



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

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July 11, 2017

Mr. Chris Gdowski, Superintendent
Adams County School District 12
1500 East 128th Avenue
Thornton, Colorado 80241-2602

Re: **Adams County School District 12**
OCR Case Number: 08-17-1155

Dear Superintendent Gdowski:

We write to advise you of the resolution of a complaint that was filed with the Office for Civil Rights (OCR) against Adams County School District 12 (“the District”). The complaint alleged that the District discriminated against the Student on the basis of disability and national origin. Specifically, the Complainant alleged that the District, at XXXX (“the School”), denied the Student a free appropriate public education (FAPE) by: (a) failing to conduct an evaluation of the Student in a timely manner; (b) failing to implement the Student’s Section 504 plan during XXXX on XXXX XX, 2016; and (c) failing to provide the Student with services during his exclusion from School following XXXX. The complaint also alleged that the School disciplined the Student differently based on his national origin.

We investigated the complaint pursuant to: Title VI of the Civil Rights Act of 1964 (“Title VI”), and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) part 104, which prohibit discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance; Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and its implementing regulation at 34 C.F.R. part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education (“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. As recipients of Federal financial assistance from the Department and public entities, the District and School (collectively “the Recipients”) are subject to these laws and regulations.

During the course of our investigation, we identified two additional concerns regarding the Student’s right to a FAPE. Specifically, the issues were whether the School changed the Student’s education placement: (a) without the decision being made by a group of persons knowledgeable about the Student, the evaluation data, and the placement options; and (b) without conducting a manifestation determination. These matters are described in further detail below.

Also during the course of our investigation – before interviews were conducted and additional data were requested – the Recipients indicated their desire to voluntarily enter into an agreement to resolve the Complainant’s allegations pursuant to Section 302 of our *Case Processing Manual* (CPM). We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation of the following issues:

- Whether the School failed to implement the Student’s Section 504 plan during XXXX on XXXX XX, 2016;
- Whether the School failed to follow the Student’s Section 504 plan and then his IEP during his exclusion from the School; and
- Whether the School disciplined the Student differently based on the Student’s national origin.

However, according to Section 302 of our CPM, “Where OCR has obtained sufficient evidence to support a finding under CPM subsection 303(a) (insufficient evidence) or CPM subsection 303(b) (violation) with regard to any allegation(s), OCR will not resolve the allegation(s) pursuant to CPM Section 302, but will proceed in accordance with the appropriate provisions set forth in CPM Section 303.” In this case, OCR obtained a preponderance of evidence to find violations with respect to the remaining issues:

- Whether the School failed to evaluate the Student in a timely manner;
- Whether the School failed to make placement decisions for the Student using a group of persons knowledgeable about the student, the evaluation data, and the placement options; and
- Whether the School failed to conduct a manifestation determination before changing the Student’s placement.

The School voluntarily entered into a resolution agreement to resolve all six of the aforementioned issues. This letter details the applicable legal standards, the evidence obtained thus far by OCR, and the reasons for our conclusions. A signed copy of the agreement is enclosed with this letter.

I. Investigation

Our investigation focused on obtaining the evidence necessary to determine whether the Recipients complied with the legal standards established in Title VI, Section 504, and Title II; or whether the Recipients engaged in national origin and disability discrimination as alleged. Specifically, our investigation consisted of interviewing the Complainant and reviewing extensive documents submitted by the Complainant, the District, and the School.

II. Evidentiary Standard

OCR applies a preponderance of the evidence standard to determine whether evidence is sufficient to support a particular conclusion. Specifically, OCR examines evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion as alleged.

III. Basic Facts

The School X – remainder of sentence redacted – X.¹ The School is X – remainder of sentence redacted – X.² The Student is X –remainder of sentence redacted – X.

In XXXX, the Student was admitted to the School. He started at the School as a kindergarten student at the beginning of the XXXX-XXXX school year. During the XXXX-XXXX school year, the Student was in XXXX grade at the School.

IV. 302 Agreement

After receiving the Recipients’ request for a Section 302 agreement, we determined that it was appropriate to enter into such an agreement without completing a full investigation of the three issues in this section. Presently, we do not possess sufficient evidence to make investigative determinations – *i.e.*, an “insufficient evidence determination” or a “non-compliance determination” per Section 303(a) or Section 303(b), respectively, of our CPM – regarding implementation of the Student’s Section 504 plan, the provision of educational services to the Student during his exclusion from School, or the different treatment of the Student in the administration of discipline.

a. Implementation of Section 504 Plan

i. Legal Standard

The Section 504 regulations, at 34 C.F.R. Section 104.33, require school districts to provide a 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 Sections 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of a Section 504 plan, developed in accordance with the procedural requirements cited above, is one means of meeting the FAPE requirement. OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

¹ X – sentence redacted – X.

