



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310  
DENVER, CO 80204-3582

REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

November 3, 2023

Chad Krug, Superintendent  
210 West Pearl Street  
Lamar, CO 81052

*By email only to [redacted content]*

Re: OCR Complaint No. 08-23-1455  
Lamar Re-2 School District

Dear Superintendent Krug:

This is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) with respect to the above-referenced complaint filed on May 9, 2023, against the Lamar Re-2 School District (the District). The Complainant alleges that the District discriminated against his son (Student) on the basis of his disability. Specifically, the Complainant alleges that the District discriminated against the Student when it:

- (1) changed his placement when it sent him home early multiple times during the past two school years without holding a manifestation determination hearing or otherwise evaluating the Student;
- (2) changed his placement during the 2022-23 school year when it assigned him to one hour of school per day at the District office and the remainder of his day in an online program without holding a manifestation determination hearing or otherwise evaluating the Student;
- (3) failed to provide the Student with FAPE when it did not provide any special education or related services or other accommodations after it placed him in the District office/online program; and
- (4) treated him differently than non-disabled students when it barred him from District property.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, 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.

During the course of the investigation, OCR reviewed documentation provided by the District and interviewed the District Superintendent. OCR requested to interview the Complainant but the Complainant either did not attend the interview or cancelled and declined to provide additional information to OCR when invited to do so.

During the investigation, OCR identified compliance concerns regarding the District's failure to evaluate the Student prior to changes in placement and in providing the Student with FAPE. Prior to the Completion of the investigation, the District requested to resolve the Allegations 1-3 pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and signed the enclosed Resolution Agreement to address the identified compliance concerns. OCR found insufficient evidence that the District treated the Student differently than non-disabled students when it allegedly barred him from District property.

### **Summary of Investigation and Factual Findings**

#### *2021-2022 School Year*

During the 2021-2022 school year, the Student attended [redacted content]. In October 2021, the Student's IEP Team agreed that the Student should attend school on a reduced schedule because the Student had begun "[redacted content]."<sup>1</sup> Between October 2021 and April 2022, the Student [redacted content]. In April 2022, the Student's IEP Team decided to continue the reduced schedule but determined that the Student would attend school [redacted content]. The April 2022 IEP provides that the Student would be in a general education classroom 80% or more of the school day.

The April 2022 IEP generally notes that the Team, in October 2021, determined that the Student would benefit from a reduced schedule in an effort to "[redacted content]." However, the April 2022 IEP does not explain the sources of information on which the Team relied to determine that a reduced schedule would meet the Student's individualized needs and provide him with FAPE.

OCR reviewed the sources of information referred to by the April 2022 IEP, which include observations, standardized academic evaluations, and a psycho-educational report. The April 2022 IEP describes two observations of the Student, conducted in September 2021 and April 2022. The September 2021 observation showed that the Student generally failed to cooperate with a classroom routine and engaged in disruptive behavior such as [redacted content]. The April 2022 observation showed that the Student participated in activities in a P.E. class, though switched activities frequently and needed reminders about classroom rules. Academic

---

<sup>1</sup> OCR did not review the October 2021 IEP because it was not in effect during the 2022-23 school year. However, the April 2022 IEP, which was in effect at the outset of the 2022-23 school year summarizes the Team's placement determination.

evaluations, performed in March 2022, indicate the Student’s mathematics and reading levels were well below grade level. The April 2022 IEP also contains a psycho-educational report completed by the District’s Psychologist. The Psychologist noted that the Student may benefit from multiple interventions aimed at supporting academic progress, that the Student’s Team should “continue to explore different strategies to increase [the Student’s] participation in an academic setting, and that the Student may benefit from small-group instruction.” None of the information suggests the Student’s individualized needs would be met by a reduced schedule.

*2022-2023 School Year*

During the 2022-23 school year, the District scheduled monthly “conferences” to discuss the Student’s needs, behaviors, and the special education services the District was providing to the Student. Sometimes the District did not hold the monthly meetings because the Complainant was not available to attend.

The meeting notes from these conferences show that, during the fall 2022 semester, the District gradually expanded the number of hours the Student would attend school, but that the Student frequently [redacted content]. In late fall, the meeting notes from the monthly conferences showed that the Student had exhibited more discipline-related behavior and that the Student exhibited discipline-related behavior more often in unstructured settings. As a result, the Team members altered the Student’s schedule to replace [redacted content] and instructed the paraprofessional assigned to the Student to allow the Student to go to a resource room or the School’s [redacted content].

The District provided OCR a copy of the Student’s discipline log (Discipline Log) and a spreadsheet summarizing the contacts between District staff and the Complainant (Contact Log). The Contact Log shows that on October 4, 2022, the School’s Principal spoke with the Complainant, and they agreed that when the Student [redacted content], the Principal would call the Complainant to allow the Complainant to [redacted content].

