/or not feeling well. The XXX told OCR that she had no idea in the Fall of 2021 that the Student was having XXX pain; she attributed his absence to the Complainant's inability to get the Student to school based on a conversation she had with the Complainant years before about the Student staying up late at night playing video games.

The Counselor told OCR that she was unaware that the Student was having XXX pain last year, did not know the reasons for the Student's excessive absence, and did not participate in any discussions about the Student's absence being related to his unaccommodated disabilities and/or health issues. The Principal and XXX similarly told OCR that there were no discussions among the administrative team about excusing the Student's absences because of his XXX issues or other disabilities.

The Assistant Principal told OCR that she had a conversation with administrators in the Fall of 2021 about whether the School could require doctors' notes from the Complainant for the Student's absences and was told that it could. She therefore instructed the School secretary that a doctor's note was needed for each of the Student's absences to be "excused."

The Student's attendance records indicate that through November 9, 2021, the Student's absences for being sick were "excused" without a doctor's note. Beginning on November 10,

2021, the absences were “unexcused” if there was no doctor’s note despite information from one of the Student’s parents that the Student was sick.

On December 16, 2021, the Assistant Principal emailed a form letter to all families, including the Student’s parents, whose children had (8) or more unexcused absences in the first semester. The email stated that it was the School’s first notice regarding the Student’s absences this school year. The email additionally stated that ten unexcused absences may result in truancy court proceedings. The email further stated that the Student was placed on probation pursuant to the School’s continuing enrollment policy, which was included in the email. Lastly, the email stated that the Assistant Principal wanted to meet with the Student’s parents “to discuss how we can support attendance for [the Student] for the second semester.”

The Complainant responded by email to the December 16th email that afternoon and asked which absences were not excused because she has doctors’ notes for most of the Student’s absences. The Complainant additionally stated that she had talked to the Principal at the beginning of the year regarding the Student’s medical problems and that she has been trying since August to get him a 504 or IEP. She concluded her email with “[h]e is on the waiting list at the moment for XXX confirmation.” On January 3, 2022, the Assistant Principal told the Complainant in an email to send the doctors’ notes and provided the dates of the Student’s unexcused absences.

According to the Student’s attendance records, the Student had 13.5 unexcused absences from the start of the school year until December 16, 2021, and 9.5 excused absences. The attendance records for this period have comments indicating that the Student was sick and/or had a doctor’s appointment on at least 12 of those 23 days. The records specifically indicate that the Student had a XXX on 5 of those days.

On January 6, 2022, the Student’s OT emailed ESS Teacher 1 to inquire about the status of the Student’s evaluation for a 504 plan or IEP. She asked when someone would be available to complete the assessment so that the Student could “benefit from needed services in the school setting.” She additionally stated that the Student’s “excessive absences are related to this situation as well.” The OT wrote, “I know his SLP and OT (myself) saw him numerous times when home due to health issues and/or other needed supports he could be getting in an educational environment that would make it more feasible to be successful attending school in person.” ESS Teacher 1 responded to the OT that the School was still evaluating the Student and should be able to meet by February 6, 2022.

On January 17, 2022, the Assistant Principal forwarded to ESS Teacher 1 the attendance email that she had sent to the Student’s parents and wrote, “[The Complainant] did not send me doctors notes for any of his absences.” The Assistant Principal additionally wrote to several of her colleagues, “My concern is that his mom says that he is ‘sick’ but then [he] attends almost every other day . . . “

On February 6, 2022, the Student’s OT sent an email to ESS Teacher 1 asking if the meeting that was supposed to occur by February 6th, had taken place. ESS Teacher 1 responded that it had not because the team had not finished assessing the Student’s needs due to the Student’s many

absences, snow days, and COVID closures. The OT responded by email to ESS Teacher 1: “I know the family and his care team are really looking forward to the evaluation being completed and a meeting scheduled, so he can be better supported in an educational setting and hopefully not continue to miss so much school.”

The Assistant Principal stated in her affidavit that, on February 7, 2022, she left a phone message for the Complainant asking the Complainant to call the School to discuss the Student’s absences, but that she did not receive a reply. The Assistant Principal told OCR that she tried multiple times to reach the Complainant because she was trying to meet with her by phone or in person to “understand why the Student was not in school” and “figure out what the School could do to help him.”

On February 24, 2022, the Assistant Principal sent a letter to the Complainant’s home stating that that the Student had accumulated 20 unexcused absences this school year, and that this was the Complainant’s “third formal notice regarding [the Student’s absences.” The letter further states that the Student is “now designated as chronically absent and the district may initiate action through the truancy court.” The Assistant Principal concluded the letter with a request for a meeting with the Complainant and the following statement: “My goal is to remedy this situation or better understand the need for your child’s absences.”

According to the attendance records provided to OCR, the Student had an additional ten unexcused absences between December 16, 2021, and February 24, 2021, making the total unexcused absences from the start of the school year 33.5 days. There are notes in the attendance records from December 16th to February 24th that the Student was sick on at least 2 of those days. In addition, 2 days appear to be an extended quarantine due to COVID.

On February 28, 2022, the Assistant Principal sent an email to the Complainant and the Student’s father reiterating that the Student is designated as “chronically absent” and that he “may be disenrolled and asked to attend his home school if he continues to have poor attendance.” She additionally stated that the School had not received any doctors’ notes for his absences and requested to schedule a meeting.

