



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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OOREGION VIII

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February 28, 2023

Dustin Hunt, Superintendent  
Hot Springs County School District #1  
415 Springview Street  
Thermopolis, Wyoming 82443

by email only to [dhunt@hotsprings1.org](mailto:dhunt@hotsprings1.org)

Re: **Hot Springs County School District #1**  
OCR Case 08-23-1023

Dear Superintendent Hunt:

This letter is to notify you of the disposition of the above-referenced case stemming from a complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on October 7, 2022. On October 27, 2022, OCR opened an investigation into whether Hot Springs County School District #1 (District), at XX XX XX School, discriminated against the Complainant's XX (Student) on the basis of disability by, from XX to XX, failing to: (a) fully implement the Student's individualized education program (IEP); and (b) conduct a timely manifestation determination for the Student before subjecting him to a disciplinary significant change in placement.

OCR conducted this investigation under Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulations, 28 C.F.R. Part 35, which prohibit discrimination based on disability in programs or activities receiving federal financial assistance and public entities, respectively. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II, and their regulations.

Based on information and records from the Complainant and District, and interviews of District staff, OCR found, by a preponderance of the evidence, that the District discriminated as alleged. OCR interviewed the District's Director of Special Services (Director); the School's principal (Principal), lead case manager (Manager), XX (Special Education Teacher), and speech-language pathologist (SLP); one of the School's XX (Teacher); and a contracted elementary school counselor for the District (Counselor).

**ALLEGATION 1: FAILURE TO IMPLEMENT THE STUDENT'S IEP**

**Legal Standard**

Section 504 requires recipients that operate a public elementary or secondary education program to provide a free appropriate public education (FAPE) to each qualified student with a disability, regardless of the nature or severity of the disability. An appropriate education is defined as regular or

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special education and related aids and services that are: (a) designed to meet the individual needs of students with disabilities as adequately as the needs of students without are met; and (b) developed in accordance with the procedural requirements of section 504 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. OCR interprets the Title II regulations to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

### **Findings of Fact**

On March 25, 2021, the Student was evaluated by XX in XX, Wyoming, and identified as a student with a speech-language disability. During the 2021-22 school year (SY), the Student was in XXXX at the XXXX and had an IEP under the disability category of speech or language impairment. The IEP, effective XX, entitled the Student to the following monthly services: eight 10-minute sessions of “pre-academics” special education; eight 10-minute sessions of “social skills” special education; and six 15-minute sessions of speech-language services. The services were to take place at XX or XX.

On August 24, 2022, the School’s 2022-23 school year (SY) began and the Student started XX at the School. On September 16, the Student’s IEP team met. The team decided to develop a behavioral intervention plan (BIP) and created a new IEP for the Student. The new IEP, effective XX, entitled the Student to the following weekly services: three 15-minute sessions of speech/language therapy in the speech/language therapy room; five 15-minute sessions of “behavior” special education in the resource room; two five-minute sessions of speech/language therapy in the speech/language therapy room; and one 20-minute session of counseling in the counselor’s office.

On XX, the Student’s IEP team met again. The team reviewed a draft BIP for the Student and amended his IEP. The amendment changed his placement from mostly a general education setting to a separate setting, effective XX. The separate setting was a space in a special education classroom, between the School’s seclusion room and the rest of the classroom. The space was designed specifically for the Student; he joined his peers only for lunch, recess, or specials, and only if he was being safe.

On Friday, October 14, the Student’s IEP team met to discuss his placement. The team decided to recommend placement at Northwest BOCES for 60 to 90 days. The Director told the Complainant that the Student would have to stay home until he could start at Northwest BOCES. The Teacher gave the Complainant a packet of classwork for the Student to complete at home.

On Monday, October 17 and Tuesday, October 18, District schools were closed. On Wednesday, October 19, the Student was accepted at Northwest BOCES. On Wednesday, October 26, the Student was allowed to start at Northwest BOCES. The Student did not receive any educational services from October 15 to 25, which included five total school days.

The Special Education Teacher told OCR that from the start of the 2022-23 SY until the Student’s new IEP went into effect on September 20, she was scheduled to provide him with 120 minutes per week of reading intervention special education, 120 minutes per week of math intervention special education, and 75 minutes per week of social skills special education – all in the form of pull-out services in a special education classroom. According to the Special Education Teacher’s service logs, from the first day of the 2022-23 SY until the Student’s new IEP went into effect on September 20,

2022, she provided the Student with 1,550 minutes of special education services outside of the general education setting.

According to the SLP, she provided the Student with the following services: 15 minutes on August 30 and 31; 15 minutes on September 6, 7, 13, 20, and 26; five minutes on October 5; 15 minutes on October 10; 20 minutes on October 12; and 5 minutes on October 13. The Director told OCR that the District only has two speech-language pathologists and each of them has a caseload of 37 to 40 students; and thus, cannot make up services for students who are absent or suspended.

