



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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February 28, 2023

Darrin Jennings, Superintendent
Carbon County School District No. 2
P.O. Box 1530
315 N. First Street
Saratoga, Wyoming 82331

By email only to: djennings@crb2.org

Re: OCR Complaint No. 08-22-1574
Carbon County School District No. 2

Dear Superintendent Jennings:

This letter is to notify you of the disposition of the above-referenced complaint that the United States Department of Education (Department), Office for Civil Rights (OCR), received on September 7, 2022. The Complainant alleges that the District is discriminating against her client's daughter (Student) based on disability. Specifically, the Complainant alleges that the District is failing to implement the Student's individualized education program (IEP) by not providing the Student with the accommodations, supplementary aids and services, and special education service minutes specified in her IEP.

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. 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: a) a review of documents pertinent to the complaint allegations, including the District's non-discrimination and special education policies and procedures, the Student's file, documents related to the implementation of the Student's IEP, and correspondence

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with the Student’s parent and among District staff about the implementation of the Student’s IEP; and b) interviews of thirteen witnesses, including the Complainant, the Student’s parent, the Student, the teachers of three of the Student’s classes during the 2021-22 school year (Teachers 1 and 2), the teachers of three of the Student’s classes during the 2022-23 school year (Teachers 1, 3, and 4), the Student’s case managers during the 2021-22 and 2022-23 school years (Case Managers 1 and 2), the Student’s XXX Therapist,¹ the XXX Teacher, the School XXX, the School XXX, and the District’s XXX.

Prior to the conclusion of OCR’s investigation and interviews of all relevant witnesses, the District expressed a willingness to voluntarily resolve the complaint allegation. OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement under Section 302 of OCR’s Case Processing Manual (CPM) because OCR has identified several concerns to date regarding the District’s practices for implementing IEPs and the implementation of the Student’s IEP during the 2021-22 and 2022-23 school years. As a result, OCR suspended its investigation and resolved it through the enclosed resolution agreement.

Legal Standards

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdiction. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. Failure to implement a student’s IEP may result in the student being denied a FAPE.

Facts

Below OCR summarizes the facts it found to date based on its investigation of the complaint, including the District’s policies and practices for implementing IEPs and the District’s implementation of the Student’s IEP during the 2021-22 and 2022-23 school years.

A. Policies and Practices

The District’s Special Education Handbook (Handbook) provides that the case manager is responsible for, among other things, “[e]nsuring IEP services, accommodations, and modifications are being implemented with fidelity throughout the life of the IEP,” which the XXX and XXX Teacher confirmed. The Handbook additionally provides that general education teachers are responsible for “[i]mplementing classroom accommodations and modifications per the IEP.” The Handbook also states that the building administrator is responsible for “ensuring that the [IEP] team members are held accountable for their responsibilities.”

¹ The Student’s XXX Therapist is Case Manager 1.

Case Managers 1 and 2 both told OCR that they do not know whether all the Student's IEP services and accommodations were provided during the 2021-22 and 2022-23 school years, respectively, because X---X. They additionally told OCR that it is the responsibility of the XXX teacher and/or building administrator — not the case manager — to ensure implementation of students' IEPs.

The Handbook additionally provides that a student's final IEP should be sent to parents and "filed at the school." There is no requirement in the Handbook that case managers send the final IEP to team members or the student's teachers. However, the Handbook states that the case manager should provide copies of IEP amendments to the parents and "inform[] all team members of the changes (including the Special Education Director)."

Several witnesses told OCR that students' IEPs are accessible to teachers and service providers on PowerSchool; staff can view the full IEP or a summary document. Case Manager 1 told OCR that his practice is to send the "IEP at a Glance" summary document by email to a student's teachers after an IEP or IEP amendment meeting. The XXX Teacher, who serves as a case manager for many students at the School,² told OCR that he usually meets with the teachers of the students on his caseload in person at the beginning of the school year to go over the students' accommodations and goals. He additionally told OCR that he does not have a process for informing teachers about IEP amendments because they do not happen often; he probably would talk to each teacher individually.