The Complainant responded two hours later with the following email:

I feel like we aren't all on the same page here. I was told attendance would be discussed when we had his iep meeting. Since it has taken six months to get his iep that hasn't been addressed yet. . . . I can't go to the doctor every time he has a issue with his XXX, there's a 2 week wait right now and the urgent care wait times are several hours. If you would accept a medical excuse I can obtain that but I can't take him to the doctor everytime as he has ongoing XXX issues I feel like I'm doing the best I can given the situation. Please let me know if there has been a misunderstanding. Thanks.

The Assistant Principal responded that day with: “School attendance is required by Colorado law. At this point, all absences must have documentation that meets the state requirement for

excused absences or they will be considered unexcused.” She then included language regarding excused absences, which differs somewhat from the language in the School’s Attendance policy.

The Assistant Principal stated in her Affidavit that she shared the Complainant’s email exchange with the School’s two ESS teachers. ESS Teacher 1 emailed the Complainant with a copy to the Assistant Principal to let her know that the Student’s attendance issues would be discussed at the March evaluation meeting. ESS Teacher 1 additionally wrote:

We will decide as a team at that meeting whether [the Student] qualifies for ESS services or not, but just to clarify – ESS students still have to abide by the truancy, (attendance), laws. Having an IEP does not automatically excuse students from being absent.

On March 5, 2022, the Complainant emailed the Assistant Principal a doctor’s note requesting excusal of the Student’s absences on February 28, 2022 and March 2, 2022 because the Student “was sick with a XXX.” Although the Student’s attendance records reference this note in the comments, the Student’s absence was excused for only one of the two days listed. The documentation provided to OCR by the Complainant and the School indicate that the Complainant provided doctor’s notes for two additional days last school year: November 1, 2021 and November 3, 2021.

c. March 2022 Evaluation Meeting for the Student

The team held an evaluation meeting for the Student on March 9, 2022. The meeting was attended by two ESS teachers, the Student’s classroom teacher, the XXX, the psychologist who evaluated the Student, a District representative, the Student’s OT, and the Complainant. During the meeting, the team went over a draft evaluation report. The Student’s classroom teacher added to the narrative in the report that the Student struggles with writing. The Student’s OT explained that the Student also has difficulty with handwriting from a physical standpoint because of struggles with fine motor and visual motor skills.

The ESS teacher who was conducting the meeting, ESS Teacher 2, noted that the Student has a diagnosis of XXX, and that this information was provided by the Complainant, the Student’s OT, and is contained in the Student’s cumulative health file in PowerSchool. ESS Teacher 2 also noted that the School was unable to complete a speech language evaluation of the Student because of his absences.

The psychologist discussed that the Student has clinically significant scores in XXX, as well as somatization in home and school settings. She stated, “So what we are seeing from [the Student] is complaints about XXX or physical manifestations that can often occur when students are struggling from XXX.”

The Student’s OT asked for more information about how the Student is interacting with peers in school. The psychologist responded, in part, that it is hard to assess the Student’s social skills in the classroom because he is not in school enough. The OT responded, “I know that the absences

keep getting emphasized. I completely understand that it makes it hard to get a full picture on you guys's end . . . But I hope as a team you all understand that his absences are very much related to a lot of what he has going on that we can see here in the evaluation.”

When the District representative asked if the Student's social skills are consistent from last year, the XXX responded that she has seen some of these social issues consistently for many years. She then reported her own observations that the Student has difficulty processing and responding to verbal instructions and that he sometimes has a flat affect. The psychologist confirmed that the Student had not been assessed for auditory processing.

The OT responded that there is suspected XXX going on with the Student and that he is on a waiting list to be evaluated medically for XXX. The District representative suggested adding the Student to the District's XXX assessment list, to which the Complainant and team agreed. The District representative also recommended adding the XXX rating scale and completing the speech evaluation before determining eligibility.

The team decided that it would reconvene on April 11, 2022, to review the XXX results, complete the determination of eligibility form, and develop an IEP, if necessary. The XXX then added that since the Student already has a diagnosis of XXX those things “were not on the table to be considered because they were already diagnoses.” The psychologist asked the District representative if the Student's auditory processing could be further evaluated by an audiologist, and the District representative responded that she would ask.

The Complainant then asked what to do about the Student's absences since she cannot get him to the doctor until March 24, 2022. She explained that it is impossible to get same day visits with the doctor whenever the Student is having issues with his XXX and that there are days when the Student will not get out of bed for the whole day because his XXX hurts. She stated, “I can call every time that happens. But every time I call, I get a lecture about how many days he has missed. I don't know what else to do.”

The XXX responded that while she appreciates what the Complainant shared, “The next step is truancy court. It is filing truancy charges.” She added:

It is going to get more difficult if we get to that stage. . . We will support you and help you but he has got to be at school . . . I think those 54 days¹⁰ [he has missed] are truly significant. There either is something going on like you said medically . . . or maybe it is social anxiety issue I am not sure but it is beyond excessive if I am being honest here and it cannot continue . . . This concerns me greatly that we have this many absences. . . This isn't going to stand up too easily I don't think in truancy court if it goes that route. It is going to be problematic. We want to help you get him to school. . . If there is something

¹⁰ The attendance summary provided by the School states that the Student missed a total of 39 school days, including excused and unexcused absences. This total includes two days in March 2022, which were after the date that the Student's parents indicated would be the Student's “last day” at the School.

we can do on this end, please let us know. . .