The Logs show that between October 4, 2022, and February 22, 2023, the Student engaged in a series of incidents, mostly related to [redacted content]. The Logs show that on at least four occasions, the Student was taken to [redacted content], but appears to have remained in school and that on five occasions the Student was sent home with the Complainant or another family member. In addition, the Logs show that the Student received eight days of OSS between October 2022 and February 2023. The District asserts that on days that the Student spent time in the [redacted content] it provided all of the services in the Student’s IEP.

In January 2023, emails between the Superintendent and [redacted content]. The District represented to OCR that although it was generally aware of the proceedings it was not always involved in or informed of the nature of the proceedings.<sup>2</sup>

---

<sup>2</sup> [redacted content]

On February 22, 2023, as noted above, the Student was involved in a disciplinary incident. The District's discipline records indicate that the Student left class and was "roaming the halls," refusing to go to class. The records indicate that the School Principal was involved in a disciplinary process with another student who had been aggressive. The Student, who was friends with the other student, confronted and threatened the Principal and other School staff regarding the Principal's disciplinary process before leaving the School. The records indicate that the School called both the Complainant [redacted content].

That day, the Student's IEP Team met for the monthly conference. Notably, the meeting notes indicate that the purpose of the meeting was to "conference" and the District did not provide OCR with any documentation to indicate that prior written notice that was given to the Complainant. Further, the meeting notes do not reflect that the District conducted any sort of evaluation of the Student. The notes reflect that the Team discussed the Student's ongoing refusal to engage in schoolwork or attend class and strategies that the District had either attempted or considered in response to that refusal. The School's Counselor noted that the Student did not work with most School staff and did not want to be around other kids. The Complainant noted that when he took the Student to a psychological evaluation (to be completed by a provider outside the School), the Student left. The notes reflect that the Student, who also attended the conference, expressed an interest in transferring to another school. Although the Team discussed the possibility of [redacted content]," the Team and Student noted that the Student was not interested in attending [redacted content] and that other Districts may be reluctant to enroll the Student.

Ultimately, the Team determined at the February 22, 2023, monthly conference that the Student would begin online learning, though the records do not indicate what material the Team relied on to determine that this was the appropriate placement for the Student. The Counselor stated that she had set up classes for the Student in an online learning platform called "Edmentum." The Exceptional Student Services Director (ESS Director) for the area BOCES stated that "partial days" did not work and that the Student did not want to be in a self-contained classroom. The meeting notes indicate that the Student would attend school online, via Edmentum, with one hour of support at the District central office per day. However, the Team agreed that having the Student work online at home "is not the best long-term placement." [redacted sentence].

The Team met again on February 27, 2023. The Team noted that the Student had resisted online learning and had not completed much schoolwork since February 22. Nevertheless, the Team determined to provide the Student one hour of support services at the District central office, with an additional hour of availability provided via Zoom to answer questions. The Team noted that this is "a starting point" and that the "ultimate goal" is for the Student to return to in-person learning full time.

On March 22, 2023, the Student's Team met for a tri-annual eligibility determination meeting. The March 2023 IEP included a review of the Student's disciplinary incidents during the 2022-23 school year, described above, and a review of different evaluations and classroom observations completed between September 2021 and April 2022. The March 2023 IEP notes

that the Student's online scores in Edmentum for the most recent month were between 0 and 16%, without explanation of what these percentages mean. The March 2023 IEP also indicates that the Student had regressed academically since the April 2022 IEP had been created. The Team observed that:

[The Student] needs specialized reading, writing and math instruction as well as behavior support services in order to be successful. The team discussed that behaviors and attendance issues make it difficult for [the Student] to be within the general education classroom at this time.

The Team continued the online learning placement model with 1.5 hours per day of special education services<sup>3</sup> that would be provided at a District office. Despite the Team's observation that the Student's current level of special education services was insufficient to meet the Student's individualized needs, the Team continued the February 2023 placement that moved the Student from an in-person learning model to an online model. In making this determination, the March 2023 IEP does not indicate what, if any, sources of information the Team relied upon to determine the Student's placement. Further, as noted above, the Team did not review any evaluations or assessment completed after April 2022, almost a year before the meeting.

#### *Restriction from District Activity*

In the evening of March 22, 2023, the Student used his School Chromebook to search [redacted content] (YouTube Search). Shortly after this incident, the Superintendent emailed District staff to note that the Student was not allowed to be at the District's "Hope Center" without prior approval. The Superintendent explained that because the District operates on a four-day week, it provides activities and services, supervised by District staff but often provided by community volunteers, to students on Fridays. The Superintendent told OCR that the Student was interested in [redacted content], and that a volunteer provided opportunities related to [redacted content] at the Hope Center. The Superintendent explained that because of the Student's YouTube Search, he wanted to know if the Student would be at the Hope Center on Fridays to provide predictability and safety for District staff, volunteers, and other Students.

