



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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August 23, 2023

Superintendent Chris Gdowski
Adams 12 Five Star Schools
1500 E. 128th Avenue
Thornton, CO 80241-2602

By email only to: chris.gdowski@adams12.org

Re: OCR Complaint No. 08-23-1251
Adams 12 Five Star Schools

Dear Superintendent Gdowski:

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 February 15, 2023. The Complainant alleges that Adams 12 Five Star Schools (District) is discriminating against students at [redacted content] (School) on the basis of disability. Specifically, the Complainant alleges that some students at the School have not received all the special education and related services in their Individualized Education Programs (IEPs), including specialized instruction in literacy, math, and behavior and mental health services, due to the scheduling of other educational or related services, such as English Language Development (ELD) instruction and speech/language therapy.

I. OCR JURISDICTION

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination 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 (Title II) 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.

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;

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student enrollment and attendance lists; eight students' IEPs, course schedules, and service providers' logs;¹ the School's master schedule; and communications regarding the implementation of students' IEPs; and b) interviews of nine witnesses, including the Complainant, District's Executive Director of [redacted content] (Executive Director), District's Assistant Director of [redacted content] (Assistant Director), former Director of the School (former Director),² [redacted content] (Coordinator),³ two teachers (Teachers 1 and 2), former social worker, and a paraprofessional.

Prior to the conclusion of OCR's investigation and interviews of several important witnesses, including the English Language Development (ELD) and Speech teachers, the District expressed a willingness to voluntarily resolve the complaint allegation.⁴ 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 implementation of IEPs at the School. As a result, OCR suspended its investigation and resolved it through the enclosed resolution agreement.

III. 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 jurisdictions. 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. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

IV. FACTS

A. The School

[redacted section]

¹ OCR initially asked for this information for all students who attended the School during the 2022-23 school year but agreed to begin its investigation with more limited student files. After reviewing two students' files selected by the District, OCR requested an additional six students' files based on information provided by the Complainant and contained in the District's data response.

² The former Director was the lead administrator for the School for [redacted content].

³ The Coordinator is currently the highest level administrator at the School site and directs the day to day operations of the School.

⁴ OCR scheduled interviews of the ELD teacher, speech pathologist, current social worker, and an additional teacher for the last day of the 2022-23 contract year but unfortunately had to cancel the interviews due to a medical emergency and was unable to reschedule them during the summer break.

B. Policies and Procedures

The Executive Director, Assistant Director, and Coordinator told OCR that pull-out services, such as speech, occupational therapy, mental health services, and ELD services, are scheduled by service providers based on students' needs and the providers' schedules. The itinerant service providers, such as the ELD teacher and speech pathologist, have set days and times that they come to the School each week, whereas the social worker, who is based at the School, does not have a set schedule for when she sees students because she is constantly addressing crises at the School.

According to the Executive Director, Assistant Director, and Coordinator, the District's goal is to provide related services during instruction not required by students' IEPs, such as social studies or science class, but that is not always possible.

Related service providers, such as social workers and speech pathologists, are required to log the services that they provide to students in a program called "EzEdMed." The former social worker explained to OCR that the EzEdMed system requires providers to assign a date and time for a service in advance. If the provider sees a student on another date and time, he/she is supposed to change the information in the system to reflect when the services were provided.

The Executive Director, Assistant Director, and Coordinator told OCR that someone checks that the logs are completed, but no one in the District reviews the logs or spot checks them to make sure that service providers are providing all the special education and related service minutes in students' IEPs. As a result, the Assistant Director and Coordinator were unable to tell OCR whether the speech pathologist and social worker have provided all the service minutes in the IEPs of students at the School during the 2022-23 school year.

The Assistant Director and Coordinator told OCR that the Coordinator reviews students' schedules against providers' schedules to ensure that students' IEP services are provided. However, the student schedules provided to OCR do not indicate when students receive related or other pull-out services, and the School does not appear to keep providers' schedules as none were provided to OCR.⁵ In addition, none of the witnesses interviewed could tell OCR when the social worker and speech pathologist saw particular students.

District policy is to include the following statement in the service delivery statement in all IEPs: "Sessions missed due to student absences, school closures due to holiday, weather, or emergency, or student participation in school-wide activities will not be made up." The Executive Director, Assistant Director, Coordinator, and former Director told OCR that related services missed due to a provider's absence are supposed to be rescheduled.