The team then asked the Student’s teacher if he is fine once he comes to school. The teacher responded that there are some days when he comes to school and says, “I know I need to be here, but my XXX really, really hurts.” The teacher added, “there are also days when he says he just cannot handle it, and I can see in his face there is something physically happening to him.” The teacher explained that the Student describes it as his XXX is eating itself. The OT responded:

I see [the Student] on almost a daily basis . . . He does have something going on in my opinion with his XXX system in addition to the anxiety that he is experiencing . . . he constantly has XXX . . . there is a real medical issue going on here as well as some psychological anxiety . . . being in an environment where he doesn’t have an IEP and doesn’t have some of these extra supports that I think he needs, it is just tricky for him . . . as a team, we all need to come together to really support [the Student] because he needs medical help and more support in the school.

ESS Teacher 1 then summarized the plan going forward: the District would do the XXX testing, XXX rating scale, and speech evaluation. She asked the Complainant for documentation from a doctor of the XXX issues because “there is nothing in his health records here that we have saying anything about that.” ESS Teacher 1 then asked the XXX if that would help with truancy. They agreed that he may still be absent, but the absences would be “excused.”

ESS Teacher 1 then told the Complainant that she does not need a letter every time the Student is sick and that it would be sufficient to have a letter that says he is being treated for XXX issues by a doctor. The Complainant told OCR this was the first time she was told that a general letter not tied to specific dates would be sufficient.

No attendance plan or health plan was developed for the Student at the evaluation meeting. The XXX told OCR that it “did not occur to [her] to put a health care action plan in place” and that an attendance plan was not developed at that meeting because it was “not the right setting and not the right individuals around the table.” The Assistant Principal told OCR that the School never developed an attendance plan for the Student because she wanted to meet with the Complainant first, and that she would have taken the Student’s health issues and disabilities into account if the Complainant had met with her.

After the Complainant and OT left the meeting, the rest of the participants discussed the OT’s participation in the IEP process. The District representative stated, “She is kind of like acting as mom’s advocate and [the Student’s] advocate . . . I appreciate the information she brings. However, she doesn’t get to dictate what happens in the school. And truancy is an issue.” ESS Teacher 1 then added that at the beginning of the school year, the Complainant did not seem that interested in an IEP or 504 plan but that it was the OT that kept bugging her. She stated, “It has been the OT that is pushing. . . There are issues going on there . . . Mom has issues.” ESS Teacher 2 added, “It just seemed like [the OT] was there to run the meeting.” OCR does not have access to the rest of their conversation because the video of the meeting cut off shortly thereafter.

d. March 9, 2022 Report to Law Enforcement

The Student's classroom teacher told OCR that before he attended the evaluation meeting for the Student on March 9, 2022, which was at 8 AM, he noticed that the Student had a black eye. When he asked the Student about his eye, the Student told him that his sister had thrown a toy that hit him in the eye. The teacher additionally told OCR that during specials, he heard the Student tell a different story to someone else about how he got the black eye, which made him suspicious. He said that he cannot recall what the Student said to the other student about the cause of the injury, but he remembers that it was different than what the Student had told him. He therefore concluded that he had to report the injury.

The teacher additionally told OCR that he met with the Counselor in person before the evaluation meeting and shared the information he had learned about the bruise. According to the teacher, the Counselor was already aware of the bruise and told him that the situation would be investigated. There was no mention of the bruise during the evaluation meeting or the private, recorded conversation among School and District staff about the Complainant that occurred after the meeting.

The Counselor told OCR that she saw the Student in the hallway in the afternoon on March 9, 2022, and noticed that he had a black eye. She called the teacher and asked him to send the Student to her office. The Counselor told OCR that she did not have any conversations with the Student's teacher about the eye before that.

The Counselor told OCR that the Student disclosed information that made her concerned for the Student's physical safety, and that the markings on his face were consistent with what he told her. The Counselor additionally told OCR that the Student did not mention his sister during the conversation, and that she did not know he had a sister.

The Counselor told OCR that she contacted the Pueblo Police Department and the Pueblo County Department of Human Services (DHS) at around 2 PM that day based on the information provided to her by the Student because she is a mandatory reporter of suspected child abuse or neglect pursuant to state law and her licenses. The Counselor told OCR that this was the first time she had ever contacted these agencies about the Student. She additionally told OCR that she was instructed to take photos of the injury, which she did, and was told that an officer would report that day to campus to interview the Student. The Counselor also told OCR that when she followed up with the police department the following day, she was told that an officer had gone to the Student's home that night and interviewed him about the injury.

The Counselor told OCR that she did not consult with anyone else prior to reporting the bruise to law enforcement and DHS but that she told administrators and the Student's teacher afterwards that she had made the report and that an officer would be coming to the School. The Counselor additionally told OCR that she was unaware that there was an evaluation meeting for the Student that day and was not told what occurred at that meeting. The Counselor's affidavit states that she keeps folders for each student and incident that she reports to law enforcement and DHS, but she told OCR during her interview that she did not take any notes of her conversation with the

Student. No notes or records regarding the incident were provided to OCR other than photos of the Student's eye.