According to the Counselor, she provided the Student with services once – for 15 minutes on October 13. She said that she attempted to see him on September 22, 27, and 29, and on October 4 and 6, but he was either absent from school or sent home early for behavior on those days.

### **Legal Analysis and Conclusions**

Pursuant to his IEP, dated XX and in effect until XX, the Student should have received approximately 250 minutes of special education or related services outside of the general education environment from the start of the 2022-2023 school year until September 19, 2022. Instead, he was pulled out of general education environment and provided with special education and related services for 1,625 minutes during this time period. By providing the Student with so much extra special education and related services in a separate setting – even if well-intentioned and potentially beneficial for the Student – the District effectively failed to follow the IEP that was in effect and changed the Student's placement to a more restrictive environment without first following the procedural requirements of Section 504, including convening a team meeting to effectuate the change.

Additionally, the District failed to implement the Student's IEP during the time between his team changing his placement to Northwest BOCES on October 14 and him starting at Northwest BOCES on October 27. The Director told the Complainant that the Student could not return to the School during this period, even though the Student had not yet been accepted at Northwest BOCES, and thus, the District retained the duty to provide him with a FAPE. Consequently, the Student was excluded from school on October 19, 20, 21, 24, and 25, and did not receive any of the services in his IEP.

### **ALLEGATION 2: FAILURE TO CONDUCT A TIMELY MANIFESTATION DETERMINATION**

#### **Legal Standard**

The Section 504 regulations prohibit school districts from taking disciplinary action that results in a significant change in the placement of a student with a disability without first reevaluating the student and affording due process procedures. OCR interprets the Title II regulations to require districts to act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a student with a disability from their program for more than 10 consecutive school days, or for a total of more than 10 cumulative days under circumstances that demonstrate a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by or directly related to the student's disability. If so, the district may not take the disciplinary action and

should determine whether the student's current placement is appropriate. If the misconduct is found not to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for students without disabilities. An exclusionary disciplinary measure may be counted as a removal for manifestation determination purposes unless the student is afforded the opportunity to continue appropriately participating in the general curriculum, continues receiving the services specified in their IEP, and continues participating with students without disabilities to the extent they would have in their current placement.

### **Findings of Fact**

The School's first bell is at 8:20 a.m. and its tardy bell is at 8:30 a.m. Monday through Thursday, the school day ends at 3:55 p.m.; on Fridays, the school day ends at 12:25 p.m.

The Student regularly engaged in variety of disruptive behaviors at school, including barking, climbing on objects, destroying objects, eloping, growling, headbutting, hitting, jumping off objects, kicking, pinching, punching, pushing, refusing to follow directions, scratching, screaming, and throwing objects. School staff attempted a variety of interventions with the Student, including using a sticker chart, a token economy, a "first-next-then" chart, an "I feel" chart, multiple prompts, a visual daily schedule, food, sensory tools, detailed data collection, and a BIP.

On August 26, the Student was twice placed in a special education classroom at the School, for a total of 2.33 hours. The Special Education Teacher told OCR that, during this time, she worked with the Student on his behavior and social skills, gave him a snack, and took him to recess.

On September 7, the Student served a 30-minute lunch detention. On September 8, the Student served a 30-minute lunch detention and a 2.42-hour in-school suspension. The Student served his lunch detentions and in-school suspensions in a small room in the front office or in a special education classroom. No other students were present at either location. According to the Principal, students who receive lunch detention also do not participate in after lunch recess.

On September 13, the Student was sent home at 3:20 p.m. On September 14, the Student was suspended out-of-school for the entire school day. On September 15, the Student was sent home at 10:20 a.m.

On September 16, the Student was placed in a separate classroom, where he participated in asynchronous learning. There were no other students present in the room with him. He used a Chromebook and Zoom to participate virtually in his regular class, where other students were participating as usual.

On September 19, the Student was placed in in-school suspension for 1.58 hours and then again for another 1.92 hours. On September 21, the Student was sent home at 1:25 p.m. On September 22 and 23, the Student served an out-of-school suspension. On September 26, the Student was secluded for 10 minutes.<sup>1</sup> On September 27, the Student was secluded for five minutes and sent home at 10:41 a.m. On September 28, the Student served an out-of-school suspension. On September 29, the Student was sent home at 9:30 a.m. On September 30, the Student served an out-of-school

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<sup>1</sup> The Student was secluded per the District's definition of seclusion.

suspension. On October 3, the Student served an out-of-school suspension. On October 5, the Student was sent home at 11:25 a.m.