The Coordinator told OCR that there is no policy in place for rescheduling related services that are missed by a student because of a behavioral incident, which happens frequently. The former

⁵ Some emails documenting specific changes to providers' schedules were provided to OCR.

Director told OCR that, under her leadership, service providers were required to make up IEP services that were missed due to a student being escalated.

C. Specialized Instruction

1. Specialized Instruction in Behavior

The Complainant and Teacher 1 told OCR that Student 1 did not receive all the minutes of specialized instruction in behavior in his IEP during the 2022-23 school year because he was pulled out for ELD services during SEL class. Student 1's March 15, 2022 and January 20, 2023 IEPs provide for 220 minutes weekly of specialized instruction in behavior from a special education teacher, and 30 minutes weekly of mental health services from a social worker. His IEPs include three goals in the area of social/emotional wellness; he has no academic goals. The IEPs also indicate that the student has limited English proficiency and is eligible to receive sheltered English instruction daily.

According to the Complainant, Student 1 was pulled out of her SEL class for ELD services every day the first semester of the 2022-23 school year and sometimes during the second semester, making her unable to provide the required minutes of behavioral instruction. Based on emails provided to OCR, the Complainant asked the ELD teacher to pull the student out of his social studies or science class instead of SEL, but the ELD teacher said that it was not possible given her schedule. The ELD teacher agreed instead to sometimes push into the student's SEL class, but it is not clear from the documents provided to OCR or witness interviews how often she pushed into the SEL class during the first semester.

In November 2022, the Complainant complained to the Coordinator about Student 1's being pulled out of SEL class for ELD services. On November 28, 2022, the Coordinator wrote to the ELD teacher:

It's come to my attention that Student 1 is being pulled during his SEL class the majority of the week. I know you worked with [the Complainant] to reduce that time, but it is still difficult to meet his behavior minutes on his IEP, which is 220 minutes per week. Those are the only minutes on his IEP aside from his Mental Health minutes. Would it be possible to pull him during another time?

The Coordinator then proposed alternative times for the ELD teacher to provide ELD services to Student 1. The ELD teacher responded on November 30, 2023, that she is unable to move Student 1's ELD services to the suggested times, and proposed the following schedule:

- Mon, Tues, Thurs: Push in at 11:40 (during Student 1's SEL class taught by the Complainant)
- Wed: Pull-out at 11:15 AM (during Student 1's science class taught by Teacher 1)

- Friday: Pull out at 12:30 PM (during Student 1’s science class taught by Teacher 1).

When the Coordinator asked the Complainant whether this schedule was acceptable, the Complainant responded, “It works for me if I don’t have to be responsible for the behavior minutes when [Student 1] is with [the ELD teacher] and he is normally scheduled to be with me. . .”

OCR requested the ELD teacher’s service logs but only received her logs for the second semester of the 2022-23 school year. Thus, OCR was unable to confirm with documentary evidence the dates and times that the student received ELD services during SEL class in the first semester. The paraprofessional in the Complainant’s SEL class confirmed that Student 1 was pulled out of SEL class for ELD services during the first semester but was unable to recall how often. OCR also notes that the ELD teacher and Coordinator did not dispute in their email responses to the Complainant that Student 1 was receiving pull-out ELD services during his SEL class for the first semester.

It is also not clear whether the new schedule proposed by the ELD teacher was implemented in December 2022. Based on the service logs provided to OCR, the new schedule was in place by January 4, 2023. Thus, from January 4, 2023 until February 20, 2023, with the exception of three days for ACCESS testing, Student 1 was not pulled out of SEL class for ELD instruction and instead received ELD instruction in the SEL class three days per week.

The ELD teacher described the push-in services in an email as follows: “I could feature vocabulary terms and concepts; [b]uild sentence starters and frames; select and print topical images; and more.” According to the ELD teacher’s logs, she mainly worked on reading “Radiance” with Student 1 when she pushed in and pulled him out. On two occasions when the ELD teacher pushed into SEL class, she worked on “guided questions” with the student.