The officer who spoke to the Counselor on March 9, 2022, told OCR, after reviewing the police report, that the Counselor said she had observed a bruise under the Student's left eye and that the Student told the Counselor he had bumped heads with his little sister. According to the officer, the Counselor did not tell him what she shared with OCR was the reason she was "concerned for the Student's safety." The officer told OCR that the Counselor did share a vague statement about what the Student had said to a teacher, which was inconsistent with what the Student's classroom teacher told OCR. The officer additionally told OCR that the case was closed based on his phone call with the Complainant; he did not visit the Student's home.

e. Withdrawal of the Student from the School

On March 10, 2022, the day after the evaluation meeting and School's call to law enforcement, the Student's father called the School and spoke to the Assistant Principal. According to the Assistant Principal's affidavit, the Student's father asked how many more days the Student could miss before he would be referred to truancy court, and the Assistant Principal responded that he was already at the point of referral. The Student's father told OCR that the Assistant Principal said that the administrative team had decided the Student "was not welcome back at school for open enrollment." He additionally told OCR that the Assistant Principal said she would not recommend truancy court if he and the Complainant pulled the Student out of the School for the remainder of the school year, but that it was a District decision.

The Assistant Principal denies telling the Student's father that the Student was not welcome back. She told OCR that the Student's father said they were considering placing the Student in an online school so that they would not need to worry about absence, and she provided him with information about online schools. The Assistant Principal additionally told OCR that the Student's father asked if they would still have to go truancy court if the Student attended online school, and she responded that she does not know how online schools handle attendance.

On March 16, 2022, the Complainant sent an email to ESS Teacher 2 and the Student's classroom teacher stating that the following day would be the Student's last day at the School because they "were informed that [the Student] must attend school everyday until the end of the school year or [they] will have to find another school. He is not welcome back next year." She explained, "I feel it's completely unreasonable and unattainable with his health issues and appts to expect him to not miss a single day until May. . ." ESS Teacher 1 responded the following day. Her email states, in part: "I am sorry to receive this email. [The Student] is required to follow attendance laws and XXX policies set by XXX. . ."

The XXX, Principal, and Assistant Principal told OCR that the Student was never disenrolled from the School and that his parents were never told that he could not miss another day during the 2021-22 school year or that the Student was ineligible to return the following school year. The Assistant Principal told OCR that what she said to the Student's father is that the Student needed to be in school and that pursuant to the School's policies, he *may* be disenrolled if he

continues to have unexcused absences. OCR was not provided with any emails to the Complainant that corrected her alleged misunderstanding that the Student was “not welcome back next year.”

According to the attendance records provided to OCR, the Student was absent a total of 38 school days from August 16, 2021, to March 17, 2021. 10.5 of those days were excused and 27.5 were unexcused.¹¹ There are notes in the documents provided to OCR indicating that the Student was sick on at least 15 of the 38 days.

The Assistant Principal and XXX told OCR that there were four students, including the Complainant’s son, who were labeled “chronically absent” during the 2021-22 school year and sent truancy letters. Two of the students had IEPs, and one of the students had more absences than the Complainant’s son. The Assistant Principal told OCR that she did not refer two of the students to truancy court because she received information from the students’ parent that there were XXX issues at home. She therefore developed an attendance plan for the students and their attendance improved.

The XXX and Assistant Principal told OCR that an administrator went to visit the other student at her home and place of employment to see what they could do to keep her in school and offered to pay for an Uber to get her to school, but that the student ultimately dropped out. They did not refer this student to truancy court because she was XXX and therefore not bound by the state’s compulsory attendance laws.

f. District’s Efforts to Evaluate the Student After the Complainant Filed an OCR Complaint

The Complainant filed the instant OCR complaint on March 14, 2022. On April 4, 2022, OCR expressed concerns to the District about the District’s failure to evaluate the Student for over one year. The District scheduled the outstanding XXX evaluation for April 12, 2022. No other evaluations were conducted after OCR contacted the District.¹²

An eligibility meeting was held on April 26, 2022. The Student was found eligible for special education based on XXX. An IEP was developed for the Student that day. The IEP does not list a secondary diagnosis but states that, “It is reported by the [Student’s] mother that [the Student] has the following medical diagnosis: X – phrase redacted - X. There has not been documentation of the diagnosis’s [sic] provided to the school setting.”

Under parent input, the IEP states: “[The Complainant] has expressed concerns about [the Student’s] attendance due to the impacts of his medical disorders that prevent him from attending school.” The IEP additionally indicates that the “team discussed that [the Student] may need a

¹¹ The School provided an email to OCR from an ESS teacher instructing the attendance clerk to excuse the Student’s absence on March 7 and 8, 2022, but the attendance records indicate those days were “unexcused.”

¹² A speech evaluation of the Student was conducted on March 14, 2022, before the Student withdrew from the School.

Health Care Plan but [the Complainant] is waiting for some information from [the Student’s] XXX doctors and then she can get with the school nurse to develop the Health Care Plan if necessary.”

The IEP additionally notes that the Student receives outside Speech and OT services. It states that speech language services were discussed, and that the Complainant agreed that these services are not necessary at school at this time. The IEP additionally states that the Complainant requested an OT evaluation for handwriting to be done next Fall. It does not appear from the evaluation report and IEP provided to OCR that a XXX checklist or auditory process evaluation were completed.

C. The Complainant’s Employment with the School

The Complainant was hired by the Director of XXX as a part-time XXX on or around April 2, 2018. With the Complainant’s employment application, she provided a copy of her XXX, which had an expiration date of February 7, 2021. The Complainant did not provide CPR or first aid certification. The Complainant X- phrase redacted - X during the 2018-19 school year.