In summary, the District subjected the Student to the following disciplinary removals from the general education setting or from the School entirely:

Date	Type	Time
August 26	Special education classroom	1.33 hours
August 26	Special education classroom	1.00 hour
September 7	Lunch detention	0.50 hour
September 8	Lunch detention	0.50 hour
September 8	In-school suspension	2.42 hours
September 13	Sent home early	3:20 p.m. (0.42 hours / 0.06 school days)
September 14	Out-of-school suspension	Full school day (approximately 7.56 hours)
September 14	Sent home early	10:20 a.m. (5.42 hours / 0.73 school days)
September 16	Asynchronous learning in special education classroom	Full school day (approximately 7.56 hours)
September 19	In-school suspension	1.58 hours
September 19	In-school suspension	1.92 hours
September 21	Sent home early	1:25 p.m. (2.50 hours / 0.34 school days)
September 22	Out-of-school suspension	Full school day (approximately 7.56 hours)
September 23	Out-of-school suspension	Full school day (approximately 7.56 hours)
September 27	Sent home early	10:41 a.m. (5.23 hours / 0.71 school days)
September 28	Out-of-school suspension	Full school day (approximately 7.56 hours)
September 29	Sent home early	9:30 a.m. (6.42 hours / 0.87 school days)
September 30	Out-of-school suspension	Full school day (approximately 7.56 hours)
October 3	Out-of-school suspension	Full school day (approximately 7.56 hours)
October 5	Sent home early	11:25 a.m. (4.50 hours / 0.61 school days)

On October 5, at 3:45 p.m., the District held a manifestation determination for the Student. According to the Director, the manifestation determination was not held earlier because of scheduling issues for School staff. The team determined that the Student's behavior was a manifestation of his disability.

According to the District, removal of a misbehaving student from the classroom and placement of the student in a special education classroom does not constitute a disciplinary removal. Additionally, lunch detention for a student does not count as a disciplinary removal because the student is not missing instructional time. However, in-school and out of school suspensions count as a disciplinary removal.

According to District staff, they count school days for purposes of manifestation determinations by adding up the exact hours and minutes a student is subjected to removal. In other words, only when the hours of partial day in-school or out-of-school suspensions add up to approximately seven hours and 35 minutes does the District count one day of removal in determining the need for a manifestation determination. For example, if a student is sent home from school at 11:00 a.m. three days in a row (after less than three hours of school), the District would count two days of removals for purposes of calculating days toward the manifestation determination 10-day threshold.

### **Legal Analysis and Conclusions**

From the start of the 2022-23 SY until the Student's manifestation determination on the afternoon of October 5, 2022, the Student was out-of-school suspended for six full school days; sent home early on six school days, including on four days for more than half the school day; and removed him from a general education setting and into a more restrictive setting (i.e., lunch detention, in-school suspension, or a special education classroom) on eight occasions for a total of 16.75 hours, including one full school day. All of his removals from the general education setting occurred when the Student's placement, pursuant to his IEPs, was supposed to be in the general education setting for all but 150 minutes per week, at most. The removals, including lunch detentions and removals to a special education classroom, totaled over 86 hours or about 11.5 school days. The District's own calculations indicated that the Student had 10.05 days of disciplinary removals by September 29, 2022, yet a manifestation determination was not held until October 5, 2022. Additionally, the Student's removal constituted a pattern. His behaviors that led to the removals were substantially similar. He repeatedly engaged in disruptive and unsafe behaviors. Additionally, the removals occurred in close proximity to each other. In September, the Student was removed on 13 of the 20 School days. Therefore, OCR found, by a preponderance of the evidence, that the District failed to conduct a manifestation determination before the Student was subjected to a disciplinary significant change in placement (i.e., more than 10 cumulative days of disciplinary removals under circumstances that demonstrate a pattern of exclusion).

### **CONCLUSION**

Upon being advised of the violation findings, the District entered into a Resolution Agreement (Agreement) to resolve the matter. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. When fully implemented, the Agreement will address the violations identified by OCR. OCR will monitor the implementation of the Agreement until the District is in compliance with its terms and the statutory and regulatory obligations under Section 504 and Title II that were at issue in the case.

This case is now in the monitoring phase. The monitoring of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. 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 in this case and 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 determinations 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 must 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, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation extended to OCR during the investigation and resolution of this case. If you have any questions, please contact the attorney assigned to this case, XX, at XX or XX.

Sincerely,

/s/

Daniel Contreras  
Supervisory Team Leader

Attached: Resolution Agreement (signed)

cc: Jacqueline Frankson, Special Services Director ([jfrankson@hotsprings1.org](mailto:jfrankson@hotsprings1.org))  
Scott Kolpitke, Attorney for the District ([scott@ckattorneys.net](mailto:scott@ckattorneys.net))