Case Manager 2, who is the Student's current case manager, told OCR that the District's practice is to leave it up to teachers to review the IEP and IEP amendments for their students on Power School. When OCR asked teachers how they would know to look for an IEP or IEP amendment on Power School if they were not at the meeting when the document was created, they said they would have to remember a meeting had taken place because they received an invite and check to see whether any changes or updates were made to the IEP.

B. Implementation of the Student's May 13, 2021 IEP

The Student attends XXX (School). A team convened on May 13, 2021 and developed an IEP for the Student that was effective through May 12, 2022. The IEP includes XXX services and six supplementary aids and services.

In mid-November 2021, when the Student was in XXX grade, her grades dropped due to many missing assignments. The IEP team amended the Student's IEP to include four additional supplementary aids and services. On November 23, 2021, Case Manager 1 sent the "IEP at a Glance" to the Student's teachers and IEP team members. The summary document included the student's new accommodations but an incomplete statement of the Student's existing accommodations.

² The XXX Teacher was the Student's Case Manager from May 4, 2022 until the end of the 2021-22 school year.

The following is a discussion of each service and support listed in the Student’s amended May 13, 2021 IEP and the evidence to date regarding implementation of those services during the 2021-22 school year.

1. Special Education Services

The Student’s IEP provides for twenty minutes of XXX services one time each week for thirty-two weeks.³ The Student’s parent alleges that the Student received approximately one-third of the XXX minutes to which she was entitled during the 2021-22 school year. The Student told OCR that she consistently received XXX services; she missed sessions only when she had a school trip or sports competition or the XXX was absent, which was only once or twice. The XXX similarly told OCR that the Student consistently received XXX services throughout the 2021-22 school year with the exception of when she was on a school trip or she or he was absent. Although the XXX told OCR that he kept records of each XXX session, none have been provided to OCR to date.

2. Supplementary Aids and Services

a. Testing in a Separate Environment

The Student’s IEP provides for “all tests” to be given in a “separate environment.” The Student told OCR that she sometimes took XXX and other tests (but not XXX tests) in the resource room and that she knew she could go to a separate room for testing but sometimes chose to stay in the classroom when she was able to focus there. Teacher 2 and the XXX Teacher told OCR that the Student frequently took XXX tests in the resource room, but only sometimes (approximately fifty percent of the time) chose to go to the resource room for XXX tests. There were no tests in the Student’s XXX class.

b. Extended Time for Large Reading Assignments

The Student’s IEP provides for one extra day for “large reading assignments.” The Student told OCR that extended time was available for large reading assignments in her XXX class, which Teacher 1 confirmed, but that it was not available in her XXX class. Notes from the Student’s XXX teacher, which were provided to the Student’s IEP team and OCR, state that the Student was given extended time on assignments. The Student and Teacher 2 told OCR that there were no long reading assignments in the Student’s XXX and XXX classes.

c. Extended Time for Classroom Tests

The Student’s IEP provides for extended time by one hour for all classroom tests. The Student told OCR that she received extra time on XXX but not XXX tests, and extra time on XXX

³ By making the duration of the services shorter than the length of the school year, the IEP team allowed for some weeks to be missed.

projects. Teacher 2 similarly told OCR that the Student received extra time on XXX tests and on XXX projects/presentations, which were given in lieu of tests.

d. Access to Classroom Support

The Student's IEP provides for "[a]ccess to classroom support in all core classes," which witnesses generally described as access to support from the paraprofessional in the classroom with completing coursework, staying focused, recording assignments, and managing classroom materials.⁴ The Student's parent and the Student told OCR that the Student did not receive assistance from paraprofessionals. Teacher 2 told OCR that the paraprofessionals in her classes were available to help the Student if she had questions, but that the Student did not need or request their assistance. Teacher 1 told OCR that the paraprofessional in her class checked in with the Student daily. The XXX Teacher told OCR that the paraprofessionals were instructed to take notes on the assistance provided to students. No notes were provided to OCR.