The District did not formally discipline the Student for the YouTube Search. In addition, the District held a manifestation determination hearing on April 17, 2023, where it determined that the Student's conduct was not a manifestation of his disability or a direct result of a District failure to implement the Student's IEP. The Superintendent represented to OCR that upon the Student's release [redacted content], towards the end of September 2023, the Student reenrolled in the District and the District planned to convene the Student's IEP Team to evaluate the Student and determine an appropriate placement for the Student. In addition, the Superintendent indicated to OCR that the District would not pursue any additional disciplinary measures for the Student's YouTube Search.

---

<sup>3</sup> The IEP indicates that the Student was to receive 1.5 hours per week; but other records, such as attendance logs, show that the Student came to the District facility each day.

OCR reviewed disciplinary records of other Students who engaged in similar behavior as the Student (conduct resulting in assault or threat of violence). Five other students without disabilities were suspended or expelled from the District when they engaged in similar conduct. Each of these students was banned from District property during the duration of the suspension or expulsion. The Principal denied that he required the Student to get permission to attend Hope Center activities because the Student had a disability or that he treated the Student less favorably than students without disabilities with similar disciplinary history.

### **Analysis and Resolution**

The District requested to resolve the complaint pursuant to Section 302 of the CPM in an October 4, 2023 email. After careful consideration of the information gathered during the investigation, OCR has determined that it is appropriate to resolve Allegations 1-3 pursuant to Section 302 and that there is insufficient evidence to support a finding that the District violated Section 504 as alleged by Allegation 4. The bases for these determinations are set forth below.

#### *Allegations 1-2*

The Complainant asserts that the District:

- changed the Student's placement when it sent him home early multiple times during the past two school years without holding a manifestation determination hearing or otherwise evaluating the Student; and
- changed his placement during the 2022-23 school year when it assigned him to one hour of school per day at the District office and the remainder of his day in an online program without holding a manifestation determination hearing or otherwise evaluating the Student.

Section 104.35(a) requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. A procedure consistent with the IDEA is one means of meeting this requirement.

Additionally, a student's disability-based behavioral needs may change over time. School districts should therefore be aware that additional evaluations may be required if, after the initial evaluation, the district has reason to believe that the student's needs are no longer being met within their current placement.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. OCR generally does not review the results of individual placement and other educational decisions as long as the district complies with the "process" requirements concerning identification, location of services, evaluation, and due process procedures.

Further, OCR has interpreted Section 104.35(a) to prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without reevaluating the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show 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 was a manifestation of 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 not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

Here, OCR has compliance concerns related to the District's adjustment of the Student's placement during the 2022-23 school years outside of a formal IEP evaluation and placement process.

The information provided by the District shows that the Student experienced frequent removal from school during the 2022-23 school year, including both formal OSS and ISS (the District asserts that it provided special education services during ISS, but does not provide information to support this assertion) and informal suspensions, where the District contacted the Complainant to pick the Student up from school. These removals exceeded ten days.

In addition, information in the Student's April 2022 IEP suggests that the Student was struggling in his current placement, both academically and with the increasing frequency of school-avoidance behavior. Information in the April 2022 IEP indicates that the Student might benefit from additional interventions or smaller group instruction. This information, coupled with the pattern of behavior during the 2022-23 school year described in this letter, suggests that the District may have had sufficient knowledge that the Student's April 2022 was not sufficient to

meet his individualized needs, particularly given his placement in a general education classroom for 80% or more of a school day.

The information gathered during the investigation to date also shows that in the face of the Student's increasing disciplinary issues, the Student's IEP Team met during a monthly conference in February 2023, and moved the Student from an in-person learning model where the Student was placed in a general education classroom at least 80% of the school day to an online learning model, where the Student received 1 hour of special education instruction at a District office per day. However, the District did not provide prior written notice of proposed changes to the Student's IEP, did not receive consent to further evaluate the Student, did not inform the Complainant or record in the conference meeting notes that it intended to utilize temporary changes in the Student's placement as a means to evaluate whether these were effective at meeting the Student's IEPs. Further, information provided at the monthly conferences, including information from District staff, [redacted content], and others indicate that online learning models did not meet the Student's individualized needs.

In addition, the March 2023 IEP that continued the online learning model did not rely on any evaluation or observation (other than a recitation of the Student's 2022-23 disciplinary issues) that had been completed since the April 2022 IEP. The information also shows that the District did not hold a manifestation determination hearing – even though the change in placement appears to largely rely on the Student's disciplinary history and operates to exclude him from any contact with peers in a general or special education classroom.