Between February 20, 2023 and April 17, 2023, Student 1 received ELD services according to the above schedule, but the services had the following impact on Student 1’s classes, which changed several times:

- Mon, Tues, Thurs: Push in at 11:40 (during Student 1’s science class taught by Teacher 1)
- Wed: Pull-out at 11:15 AM (during Student 1’s SEL class taught by the Complainant/Teacher 3/Teacher 1)⁶
- Friday: Pull out at 12:30 PM (during Student 1’s SEL class taught by the Complainant/Teachers 1 and 3).

⁶ The Complainant transferred to another school in the District on March 6, 2023. The Student’s schedule lists Teacher 3 as his SEL teacher after the Complainant left the School. However, Teacher 1 told OCR that both he and Teacher 3 taught the SEL class together for some time until the class was split into two and Student 1 was placed in Teacher 1’s SEL class.

Thus, for these approximately two months, Student 1 missed 60 minutes per week of SEL class for ELD pull-out services.

From April 17, 2023 to May 25, 2023, the ELD services schedule had the following impact on Student 1's classes:

- Mon, Tues, Thurs: Push in at 11:40 (during Student 1's ELA class taught by Teacher 3)
- Wed: Pull-out at 11:15 AM (during Student 1's SEL class taught by Teachers 1 and 3)
- Friday: Pull out at 12:30 PM (during Student 1's SEL class taught by Teachers 1 and 3).

For this month, Student 1 again missed 60 minutes per week of SEL class for ELD pull-out services.

The District contends that it was able to meet Student 1's SEL service minutes despite the above ELD services schedule because Student 1 received additional specialized instruction in behavior throughout the day when he engaged in behavior that needed to be corrected by the special education teachers, behavior analysts, or social worker and also during the second homeroom period. The Executive Director explained that when special education teachers go over students' point sheets during the afternoon homeroom, they may provide specialized instruction in behavior based on the student's behavior plan or goals.

Teacher 1, who teaches a homeroom class, told OCR that he does not think it is appropriate to count the afternoon homeroom as specialized instruction in behavior because he does not work on IEP goals during that time, nor has he ever been told during his [redacted content] years of teaching at the School that he is supposed to be providing SEL service minutes during that time. Teacher 2, who also teaches a homeroom class, similarly told OCR that there is no direct SEL instruction during homeroom although [redacted content].

A paraprofessional, who supports teachers in homeroom, similarly told OCR that there is not much instruction that occurs during the afternoon homeroom; after the students buy their rewards, they play games, talk, gather their belongings, and wait for the buses to be called. She additionally told OCR that she has not observed teachers working on IEP goals during that time. The former School Director told OCR that it was not the School's practice during the [redacted content] years that she led the School for homeroom to count as SEL/behavior minutes because it is "not instructional time."

Based on OCR's review of select student records, there is at least one additional student whose schedule does not provide for enough time in SEL class to meet the specialized instruction in behavior minutes in his IEP. Student 2's [redacted content] IEP provides for 300 minutes per week of specialized instruction in behavior by a special education teacher but there are only 225 minutes per week of SEL class. When OCR asked the Assistant Director how Student 2 receives

the required number of SEL minutes, she told OCR that “behavior instruction is embedded in the whole day,” and some behavior instruction is provided during the afternoon homeroom.

Six of the other students whose files OCR reviewed have IEPs that provide for 220 minutes of specialized instruction in behavior per week. The Complainant told OCR that two of these students were pulled out of her classes for speech services. OCR could not confirm based on the documents provided whether these students were pulled out of SEL class because the speech pathologists’ logs do not include the time that she saw students – only the date.

2. Specialized Instruction in Literacy

The Complainant and Coordinator told OCR that the Complainant complained in January 2023 that Student 2 was being pulled out of ELA class for speech services, which was impacting the Complainant’s ability to meet Student 2’s literacy goals. Student 2’s [redacted content] IEP provides for 180 minutes per week of specialized instruction in literacy by a special education teacher and 90 minutes monthly of direct speech/language instruction by a speech pathologist among other special education and related services.⁷ The Coordinator and Assistant Director told OCR that the Coordinator requested the speech pathologist change her schedule to pull Student 2 from science or social studies class, which the speech pathologist did in early February 2023.