e. Extended Time for High States Tests

The Student's IEP provides for extended time for all high stakes tests to be taken in a separate environment. Several witnesses told OCR that the high stakes test in Wyoming, the Wyoming Test of Proficiency and Progress (WY-TOPP), is untimed, and that the Student had as much time as she needed to take the test in the resource room. The Student confirmed that she routinely took the WY-TOPP test in the resource room and had the time that she needed.

f. Homework Completion Check-Ins

The Student's IEP provides for daily afternoon homework completion check-ins. The Student's parent told OCR that the XXX Teacher was supposed to conduct the check-ins but did not. The Student told OCR that the XXX Teacher and paraprofessionals did not check in with her during the 2021-22 school year, but that the XXX did for the last quarter of the school year.

The XXX Teacher told OCR that he or the School XXX conducted daily check-ins at the end of the day and then moved to weekly check-ins and ultimately random check-ins "every once in a while." The XXX Teacher said that he would go to the Student's locker at the end of the day or pull her out of her last period class to double check her planner and backpack. The School XXX told OCR that he never did check-ins with the Student; they were not his responsibility, and he was not around at the end of the day.

In November 2021, when the Student's parent complained to XXX that the check-ins were not occurring, the XXX responded by email that the paraprofessionals were conducting the check-ins when the XXX Teacher was absent. Teacher 2 told OCR that either she or a paraprofessional would check at the end of last period that the Student had the assignments for her classes written

⁴ The paraprofessionals in the Student's classes were not 1:1 paraprofessionals; they supported several students in the class.

down in her planner. The XXX Teacher, who X---X, told OCR that the paraprofessionals did not conduct check-ins for the Student.

g. Visual Reminders in Classroom and Locker

The Student's IEP was amended in November 2021 to include daily "[v]isual reminders for homework and organizations [sic] in classrooms and in locker." The Student's parent told OCR that a photo was supposed to be taken of the Student's locker fully organized and checklists created for each class with homework assignments and materials needed, neither of which happened.

The XXX told OCR that he worked with the Student to organize her lockers,⁵ which the Student confirmed. The XXX additionally told OCR that he took a photo of the Student with everything she needs to bring home and that the photo and a class materials list hung in her locker during the 2021-22 school year, which the Student disputes. No photos of the Student's locker during the 2021-22 school year were provided to OCR.

Teacher 1 told OCR that she is not aware of any visual reminders for the Student in her class. Teacher 2 told OCR that the weekly assignments for XXX and XXX were written on a white board in her classroom, which the Student confirmed. There were no visual reminders for materials in XXX and XXX.

h. Communication Log

The Student's IEP was amended in November 2021 to include an "[o]pen communication log between staff and parent to track changes in behavior or other concerns (suggested google doc or other similar tool." The frequency is listed as "[w]hen changes/concerns are noted."

According to multiple witnesses, a communication log was created as a Google doc to track missing assignments/materials and behavior concerns, and the link was sent to the Student's teachers, service providers, and the Student's parent. A copy of the document was provided to OCR by the Student's parent. It contains nine entries between November 29, 2021, and February 10, 2022. Eight of the nine entries were made by the Student's XXX Therapist and discuss whether he and the Student met for a XXX session, what they worked on, and how the Student was doing with her assignments and grades. One entry was made by a paraprofessional.

Teacher 1 told OCR that she never added to the document because there were not any late or missing assignments in her class that were concerning enough to be documented, and she never observed behavior issues. Teacher 2 told OCR that she did not add any entries to the log because the Student's behavior was not a concern. The XXX Teacher told OCR that he wrote notes to the Student's parent in the Student's planner rather than in the Google doc, which the Student's parent disputes.

⁵ The Student was given two lockers during the 2021-22 school year to help her stay organized.