On March 16, 2019, the Complainant informed the Director of XXX that following Spring Break, she would only be able to X – phrase redacted - X. On May 6, 2019, the Complainant sent an email to the Director of XXX stating that she would be unable to return the following school year as a XXX because she was expecting a baby in October 2019. The Complainant stated that she could XXX from August through early October 2019, but after that her time would be “extremely limited.” She concluded her email with, “I wish things could be different as I have enjoyed working for the school and for you. Maybe in the future I will be able to come back full time.” The Director of XXX responded by congratulating her and thanking her for her service to XXX. Her email concluded with, “We will keep you as a sub.”

The School requested that the Complainant fill in as a substitute XXX on August 13, 2019. On August 27, 2019, the School’s Business Manager sent the Complainant an email asking for her first aid/CPR certification. The Complainant responded, “I don’t have CPR first aid certification.” Following that exchange, the School asked the Complainant to XXX as a substitute on at least two occasions: February 12, 2020 and March 4, 2020. According to the School, the Complainant never responded to the School’s requests to substitute XXX.

The Director of XXX stated in an affidavit provided to OCR that the School had one XXX during the 2020-21 school year, which was sufficient to meet the School’s needs because X – phrase redacted - X.

On May 24, 2021, at 12:40 PM, the Complainant texted the XXX and asked, “Will you guys need me this fall?” The XXX responded, “You will need to check with [the Director of XXX].” The Complainant responded, “I just meant do you have someone for the XXX next year.” The XXX wrote, “So far yes, but you know how that can change.”

At 12:55 pm that day, the Complainant sent an email to the Director of XXX stating:

I was wondering if you will need me to XXX this fall? I am trying to see about going back to work. If there's any training or papers you need. I renewed my XXX a couple months ago. Thanks!

The Director of XXX forwarded the Complainant's email to the XXX and responded to the Complainant, "Great! I have forwarded your email to [the XXX]."

On May 31, 2021, the Complainant texted the XXX again about XXX the following school year. She wrote, "If you happen to have XXX that'd be great. I'm not sure about XXX because of my kids nap . . ." The text messages provided to OCR by the Complainant indicate that the message was read by the XXX but that he did not respond.

In the Fall of 2021, the Complainant noticed signs posted that the School needed XXX. On September 7, 2021, the Complainant texted the XXX again and wrote, "I had to take [my son] to school today and noticed the sign said you're hiring XXX. What hours are you looking for?" The XXX responded, "The position is on call. You would need to see [the Director of XXX]." The Complainant responded, "OK, every time I ask her she says to ask you, lol. I'll email her again sometime." The XXX responded, "OK." The Complainant told OCR that she emailed the Director of XXX but cannot find the email. The Director of XXX does not recall receiving another email from the Complainant and none was provided to OCR. The Complainant told OCR that she never heard back from either the XXX or the Director of XXX regarding her requests for employment.

The Director of XXX stated in her affidavit and interview with OCR that the Complainant was not placed on the substitute XXX list because the School "did not hear back from [the Complainant] about her updated required documentation." The Director of XXX told OCR that the School was missing documentation regarding the Complainant's updated XXX and CPR certification. She told OCR that the Business Manager reached out to the Complainant by email and phone to get the required documentation and that the XXX also reached out to the Complainant several times by phone but that the Complainant never responded. The Director of XXX told OCR that she never reached out to the Complainant herself.

The Business Manager told OCR that she does not recall communicating with the Complainant in 2021 regarding her employment; all her communications with the Complainant in 2021 were about the Student. OCR was unable to interview the XXX because he is currently on medical leave. However, a draft statement that he provided to the School on August 4, 2022, states: "[The Complainant] contacted me about reapplying to work as a school XXX this past year as referenced in text, email, and/or phone calls. In all cases I referred her to the School Administration as I do not have hiring or supervisory authority in this area." The statement mentions some concerns about the Complainant's job performance in 2018-19; it does not say anything about missing required documentation from the Complainant.

The Complainant told OCR that she never received a request in 2021 from the XXX or Business Manager for her renewed XXX or first aid/CPR certification. She additionally told OCR that

each time she inquired about employment with the School, she got “mixed messages” and the run around – i.e., the XXX told her to talk to the Director of XXX, and the Director of XXX told her to talk to the XXX.

The affidavit from the Director of XXX states that the School employed two XXX for the 2021-22 school year and that the two XXX shared X – phrase redacted - X, which was sufficient to meet the School’s needs. According to the Director of XXX, the School nevertheless posted a substitute XXX position on its website and its marquee at the beginning of the school year so that there would be another XXX available on an “as-needed basis, such as an emergency.” The Director of XXX told OCR that the School interviewed two candidates for the position but did not hire them because they did not have XXX. The School therefore had no substitute XXX during the 2021-22 school year. The Director of XXX also told OCR that one of the School’s two XXX took periodic medical leave during the 2021-22 school year and that the School had no one to fill-in for him.

The posting for a XXX remains as a “current opening” on the School’s website, and the Director of XXX confirmed during her interview that the School still needs substitute XXX. The job description for the XXX position states that a XXX and “[w]orking knowledge of first aid procedures” is required but does not require first aid or CPR certification.

The Complainant told OCR that there was at least one day last school year when she got a phone call to XXX because there was no XXX available and that she could have XXX that day as a substitute but was never asked. The attendance records provided by the School indicate that the Student left early on October 19, 2021, because XXX was “cancelled.” The Principal confirmed there was at least one day last year when students XXX because no one was available to XXX.