According to the District, Student 2 received speech services from 9:00 a.m. to 9:30 a.m. on Thursdays from August 25, 2022 through September 22, 2022, which was during 10 minutes of his science class and 20 minutes of his math class. Student 2’s ELA class was from 10:00 a.m. to 10:49 a.m. during that time frame. OCR was unable to verify the time of Student 2’s speech services but notes that the speech pathologist’s logs indicate the sessions were 38 – not 30 – minutes per week, which still would not have impacted Student 2’s ELA class.

The District told OCR that, from September 29 through December 1, 2022, Student 2 received speech services from 10:40 a.m. to 11:10 a.m. on Thursdays, which was primarily during his lunch period but included nine minutes of ELA class and accordingly did not impact the Complainant’s ability to meet Student 2’s service minutes (i.e., she had 216 minutes per week to provide 180 minutes of literacy instruction). Again, OCR could not verify the time of the speech services and notes that the logs indicate some of those sessions were 38 minutes long and others were 22 minutes long, making it unclear when the speech pathologist saw the student. In addition, Student 2’s schedule indicates that he had lunch and nine minutes of science class during the 10:40 a.m. to 11:10 a.m. time frame on Thursdays beginning November 4, 2022.

The District told OCR that, from December 8, 2022 through December 15, 2022, Student 2 received speech services from 9:30 a.m. to 10:00 a.m., which was during his 9:10 a.m. to 9:59 a.m. ELA class. According to the service logs, sessions during that time frame were 22 minutes long – not 30. Even if Student 2 missed 30 minutes of ELA per week those two weeks, the

⁷ The Coordinator told OCR that some of Student 2’s related services were amended during the 2022-23 school year, but no IEP amendment was provided to OCR.

Complainant had 195 minutes per week to provide 180 minutes of specialized instruction in literacy to the student.

On or around February 2, 2023, Student 2's speech time changed to during his science class, which was 10:00 a.m. to 10:49 a.m.⁸ According to the service logs, the student saw the speech provider twice in February 2023 for 22 minutes each at this new time and not again for direct services for the rest of the 2022-23 school year.

3. Specialized Instruction in Math

Teacher 1 told OCR that he had concerns during the 2022-23 school year, which he discussed with the social worker and behavior specialist, that students were not getting sufficient direct instruction in math because they were not in class either because of behavior issues, pull-out services, or a refusal to attend. Teacher 1 explained that he did not always know why students were being pulled out of his class because he was not provided a schedule by related service providers. Teacher 1 named four students (Students 1, 2, 3, and 9) who did not attend his class often. Three of the four students (Students 2, 3, and 9) have specialized instruction in math and math goals in their IEPs.

Student 2's [redacted content] IEP provides for 225 minutes of specialized instruction in math per week, which is the total number of minutes of math provided per week at the School. As discussed above, Student 2's speech schedule between August 25, 2022 and September 22, 2022 required him to be pulled out of math class for at least 20 minutes per week.

In addition to the students named by Teacher 1, Student 4's speech schedule required him to miss math class. Student 4's [redacted content] IEP provides for 220 minutes of specialized instruction in math per week and 80 minutes monthly of direct speech/language services among other special education and related services. Based on documents provided to OCR, Student 4's schedule for receiving speech services changed to 9:10 a.m. on February 2, 2023.⁹ According to Student 4's schedule, he had math class from 9:10 a.m. to 9:59 a.m. on Thursdays. Thus, Student 4's speech schedule required him to miss 20 minutes of math class each week, leaving Teacher 1 205 minutes per week to provide 220 minutes of specialized instruction in math to Student 4.

Teacher 1 told OCR that he was unable to meet the math minutes in Student 4's IEP for a few weeks in the Spring of 2023 when Student 4 began attending school online because he lacked sufficient technology to be able to simultaneously teach students in person and provide direct instruction to Student 4 virtually, which was ultimately resolved. The Coordinator confirmed that Teacher 1 reported problems with the provision of math instruction to Student 4 when Student 4 attended school online.

D. Related Services

⁸ OCR does not have information about when Student 2 received speech services from January 2, 2023 to February 2, 2023.

⁹ OCR does not have information about what the schedule was previously.