During the May 4, 2022 IEP meeting, “[r]efusal of [s]ervices, accommodations or other teacher input” was noted as an education concern for the Student. The IEP states, “[t]here are occasionally times that [the Student] refuses accommodations or help from the special education staff . . . This will sometimes end with a power struggle if she is told to do it, but if given the option she will sometimes say no to the services or accommodation.” The IEP additionally states that all teachers reported the Student does not come to class prepared with the materials that she needs to access the curriculum. Neither of these concerns were noted in the communication log.

i. Chunking of Assignments and Movement Breaks

The Student’s IEP was amended in November 2021 to include chunking of all large individual assignments in all core classes (i.e., math, science, English, social studies) and allowance of short movement breaks of greater than five minutes per chunk in core classes. The Student’s parent told OCR that the XXX Teacher was supposed to chunk assignments for the Student, but did not. The Student similarly told OCR that her assignments were not chunked, and she was not provided with movement breaks.

The XXX Teacher told OCR that he did not chunk large assignments for the Student, and that it was the responsibility of the classroom teachers. Teachers 1 and 2 told OCR that they did not chunk any assignments specifically for the Student, but that assignments were typically broken into parts for the whole class. Both teachers also told OCR that no one invited the Student to take movement breaks, but that she sometimes stretched or stood up on her own to use the bathroom, ask a question, or get materials.

j. Assistive Technology

The Student’s IEP was amended in November 2021 to include an “assistive technology tool to assist in reminders for homework and other school related reminders (reminders on [the Student’s] phone and sent to mom)” during the last two minutes of each core class. Several witnesses, including the Student, told OCR that the Student took photos of her assignments with her cell phone for a few weeks in the middle of the school year until her phone broke. The Student told OCR that she did not resume taking photos after she got a new phone because the paraprofessionals stopped reminding her. The XXX Teacher told OCR that he initially checked on a daily basis whether the Student was taking photos; once she “got better,” his checks became “sporadic” and “random.”

C. Implementation of the Student’s May 4, 2022 IEP

A team convened on May 4, 2022, to discuss the Student’s IEP. The team determined that the Student is no longer eligible for special education services as a student with a XXX but qualifies for services based on XXX. The team developed an IEP that includes special education services, XXX services, and nine supplementary aids and services. The IEP was amended on May 23, 2022, to remove the XXX services and add a supplementary aid and service related to XXX. The IEP was amended again on August 22, 2022, to add two additional supplementary aids and services and staff training on executive functioning.

In August 2022, Case Manager 2 became the Student's case manager. Case Manager 2 told OCR that she did not inform the Student's teachers about the Student's accommodations at the start of the school year because she assumed they had accessed the Student's IEP on Power School. In mid-September 2022, when Case Manager 2 was collecting data regarding the Student's IEP goals, she learned that one of the Student's teachers was unaware that the Student has an IEP. Upon learning this information, Case Manager 2 sent the Student's teachers an email with a list of her accommodations and met with each teacher individually to discuss the Student's accommodations.

The following is a discussion of each service listed in the Student's amended May 4, 2022 IEP, and the evidence to date regarding implementation of the supports and services during the 2022-23 school year.

1. XXX Services

The Student's IEP provides for the following specialized instruction: "Study Assist for Organization" for twenty-five minutes, four times per week for thirty-four weeks and "Study Assist for Work Completion" for twenty-five minutes, four times per week for thirty-four weeks (Study Assistance). The notes from a February 28, 2022 IEP pre-meeting, which were provided to OCR, discuss the intent of the Study Assistance sessions. The notes state, in relevant part:

[The Student] will receive explicit instruction on EF [executive functioning] skills and strategies. [The Student] will use these skills while completing assignments during help sessions and performing work on tardy homework to get it turned in before she leaves for the day. . . [The Student] will be provided visual supports for organization, initiation, and completion of tasks . . . She will have her organizer checked for accuracy and updated for taking home to present to her mother for at-home tracking of homework assignments. Her work and her organizer will be verified in the backpack at the end of the support session. Teachers will continuously update the assignment communication log with due and past assignments.