OCR has determined that these compliance concerns can be resolved with an Agreement pursuant to Section 302 of the CPM.

### *Allegation 3*

The Complainant asserts that the District failed to provide the Student with FAPE when it did not provide any special education or related services or other accommodations after it placed him in the District office/online program.

Implementation of an IEP developed in accordance with the IDEA is one means of meeting Section 504's FAPE requirements. In analyzing a claim regarding whether a school district has failed to implement a student's plan which may have resulted in a denial of FAPE, OCR will first determine whether a school district has met its FAPE obligation by considering whether it provided the services required by the IEP or Section 504 plan.

The District asserts, and provides some documentation to support, that it provided the Student with 1 hour (and later 1.5 hours) per day of special education support at a District office. Although OCR typically does not review the results of an individual placement decision, and the implementation of a validly created IEP is one means a District can provide FAPE, OCR has compliance concerns related to the District's provision of FAPE to the Student. OCR notes that the District was aware that the February 2023 IEP conference that shifted the Student to an



online learning model could not meet the Student's individualized needs. Multiple Team members, both within the District and representing the Student, noted that an online learning model was not appropriate for the Student. Further, just five days after the Student was moved from in-person learning to online learning, the Student's Team recognized that the Student had not completed any schoolwork. The March 2023 IEP Team also observed that: (1) the Student had not been successful in an online learning model; (2) had regressed academically during the 2022-23 school year; and (3) online learning was not appropriate to meet the Student's individualized needs. Finally, as noted above, the District did not evaluate the Student prior to changing his placement to an online learning model.

OCR has determined that these compliance concerns regarding the District's provision of FAPE to the Student can be resolved with an Agreement pursuant to Section 302 of the CPM.

#### *Allegation 4*

Finally, the Complainant alleged that the District treated the Student differently than non-disabled students when it barred him from District property.

To determine whether an individual has been discriminated against on the basis of disability, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the recipient provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. OCR also examines whether there was any evidence to suggest that the recipient treated the student in a manner that was inconsistent with its established policies and procedures or whether there was any other evidence of prohibited discrimination.

Under the District's disciplinary policies, which are available on the District's website at [https://www.lamarwarriors.org/615835\\_3](https://www.lamarwarriors.org/615835_3), [redacted content]. The District provided information that when a student is suspended or expelled, the notice of suspension or expulsion prohibits the student from entering any District property.

The information shows that on or about March 22, 2023, the Student used a school computer to conduct the YouTube Search [redacted content]. As a result of the Student's conduct, the District held a manifestation determination and determined that the Student's conduct was not a manifestation of his disability or a District failure to implement the Student's IEP. Despite this finding, the District did not formally discipline the Student, [redacted content]. However, the Superintendent emailed District staff to ensure that *if* the Student arrived at the District's Hope Center on a non-school day, he sought permission in advance for doing so.

The information shows that other students without disabilities who engaged in similar conduct received greater disciplinary consequences than the Student, including more severe restrictions from District property during a suspension or expulsion.

After careful consideration of all the information, OCR concludes that there is insufficient evidence to find that in requiring that the Student receive advance permission to attend the Hope Center on non-school days, the District treated the Student less favorably than students without disabilities. To the contrary, the evidence establishes that Student received less restrictive consequences. Therefore, OCR is closing Allegation 4 pursuant to Section 303(a) of OCR's CPM.

#### *Resolution Agreement*

The District signed a Resolution Agreement (Agreement) to resolve OCR's compliance concerns with respect to Allegations 1, 2, and 3, a copy of which is attached to this correspondence. The Agreement requires the District to:

- (1) provide training to District staff regarding the Section 504 Regulation's requirements related to evaluation and placement and the provision of FAPE;
- (2) develop a protocol to distribute to District staff regarding the evaluation and placement process; and
- (3) convene the Student's IEP Team to determine the appropriate placement for the Student and determine whether any of the changes in placement or alleged failure to provide FAPE, require the District to provide the Student compensatory educational services.

When fully implemented, the Agreement will resolve the compliance concerns identified in this letter. The provisions of the Agreement are aligned with the allegations and issues raised by the Complaint and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statutes and regulations.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-23-1455 and will send a letter to the District stating that the case is closed.

This letter sets forth OCR's determination in an individual case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's

formal policy statements are approved by a duly authorized OCR official and made available to the public.

Recipients of federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the District for being willing to voluntarily address the compliance concerns identified in OCR's investigation of the complaint. We appreciate the District's attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions regarding this complaint, please contact Patrick Alexander, the attorney assigned to this case, at [Patrick.Alexander@ed.gov](mailto:Patrick.Alexander@ed.gov) or 303-844-3473.

Sincerely,

Sandra J. Roesti  
Supervisory Attorney