1. Speech/Language Services

There is one speech pathologist who provided services to students at the School during the 2022-23 school year. OCR reviewed the speech pathologist's service logs for five students (Students 2, 4, 5, 6, and 7) at the School. One additional student, Student 8, was supposed to be receiving speech/language services per his IEP, but no logs were provided to OCR.

OCR noticed the following regarding the speech logs that were reviewed:

- Many students were not seen for speech/language services on multiple dates for the reason: "Special Event." For example, Student 2 has "Special Event" listed five times between August 18, 2022 and October 27, 2022. Student 7 was not seen two times between September 21, 2022 and December 15, 2022 because of "Special Events."

None of the witnesses interviewed knew what "Special Event" means. According to the Coordinator and Assistant Director, the only schoolwide events that occurred during the 2022-23 school year were a holiday party in December and family picnic in May, neither of which correspond to the dates listed for special events.

In most instances, there is no explanation of the "Special Event" in the logs. In a few places, there is a description that suggests the sessions may have been cancelled because the student was dysregulated. For example, on October 13, 2022, Student 2 was not seen for a "Special Event" that is described as the student "came to therapy but was upset about something happening at home." On October 27, 2022, Student 2 was not seen because of a "Special Event" described as the student wanted to go to lunch instead of speech after an "incident in class" subsided.

- Some students were not seen for speech/language services for the full period that their IEPs mandate services. For example, Student 4 began attending the School on [redacted content]. His IEP provides for 80 minutes monthly of speech/language services by a speech pathologist among other services. According to the speech pathologist's logs, Student 4 did not begin speech services until January 5, 2023, and concluded them on May 11, 2023, two weeks before the end of the school year. Student 5 also concluded speech services on May 11, 2023.

Student 6 attended the School from the start of the 2022-23 school year and left on [redacted content]. He did not begin receiving speech/language services until September 8, 2022, and received no services in January 2023 although his service minutes increased on December 14, 2022 from 60 minutes per month to 120 minutes per month.¹⁰

¹⁰ The Assistant Director told OCR that it is possible Student 6 received speech services at another school from a different speech pathologist in January 2023. No other speech pathologists' logs were provided to OCR.

Student 7 attended the School from the start of the 2022-23 school year and left on [redacted content]. He did not begin receiving speech/language services until September 21, 2022. He received 30 minutes of speech per month from September through December instead of 60 minutes per month, as required by his IEP. There is no indication in the logs that the services were missed for one of the “excusable” reasons set forth in his IEP, such as student absence, holiday, weather, emergency, etc . . .

- According to a notation in the logs, direct speech services were discontinued for Student 2 on March 9, 2023, because Student 2’s mother told the speech pathologist that the student wanted to take a break from services. The Coordinator told OCR that there was an IEP amendment changing Student 2’s speech services from direct to consultation services but no amendment was provided to OCR.
- Some students did not receive services for the reason: “IEP minutes met.” In several of the cases, it is not clear from the logs how the student’s service minutes were met. For example, Student 5’s [redacted content] IEP provides for 30 minutes weekly of direct speech/language instruction by a speech pathologist. He began attending the School on November 1, 2022. In November 2022, Student 5 received a total of 30 minutes of speech services; sessions the other three weeks that month were cancelled due to “Special Event,” “Therapist Absent,” and “Thanksgiving Break”. On December 1, 2022 and December 8, 2022, Student 5’s speech sessions were cancelled for the reason “IEP minutes met” although he received 30 minutes total in November and again in December.¹¹

Similarly, Student 2 did not receive services on March 9, 2023 because “IEP minutes met.” However, Student 2 received 22 minutes of speech services in February instead of the required 90 minutes because he “refused to attend” sessions and was absent on March 2, 2023.

2. Mental Health Services

During the 2021-22 school year, the School had two social workers. For the 2022-23 school year, the School was unable to find a second social worker. Thus, one social worker provided all the mental health services at the School, which the Coordinator and Assistant Director explained was difficult for the social worker to manage but she did.

All witnesses told OCR that the social worker does not have a set schedule to provide individual or group mental health services to students, which is clear from her logs; she sees students on different days of the week each week sometimes in a group and sometimes individually. Several witnesses told OCR that they have seen students in the social worker’s office but do not know if

¹¹ Student 5 did not receive services the other two weeks in December because of Winter break.

she was providing 1:1 or group mental health services during that time or addressing a crisis situation.