The Student's parent alleges that the Student is getting approximately one third to one half of the Study Assistance minutes in her IEP, and that the Student is not being provided the required assistance when she attends. The XXX Teacher, Case Manager 2, and the Student all told OCR that the Student receives her Study Assistance minutes unless she is absent, has a club meeting, or requests to see a teacher or finish a project. Documents provided to OCR show that, other than when the Student or XXX Teacher were absent from school, the Student has missed Study Assistance at least ten times for club activities, ten times to meet with teachers, and seven times for miscellaneous reasons, such as sports photos, projects, student meetings, or school trips. In addition, the School XXX told OCR that he often meets with the Student during her Study Assistance time, which records provided to OCR confirm. The XXX teacher additionally told OCR that he is not checking the Student's backpack or planner this year or working with her much on organization because she is doing well with organization.

2. Related Services

The Student's IEP initially provided for XXX services by the XXX in the regular classroom for eighty minutes one time every four weeks for thirty-four weeks. That service was removed from the Student's IEP on or around May 20, 2022. The XXX told OCR that he did not provide any XXX services to the Student during the eleven days that service was included in the Student's IEP.

The Student's IEP was amended in August 2022 to include twenty minutes of XXX services by the XXX one time per week for thirty-four weeks. The XXX provided his XXX logs to OCR, which show that he has met with the Student weekly for the required minutes with the exception of three days when the Student was absent and one day when she had an independent evaluation.

3. Supplementary Aids and Services

a. Materials List

The Student's IEP provides for a "[c]lass by class list of materials in locker which should be checked with a staff member for accuracy." The District provided OCR with photos of a materials list and color-coded calendar in the Student's locker. Both the XXX and the Student told OCR that the XXX helped the Student to create these documents, and they have been hanging in her locker all school year.

b. Peer Mentor

The Student's IEP provides for a "[p]eer mentor to check in and encourage and model appropriate behaviors based on situation" with the frequency listed as "weekly." The Student's parent told OCR that an upperclassman was supposed to be assigned who could regularly check in with the Student and model good organizational skills, and that no mentor has been assigned. The XXX told OCR that the intent of this accommodation was for the Student to have a mentor in each of her classes. None of the witnesses interviewed could identify a mentor that was assigned to the Student or explain what was supposed to occur weekly.

c. Separate Location

The Student's IEP provides for a "[s]eparate location for reteaching, work completion and assessments" with the frequency listed as "all necessary opportunities" and the location as "outside regular classroom." The notes from the February 28, 2022 pre-IEP meeting state that the Student "may elect to go to a quiet place (Sped Room) to complete her work." The Student told OCR that she sometimes chooses to go to the resource room to work on XXX and XXX projects but not XXX.

Teacher 1 similarly told OCR that the Student sometimes chooses to go to a separate location during English class and gave two examples in the last week: one when the Student went to the

resource room to work on an independent project and one when she went into the teacher's office to read quietly. Teacher 4 told OCR that the Student elects to go to a separate location to work on XXX projects approximately one to two times per week. Teacher 3 told OCR that she informed the Student at the beginning of the school year that she could go to a separate location if she needs, but the Student does not ask to go because she feels comfortable and productive in XXX class.

d. Extended Time for Assignments, Tests, and Transitions

The Student's IEP provides for "[e]xtended time of up to 1 ½ times the typical amount needed for assignments and tests. She should also be allowed 1 ½ time for transitions between classes to work on organization and necessary materials." The Student told OCR that she does not receive extra time for assignments but has not lost points on an assignment for lateness. The Student additionally told OCR that she often arrives late to her XXX class from XXX but is not marked tardy.

Teachers 1 and 4 told OCR that the Student sometimes takes extra time on assignments and on tests in Teacher 4's class; there are no tests in Teacher's 1 class. Teacher 3 told OCR that she informed the Student at the beginning of the school year that she is entitled to extra time on assignments and tests but that the Student has not needed to take extra time other than when she was absent.

Teacher 1 told OCR that the Student does not take any more time to get to her class than the other students coming from XXX. Teachers 3 and 4 told OCR that they have never told the Student that she has extra time to get to their classes but have never noticed lateness to be an issue. Teacher 4 told OCR about one time when the Student was marked tardy; he does not recall how late she was on that day.