Legal Standards

A. Child Find and Evaluation

The Section 504 regulations, at 34 C.F.R. § 104.31, require recipients that operate a public elementary or secondary education program or activity to annually: “(1) Undertake to identify and locate every qualified handicapped person residing in the recipient’s jurisdiction who is not receiving a public education; and (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient’s duties under this subpart.

1. FAPE

The Section 504 regulations, at 34 C.F.R. § 104.33(a), require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions regardless of the nature or severity of their disabilities.

An appropriate education is defined in 34 CFR § 104.33(b)(1) 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 §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections.

2. Evaluation and Placement

Section 104.35(a) of the 504 regulations 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 Section 104.35(c), in interpreting evaluation data and in making placement decisions, school districts shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

A school district must evaluate students who are suspected of having any kind of disability in all specific or all related areas of educational need, even if the students do not fit into one suspected disability category or fit into multiple disability categories. *See OCR, Dear Colleague Letter and Resource Guide on Students with ADHD*, 18 (July 26, 2016).

Although a school district can request relevant information from parents, the district cannot require the parent to provide certain data or information before conducting an evaluation. It is the district's obligation to evaluate; it cannot shift the burden of that cost or obligation onto the parent. *See OCR, Dear Colleague Letter and Resource Guide on Students with ADHD*, 19 (July 26, 2016).

A specific diagnosis is not actually necessary if the school determines a student is substantially limited in a major life activity and that limitation is caused by a mental or physical impairment. 34 C.F.R. §§ 104.3(j), 104.35; *see also OCR, Dear Colleague Letter and Resource Guide on Students with ADHD*, 23 n.70 (July 26, 2016).

B. Procedural Safeguards

Pursuant to § 104.36, public school districts must establish and implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students with disabilities that includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with participation by the parent and representation by counsel, and a review procedure.

The obligation to establish and implement procedural safeguards is in addition to school districts' obligation under 34 C.F.R. § 104.7(b) to establish grievance procedures that incorporate

appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulations.

Under § 104.7, districts also must ensure that they have properly identified the designated Section 504 coordinator.

C. Notice

Pursuant to § 104.8, a recipient must also take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall include an identification of the responsible employee designated pursuant to § 104.7(a).

D. Retaliation

Section 504 and Title II of the ADA prohibit a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual “because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under” the regulation (participation clause) or “for the purpose of interfering with any right or privilege secured by” the statute and regulations (interference clause).

A recipient engages in unlawful retaliation when it takes an adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To establish a *prima facie* case of retaliation, OCR must find the following:

1. The complainant engaged in a protected activity;
2. The recipient took a materially adverse action against the complainant; and
3. Some evidence of a causal connection exists between the protected activity and the materially adverse action.

If a *prima facie* case has been established, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its materially adverse action. If a non-retaliatory reason for the materially adverse action exists, OCR must determine whether the recipient’s reason is genuine or a pretext for retaliation.

Legal Analysis

During OCR’s investigation, before OCR had received all the requested data and conducted all relevant witness interviews, the School and District requested to resolve the allegations in this case through a voluntary resolution agreement. OCR finds it appropriate to resolve the allegations through a voluntary resolution agreement because it has identified several concerns

regarding each of the allegations, which are summarized here:

A. Allegation One: Failure to Evaluate the Student

OCR has concerns that the Student was not timely evaluated by the School. The School had reason to suspect that the Student has a disability when the Complainant indicated on his health forms beginning in first grade that the Student has XXX issues and by third grade that he has XXX. The Complainant told OCR that she also discussed the Student's XXX difficulties with his third-grade teacher, which OCR has not yet confirmed. In addition, the XXX stated during the evaluation meeting that she observed many of the issues discussed in March 2022 through her interactions with the Student years before.

In any event, the School's obligation to evaluate the Student was clear by February 2021, when the Complainant requested in an email to the Counselor/504 coordinator help for the Student in school based on his XXX. Rather than begin the process of evaluating the Student, the Counselor suggested that the Complainant reach out to medical providers to obtain an evaluation and diagnosis. The Counselor, ESS Teacher 1, and the Student's classroom teacher continued to give the Complainant the run-around when she renewed her request for an IEP or 504 evaluation in the Summer of 2021, emphasizing the need for "documentation" from a provider. It was not until December 2021, after the School received additional information about the Student's diagnosis from the Student's private OT, that the School began the evaluation process and to date, the Student has not been evaluated in all areas of suspected need.

Despite discussion at the March 2022 evaluation meeting about the need to evaluate the Student's XXX, those two evaluations seem not to have occurred. In addition, the School has not done an OT evaluation of the Student despite knowledge that he is working with a private OT and has a diagnosis of XXX. Nor has the School evaluated the extent to which the Student's XXX, all of which were discussed during the March 2022 evaluation meeting, are impacting the Student's attendance and learning when in school. While OCR appreciates that there were some delays in evaluating the Student in the Spring of 2022 due to snow, COVID, and the Student's absences, those delays do not explain the 10-month delay in the School's starting the evaluation process or the School and District's failure to conduct a comprehensive evaluation once the process began.

In addition to concerns about how the Complainant's request for an evaluation was handled by the School, OCR has concerns that there are systemic issues with the School's 504 policies and procedures.