Teacher 2 told OCR that he was concerned students were not being pulled consistently for mental health services during the 2022-23 school year and thought it was insufficient for students to be working with the social worker only when there was an escalated situation. Teacher 2 additionally told OCR that he raised this issue several times with the social worker and shared his belief that the social worker seemed overwhelmed and unable to meet some of her responsibilities with the Coordinator.

The Coordinator told OCR that mental health services at the School are not just provided through 1:1 or group sessions; they are provided throughout the day when the social worker is working through a crisis with a student. The former social worker told OCR that she did not record time spent de-escalating a student as “mental health services.” The Executive Director and Teacher 2 similarly told OCR that mental health services should not be provided when a student is escalated because the student is unlikely to be able to receive and retain the instruction when in crisis.

a. Group Mental Health Services in SEL Classes

Several witnesses told OCR that the social worker is supposed to “push in” to the SEL class at least once per week to provide a mental health perspective on the SEL theme for the week. According to the Coordinator, there is no set day for the social worker to push into SEL classes; it varies each week. The Complainant, Teacher 1, and Teacher 2 told OCR that the social worker did not attend SEL classes regularly during the 2022-23 school year. Teacher 2 told OCR that the social worker came in once every few weeks unlike in prior years when the social worker would come consistently the same day each week. The Complainant told OCR that the social worker showed up to her two SEL classes approximately five times from August to early March.

The Coordinator, Executive Director, and Assistant Director told OCR that the time the social worker spends teaching the SEL class counts as both “Specialized Instruction in Behavior” and “Mental Health Services” for purposes of meeting students’ IEP service minutes. It appears from the social worker’s service logs that those minutes are described as “group” mental health services.

The former Director and former social worker told OCR that it would be inappropriate to count the social worker’s time in the SEL class as both behavioral instruction and mental health services; it should count as behavioral instruction only because it takes place during the SEL class. Teacher 2 similarly told OCR that he believes the social worker’s time in the SEL class counts as behavioral instruction; mental health services should be more individualized. The former social worker told OCR that in order for group mental health services to be provided to a student with mental health services on their IEP, the IEP must specify that both group and 1:1 services are permissible.

b. Service Logs

OCR reviewed the social worker's service logs for seven students (Students 1, 2, 4, 5, 6, 7, and 8) at the School. One additional student, Student 3, was supposed to be receiving mental health services per his IEP, but no logs were provided to OCR.

OCR noticed the following regarding the mental health service logs that were reviewed:

- Mental health services were often missed because they were scheduled on one-day holidays. No witnesses were able to explain to OCR why the group services were scheduled on a holiday when the social worker has no consistent day for providing the services. For example, the social worker has seen Student 1 in a group on a Tuesday, Wednesday, Thursday, and Friday but never a Monday. Yet, the reason Student 2 was not seen on January 2, January 16, and February 20, all of which are Mondays, is common release day, Martin Luther King, Jr. day, and President's day, respectively. Thus, six of the seven students were not seen by the social worker during the weeks of January 2, January 16, and February 20.
- Some students received group mental health services although their IEPs do not specify that group services are allowed. For example, the IEPs of Students 4, 5, 6, and 7 do not specify that mental health services may be provided in a group or 1:1. Yet, 11 out of the 15 weeks that the social worker saw Student 5 were in a group, and several of the sessions that Student 5 missed because of absence were group sessions.
- Other students were not seen for the full time period mandated by their IEPs. For example, mental health services for Student 1 did not begin until October 18, 2022, although he attended the School from the start of the 2022-23 school year. Similarly, mental health services for Student 8 began on November 29, 2022, although he too attended the School from the start of the school year.

Student 4 was seen only once for mental health services from February 14, 2023, to the end of the school year. The reasons provided are student absence or dysregulation. There is no notation for the last two weeks of the school year for Student 4 and two other students.

- Many logs have missing weeks although the students are supposed to be seen weekly. For example, Students 1's log has no notation for the weeks of November 7, January 9, and January 23. Student 8's log has no entries for January 2023.
- The social worker does not appear to have made up services on days she was absent. For example, Student 6's log states that the social worker was absent on September 20, October 25, and November 17. It does not appear that services that were missed on those days were rescheduled. Student 7 similarly missed services on September 26, October 3, and November 17 because the social worker was absent or unavailable.