Records provided to OCR show that the Student has been marked tardy three times during the 2022-23 school year, but do not indicate how late the Student was on those days. An email provided to OCR indicates that on one of those days, the Student was late to class because "her locker was a mess and everything fell on her when she opened it."

e. Digital Options

The Student's IEP provides for "[d]igital options to complete assignments when appropriate." Teachers 1 and 3 told OCR that the Student utilizes digital options in their classes, which the Student confirmed. Teacher 4 told OCR that the assignments in his class are primarily on paper but that he would be happy to create digital options if that is of interest to the Student.

f. Graphic Organizer

The Student's IEP provides for a "[g]raphic organizer" for writing assignments/assessments in the regular classroom. The Student's parent and the Student told OCR that the Student has not been given any graphic organizers. Teacher 1 told OCR that all students were given a graphic

organizer for one assignment, and that the Student created her own for another assignment, which the Student denies. Teacher 3 told OCR that there is a graphic organizer built into the curriculum for her class that is available to all students. Teacher 4 was unclear about the meaning of a “graphic organizer,” but told OCR that there are not many writing assignments in his class, which the Student confirmed.

g. Technology Tools

The Student’s IEP provides for daily “[t]echnology tools to help with organization, work completion and writing (ex. Speech to text, grammar check app, schoology, powerschool checks, web based planner/calendar) in all school settings.” Multiple witnesses explained that these tools are available to all students on their Chromebooks. Teachers 1, 3, 4 and the Student told OCR that the Student uses many of these tools.

h. Chunking of Assignments

The Student’s IEP provides for “chunk[ing] of large assignments into small parts” for all lengthy assignments in all school settings “with a checklist or reminders at each step.” The Student’s parent and the Student told OCR that assignments are not chunked into small parts with checklists. Teacher 1 told OCR that she has not chunked assignments specifically for the Student or provided her with a checklist. Teacher 3 told OCR that the Student breaks down problems for herself into small parts with verbal reminders from the teacher. Teacher 4 told OCR that he has chunked big projects with verbal reminders of the steps.

i. Positive Reinforcement

The Student’s IEP provides for daily positive reinforcement and reminders to stay on task in all school settings. The Student’s parent and the Student told OCR that the Student has not received positive support or been reminded to stay on task; instead, she was told by the former XXX that she does not have a disability and is yelled at by teachers to finish assignments. All the teachers interviewed told OCR that they give the Student positive reinforcement (as they do all students) and have not had to provide the Student with many reminders to stay on task because she is generally focused.

j. Communication Log

The Student’s IEP was amended to include, beginning August 22, 2022, a weekly “[d]igital communication log between school and home (ex. Google doc)” for all classes “to communicate missing assignments and behavior.” The Student’s parent told OCR that she was anticipating a Google doc like the one created the prior school year but nothing like that was ever sent home. All the witnesses interviewed told OCR that they are unaware of a digital communication log for the 2022-23 school year, and none was provided to OCR.

Teachers 3 and 4 told OCR that they communicate with the Student’s parent in alternative ways. Teacher 3 has sent emails to the Student’s parent about missing assignments, which were

provided to OCR. Teacher 4 told OCR that he put notes on Power School regarding missing assignments, which the parent can access.

Some of the Student's teachers have recorded in a spreadsheet with various degrees of consistency whether the Student has her materials and assignments each day. Teachers 1 and 4 and Case Manager 2 told OCR that they are collecting this data to assess the Student's progress on her IEP goals. Teacher 4 told OCR that he kept data until the Student's IEP addenda meeting but then stopped because it no longer seemed necessary. Case Manager 2 told OCR that there are at least three teachers (in addition to Teacher 4) who have been inconsistent in providing this data to her, which OCR confirmed with the data sheets provided.

Case Manager 2 told OCR that she has sent the materials/assignment data to the Student's parent every two weeks since the new goals were added to the IEP in mid-September 2022. She additionally told OCR that she checks Power School each week, asks the Student's teachers about any assignments that appear to be missing, and then communicates any missing assignments to the Student's parent by email. OCR was provided with two emails from Case Manager 2 to the Student's parent – one with a list of three missing assignments and one with a chart with incomplete information from approximately half of the Student's teachers indicating "Y" or "N" for Materials (M) and Assignments (A).

k. Check Ins with XXX

The Student's IEP was amended to include checks in with the School XXX beginning May 20, 2022. It states, "meet with the XXX to problem solve specifically if [the Student] is refusing services/accommodations." The frequency is listed as "refusals/XXX needs." This accommodation is in addition to the weekly XXX services with the School XXX.