First, the School has several different non-discrimination statements that vary instead of one uniform statement that is included on its website and in various publications, including the Student-Parent Handbook.

Second, there is no mention on the School's website or in the Student-Parent or Employee Handbooks of the identity or contact information for the School's 504 coordinator.

Third, the School has varying statements of the grievance procedures that apply to parents and students and no clear grievance procedures that apply to employees. There is a vague statement of complaint/reporting procedure in the Employee Handbook, but those procedures appear to be limited to complaints of harassment.

Fourth, OCR does not know to what extent the School provides procedural safeguards to parents and guardians as there is no record that they were provided to the Complainant, and the “Notice of Parent Rights” that is referenced in the School’s 504 packet was not provided to OCR.

Fifth, several witnesses told OCR that information and/or a diagnosis from a medical provider is needed to start the 504/IEP evaluation process, which is incorrect. The Counselor and XXX additionally told OCR that they were trained and/or instructed by the District to require such documentation.

Sixth, it appears that, if and when the School conducts an evaluation under Section 504, it may not be drawing upon information from a variety of sources and evaluating students in all areas of suspected need. When the Counselor described the 504 process to OCR, she did not initially mention evaluation as part of the process. When OCR asked specifically about evaluation, she described a process whereby she observes the student in the classroom and meets with the classroom teacher. She also indicated that if a student has a documented diagnosis from a medical provider, there is no need for the School to evaluate the Student.

Seventh, it appears as if the District’s XXX team may not be timely evaluating students for an XXX. There was discussion in the Summer of 2021 about putting the Student on the list for an XXX evaluation but that did not happen until March 2022, and the only explanation that was provided to OCR by the School for the delay was an email from ESS Teacher 1 referencing a “waiting list for D70’s XXX team.”

B. Allegation Two: Disenrollment of the Student Based on Absences Related to his Unaccommodated Disabilities and Health Condition

OCR has significant concerns that all the decisions made by the School with respect to the Student’s attendance (i.e., placing him on probation, labeling him “chronically absent,” and threatening disenrollment and truancy court)¹³ did not take into account the Student’s unaccommodated disabilities and health issues and the potential impact that those conditions may have been having on his attendance.

The School had an abundance of information that the Student was struggling in school and at home both mentally and physically – through notes in the Student’s attendance records, records

¹³ The Student was not actually disenrolled from the School or deemed ineligible to re-enroll for the 2022-23 school year. However, it was reasonable for the Student’s parents to have believed, based on their communications with School administrators and administrators’ repeated references to the School’s continuing enrollment policy, that the Student was not welcome to return to the School for the 2022-23 school year based on his attendance.

of the Student’s visits to the School nurse, statements by the Student to his classroom teacher, observations by the Student’s classroom teacher, statements by the Complainant to the Principal and Assistant Principal, and statements by the Student’s OT. Yet, several witnesses told OCR that the School never considered the extent to which those struggles were impacting the Student’s attendance even after meeting with both of the Student’s parents and hearing from the OT and psychologist at the March 2022 evaluation meeting that the Student’s unaccommodated XXX – as well as other disabilities – could be causing or contributing to his XXX. Rather than examine the extent to which the Student’s disabilities and/or health condition were impacting his attendance so that it could potentially accommodate the Student with respect to enforcement of the School’s attendance policies, the School continued to threaten truancy at the evaluation meeting and in a telephone conversation with the Student’s father.

OCR also has concerns regarding the lack of clarity in the School’s attendance and continuing enrollment policies. The School’s continuing enrollment policy does not distinguish between excused and unexcused absences and does not make any allowance for absences related to a disability and/or injury or illness. It is also unclear whether the School’s “chronically absent” designation includes unexcused absences only – as it says “unexcused” in one place and “excused or unexcused” in another. In addition, while the “chronically absent” designation appears to exclude absences due to an “approved severe or persistent injury/illness,” the other two designations – truant and habitually truant – do not include that language. Furthermore, none of the policies define the documentation needed for an absence to be “excused” based on an illness, injury, or disability. As a result, there were differing interpretations among School staff as to whether a general letter from a doctor describing the Student’s condition would have been sufficient as compared to a letter for each absence (which is what the Student’s parents were told).

C. Allegation Three: Retaliation Against the Complainant and Student by Threatening Truancy Court and Calling Law Enforcement

First, OCR has concerns that the School has no anti-retaliation policy applicable to parents and students. Second, OCR has concerns that the School’s continued threats of truancy court -- even after administrators were well aware of the Complainant’s and OT’s contentions that the Student’s absences were related to his unaccommodated disabilities and health condition -- were retaliatory, as was its call to law enforcement regarding “suspected child abuse.”

1. Threats of Truancy Court

The School contends that it was merely following its attendance policies when it threatened to refer the Student to truancy court. However, there is a lot of evidence to the contrary.

First, the School did not follow its attendance policies with respect to the Student; it did not send the required communications (i.e., a letter of concern after four and eight days), develop an attendance plan for the Student, apply the usual standard for documentation from a doctor (i.e., a general letter is sufficient), or excuse absences despite evidence that at least some were related to a health condition.

Second, the School treated the Student differently than other students with excessive absences. The School provided several examples to OCR of students who received truancy letters during the 2021-22 school year. In all the examples provided, the School stopped threatening truancy court after the students' parent or guardian provided a reason for the students' absence. The School also provided examples to OCR of students with disabilities in prior years who received accommodations regarding attendance, such as a student who had diabetes and one who was in a residential treatment center.