- Many students who were supposed to be seen weekly were seen a small percentage of weeks.
 - Student 1 was seen for mental health services 7 out of the 30 weeks of the school year covered by the records.¹²
 - Student 2 was seen for fewer than the required mental health services minutes (i.e., 30 minutes per week instead of 120 minutes) 19 out of the 30 weeks of the school year covered by the records.
 - Student 4 was seen for mental health services 9 out of the 27 weeks of the school year that he attended the School.¹³
 - Student 5 was seen for mental health services 15 out of the 26 weeks of the school that he attended the School.
 - Student 6 was seen for mental health services 13 out of the 19 weeks of the school year that he attended the School.
 - Student 7 was seen for mental health services 10 out of the 16 weeks of the school year that he attended the School.
 - Student 8 was seen for mental health services 13 out of the 38 weeks of the school year that he attended the School.

V. LEGAL ANALYSIS

While OCR was in the process of re-scheduling witness interviews, 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 CPM because OCR has identified several concerns regarding implementation of students' IEPs.

First, OCR has concerns that the District lacks a process to ensure that students are getting the specialized instruction and related services in their IEPs. It is impossible to tell from students' schedules alone whether they are receiving the required services, and no one is tasked with reviewing providers' service logs against students' IEPs.

Second, OCR has concerns that at least two students may not have received the specialized instruction in behavior required by their IEPs during the 2022-23 school year. Although OCR cannot yet determine the precise amount of SEL instruction that Student 1 missed for ELD services, it has concerns that Student 1 did not receive 220 minutes per week of specialized instruction in behavior from at least August through November and February through May when he was being pulled out of SEL class for ELD services because staff do not appear to have provided the missed behavioral instruction at other times of the day. OCR is also concerned that

¹² Since the records were printed on April 4, 2023 and provided to OCR on April 28, 2023, OCR excluded the last eight weeks of the school year for this student and the others as well as the four weeks of vacation during the school year (i.e., Thanksgiving, Winter break, and Spring Break).

¹³ The Student came to the School on [redacted content].

Student 2 may not have received 300 minutes of specialized instruction in behavior per week because his schedule provides for only 225 minutes per week of SEL class.

Third, OCR has concerns that at least two students may not have received the specialized instruction in math required by their IEPs because they were pulled out for speech services during math class. Student 2 may not have received 225 minutes of specialized instruction in math per week for at least one month in the Fall because of pull-out speech services, and Student 4 may not have received 220 minutes of specialized instruction in math per week from February through the end of the school year because of speech services.

Fourth, OCR has concerns that several students at the School may not have received the speech services required by their IEPs because the speech pathologist's service logs do not show that the students received the required number of minutes for the reasons discussed above. While OCR appreciates that some services may have been provided but not logged, the omissions are so significant that human error is unlikely to account for all the missing time.

Lastly, OCR has concerns that several students at the School may not have received the mental health services required by their IEPs. OCR does not believe it is appropriate for the School to "double count" the time the social worker spends in SEL classes as both specialized instruction in behavior and mental health services because the students' IEPs, as written, clearly contemplate two distinct services being provided to students by listing them separately, and not all students who received this instruction have IEPs that provide for "group" in addition to 1:1 mental health services. In any event, even if OCR were to consider that time to be mental health services, the social worker's logs do not demonstrate that the students received the required number of mental health service minutes for the reasons discussed above. OCR again appreciates that the social worker may not have logged all the time she worked directly with students. However, the combination of witness testimony about the lack of mental health services and the logs cause OCR to be concerned that one social worker was unable to provide all the required mental health services on her own.

VI. CONCLUSION

As discussed above, during OCR's investigation, the District agreed to voluntarily address OCR's concerns to date regarding the implementation of IEPs at the School. 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 [redacted content], the OCR attorney assigned to this complaint, at [redacted content].

Sincerely,

/s/

Thomas M. Rock
Supervisory General Attorney

Attachment: Resolution Agreement

cc: Susana Cordova, Colorado Commissioner of Education (by email only)
[redacted content]