The Student's parent told OCR that she understood this accommodation to require periodic check-ins with the XXX, which have not happened. All other IEP team members interviewed told OCR that the check-ins with the XXX are supposed to occur only if the Student refuses accommodations, which has not happened during the 2022-23 school year. The XXX told OCR that he has not done any check-ins this year because there has not been a need.

4. Program Modifications and Supports for School Personnel

The Student's IEP was amended to include, beginning in August 2022, executive function supports training for the Student's teachers for twenty minutes one time every eighteen weeks for thirty-six weeks. The IEP Amendment describes this support as follows: "Staff training on executive functioning at the beginning of each semester was added as a support for school personnel. This can be done by another staff member such as the BCBA [board certified behavior analyst] or school psychologist, or an outside trainer, and should be based off [the Student's] specific needs and strategies."

The District provided OCR with an agenda from its professional development week that indicates Executive Function/Autism Training was held on August 17, 2022, from 1:00 - 2:00

p.m. The sign-in sheet for the training states that the training was provided by the District's Board Certified Behavior Analyst (BCBA) and attended by nineteen staff, including six of the Student's teachers. One of the Student's teachers, Teacher 5, did not attend and, according to the XXX, has not been provided the training on an alternate day. All the witnesses who attended the training told OCR, and the training materials confirm, that the training was general and did not address the Student's specific needs. A second training was not provided at the start of the second semester but is scheduled.

Legal Analysis

While OCR was in the process of conducting interviews of District witnesses and receiving additional documents from the District, the District requested to resolve this case through a voluntary resolution agreement. OCR determined that it is appropriate to resolve the allegation through a voluntary resolution agreement under Section 302 of OCR's Case Processing Manual because OCR has identified several concerns to date regarding the District's practices for implementing IEPs and the implementation of the Student's IEP during the 2021-22 and 202-23 school years.

First, OCR has concerns that the District does not have a clear or consistent process for notifying teachers and service providers about the services and accommodations in a student's IEP, especially when the IEP is amended. As a result, one of the Student's teachers was unaware that she has an IEP until five weeks into the school year and therefore was unable to implement the Student's IEP for that period of time. In addition, several teachers and Case Manager 2 told OCR that they do not know what was meant by certain accommodations in the Student's IEP because they were not present during the meetings when those services were added, and no notes were provided to them.

Second, OCR is concerned that there appears to be confusion among District staff as to who is responsible for ensuring that a student receives all the supports and services in his or her IEP. While the Handbook states that it is the responsibility of the case manager, the Student's past and current case managers told OCR that it is not their responsibility and that they lack access to the information needed to perform this task.

Third, OCR has concerns that the following supports and services may not have been consistently provided during the 2021-22 and 2022-23 school years:

- Homework completion check-ins (2021-22)
- Communication log (2021-22; 2022-23)
- Chunking of assignments (2021-22, 2022-23)
- Movement breaks (2021-22)
- Assistive technology (2021-22)
- Study assistance for organization/work completion (2022-23)
- Peer mentor (2022-23)
- Executive functioning training (2022-23).

Conclusion

As discussed above, during OCR's investigation, the District agreed to voluntarily address OCR's concerns to date regarding its practices for implementing IEPs and the implementation of the Student's IEP. The attached Agreement, when fully implemented, will fully resolve the compliance concerns in this case consistent with the requirements of Section 504 and Title II and their 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 implementation of the Agreement through period compliance reports about the status of its terms. OCR will provide the District 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 fails 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 has fulfilled the term of the Agreement and is 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 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 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 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: Tabetha Wolf, Counsel for District (by email only)

Megan Degenfelder, State Superintendent of Public Instruction (by email only)