By contrast, the XXX continued to threaten truancy court during the evaluation meeting after the Complainant explained that the Student sometimes cannot get out of bed to come to school because of XXX pain and the Student's OT explained her belief that the Student's absences are related to the School's failure to provide him with needed supports and services in school. The XXX even told the Complainant that she would lose in truancy court, although the XXX later told OCR that she had no intention of ever taking the family to truancy court because it is a "waste of time." The following day, the Assistant Principal similarly told the Student's father that the Student was at the point of referral to truancy court, leading the Student's parents to believe that if he missed another day of school that year – regardless of the reason – a referral was forthcoming.

The intimidating and threatening nature of the School's communications with the Student's parents during and immediately following the evaluation meeting cause OCR to be concerned that the School was trying to push the Student's parents to withdraw the Student from the School, which they ultimately did.

2. Report to Law Enforcement

OCR also has concerns that the Counselor's report of suspected child abuse to law enforcement and DHS, which occurred hours after the evaluation meeting for the Student during which School staff were noticeably and admittedly frustrated by the Complainant and the OT's advocacy, was retaliatory because OCR received inconsistent information about what occurred that day. The Student's classroom teacher told OCR that he reported the bruise to the Counselor before the evaluation meeting and that she already knew about it by then. The Counselor told OCR that she first learned about the bruise in the afternoon when she observed it herself. More importantly, the Counselor seems not to have shared with the responding police officer what she told OCR was the reason for her concern regarding the Student's safety and well-being. Instead, according to the police report, the Counselor shared something significantly less concerning that was allegedly said to the Student's teacher, which is inconsistent with what the classroom teacher told OCR. In addition, the Counselor told OCR that she took no notes of her conversation with the Student, which does not accord with her general practice as described in her affidavit or school policy, and is surprising given the seriousness of what she claims was said to her. Thus, OCR has concerns that the proffered non-discriminatory reason for the report to law enforcement may be pre-textual.

D. Allegation Four: Retaliation Against Complainant in Employment

OCR has concerns that the School has no general anti-retaliation policy applicable to employees. The only prohibition on retaliation in the Employee Handbook is limited to complaints of harassment and is not generally applicable to other forms of discrimination.

OCR also has concerns that the School's proffered non-discriminatory reason for not rehiring the Complainant as a XXX for the 2021-22 school year is pre-textual. The School claims that it did not re-employ the Complainant because she never provided the required documentation, including a job application and updated XXX and first aid/CPR certification. However, there is no evidence that any School employee requested that information from the Complainant in 2021.

On the contrary, OCR was provided multiple emails and texts from the Complainant stating her interest in the position and asking what information the School needed to re-hire her. She specifically mentioned in one of the communications that she had renewed her XXX. Rather than tell the Complainant the documentation that was needed, the Director of XXX told her to talk to the XXX, who did not have hiring authority, and the XXX told her to talk to the Director of XXX.

There is also substantial evidence that the School does not actually require CPR and first aid certification for employment as a XXX. The Complainant has never possessed these certifications, yet was hired in 2018 as a XXX. In addition, after the School was made aware that the Complainant does not possess these certifications in August 2019, it nonetheless asked her to substitute XXX for the School on at least two occasions. Furthermore, the requirement is not listed in the current job description for the XXX position, which requires only "working knowledge of first aid procedures" rather than certification in first aid and CPR.

Conclusion

As discussed above, during OCR's investigation, the District and School agreed to voluntarily address OCR's concerns to date. The enclosed Resolution Agreement requires the School and/or District to: evaluate the Student in all areas of need, convene an IEP meeting for the Student, and determine whether any compensatory or remedial measures should be provided to the Student and if so, provide the services; offer the Complainant the opportunity to work as a XXX; disseminate a memo regarding the School's obligations under Section 504 and Title II to all administrators, teachers, and staff of the School; revise the School's non-discrimination, anti-retaliation, attendance, and continuing enrollment policies and procedures; train all administrators, teachers, and staff of the School regarding the requirements of Section 504 and Title II; and conduct an audit of the School's records to determine whether there are students awaiting an evaluation and if so, conduct an evaluation of those students consistent with Section 504.

The Agreement, when fully implemented, will fully resolve the compliance concerns in this case consistent with the requirements of Section 504 and Title II and its implementing regulations. The provisions of the Agreement are aligned with the allegations and issues raised by the

Complainant and the information that was obtained during OCR’s investigation to date and are consistent with applicable laws and regulations. OCR will monitor the District’s and School’s implementation of the Agreement through period compliance reports about the status of its terms. OCR will provide the District and School with written notice of any deficiencies regarding its implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. OCR will provide the Complainant with a copy of its final monitoring letter. If the District and School fail to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District and School have fulfilled the terms of the Agreement and are in compliance with the statutory and regulatory obligations at issue in this case. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District stating that this case is closed.

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the District’s or School’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

Please be advised that the District and School may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), 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 personally identifiable information, to the extent provided by law, that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

We appreciate the District’s and School’s cooperation in the resolution of this complaint. If you have any questions, please contact XXX, the OCR attorney assigned to this complaint, at XXX.

Sincerely,

/s/

Enclosure: Resolution Agreement

cc (by email only): X – redacted - X
Kristen McCarthy, Counsel for XXX
Brad Miller, Counsel for Pueblo County School District 70
Katy Anthes, Colorado Commissioner of Education