² X – sentence redacted – X.

ii. Evidence

The Complainant alleges that, XXXX, the School failed to provide the Student with access to XXXX. The Section 504 plan in place for the Student at the time of the XXXX provided the Student with the following accommodations:

- “X – accommodation redacted – X”

The District asserted to OCR that XXXX attempted to support the Student during XXXX.

iii. Analysis

Additional investigation would be necessary for OCR to make findings with respect to this allegation. Based on the evidence we have obtained thus far, we cannot determine, by a preponderance of the evidence: (a) what the Student’s Section 504 team meant by “XXXX;” or (b) whether the Student had access to XXXX during XXXX.

b. Services During Exclusion from School

i. Legal Standard

As described in Section IV(a)(i) above, the Section 504 regulations, at 34 C.F.R. Section 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions; and OCR interprets the Title II regulations, at 28 C.F.R. Sections 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

ii. Evidence

On XXXX XX, 2016, the Student’s exclusion from the School began with a XXXX-day out-of-school suspension (OSS). On XXXX XX, 2016, after the end of the OSS, the School’s Executive Director gave the Student’s father only two options: (a) keep the Student at home to “explore other schools;” or (b) agree to a highly restrictive, shortened schedule at the School. The notes from the meeting read:

Student’s father: “Take him home and step away to think about this. Option to keep him here, no recess, no lunch, pick up at 1, etc...? Or keep him home to explore other schools.”

Executive Director: “Yes those are the two options ... If he returns his initial schedule would be: 8am searched pockets, backpack in front office, go to writing, math, no specials, no lunch, no recess, gets picked up until reading 12:30-1:30 and then picked up for the day. ... Other option is for you to choose to keep him home while we explore other options for public and private. ... Hope to have another meeting this week with options for other programs that could better support his social and emotional needs. While we want to walk hand in hand with you to find the right fit we cannot pay for private if that is the choice.”

At a meeting on XXXX XX, 2016, the Student’s father chose to have the Student stay at home.³ The Student’s parents also signed a request for an IEP and provided written consent for the School to conduct an evaluation for the Student.

From XXXX XX, 2016 to XXXX XX, 2016, the Student’s father and the Executive Director exchanged emails about setting up homebound services for the Student. For example:

- On XXXX XX, 2016, the Student’s father emailed the Executive Director (with the subject, “teacher at home for [the Student]”): “Any update on this issue? When and how we will get [a teacher] to help [the Student]?”
- On XXXX XX, 2016, the Student’s father emailed the Executive Director: “Now that [the planned teacher] is not able to help with [the Student]’s home bound teaching, do we have an alternative? ... hopefully we get a teacher to help soon.”
- On XXXX XX, 2016, the Executive Director emailed the Student’s father: “[A homebound teacher] has agreed to provide the 4 hours per week of instruction for [the Student]. ... [The School] will cover 4 hours of [the homebound teacher]’s time per week and [the Student’s parents] are welcome to discuss additional time with [the homebound teacher] should you desire it.”
- On XXXX XX, 2016, the Student’s father emailed the Executive Director: “Since there has been no official plan in writing since XXXX XX, we are concerned that [the Student]’s educational rights have been violated.”
- On XXXX XX, 2016, the Student’s father submitted application for homebound services.
- On XXXX XX, 2016, the Executive Director emailed the Student’s father and the homebound teacher: “We are good to proceed with the four hours of instruction and support for [the Student].”

The homebound services finally started on XXXX XX, 2016. Invoices from the homebound teacher show that two hours of tutoring services were provided to the Student on November

³ According to the Complainant, the Student’s father chose to keep the Student out of school because the School threatened to involve law enforcement if the Student exhibited any further misbehavior.

XXnd, XXrd, XXth, and XXth; and on December XXth, XXth, XXth, XXth, and XXth – for a total of 18 hours. The Student’s father reports that the services ended in XXXX 2016.

On XXXX XX, 2016, the Student was found eligible under the Individuals with Disabilities Education Act (IDEA) and a team created an IEP for the Student.

In short, the Student did not receive any educational services for approximately one month (XXXX XX, 2016 and XXXX XX, 2016). Then, for the remaining six weeks or so of his exclusion from school, the Student received 18 hours of educational services.

iii. Analysis

Section 504 has no explicit provision stating that districts must provide FAPE to students with disabilities who are suspended or expelled.⁴ Additionally, except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the district or school complies with the procedural requirements of Section 504 relating to identification, evaluation, placement, and due process. Such matters may be resolved through a due process hearing.

Additional investigation would be necessary for OCR to make findings with respect to this allegation. Based on the evidence we have obtained thus far, we cannot determine, by a preponderance of the evidence: (a) what educational services, if any, the Section 504 team agreed to provide or was required to provide to the Student during his exclusion from School from XXXX XX, 2016 to XXXX XX, 2016; (b) what educational services, if any, the IEP team agreed to provide the Student during his exclusion from School from XXXX XX, 2016 to XXXX XX, 2017. We can, however, make compliance determinations with respect to procedural requirements of Section 504 – see Sections V(b) and V(c) below.

c. Different Treatment in Discipline

i. Legal Standard

Under the Title VI regulations at 34 C.F.R. Section 100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin: deny an individual any service or other benefit; restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or other benefit; or deny an individual an opportunity to participate, or afford an opportunity to participate which is different from that afforded others.

To determine whether a student has been discriminated against on the basis of race, color, or national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races, colors, or national origins under similar circumstances, and whether the treatment has resulted the denial or limitation of services,

⁴ OCR does not enforce the IDEA, which does contain such a provision.

benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race, color, or national origin.

ii. Evidence

X – paragraph redacted – X.

X – paragraph redacted – X.

OCR requested from the School “all discipline records for all other students at the School since XXXX XX, 2015.” According to the records provided by the School, there were two other incidents of direct threats to kill made by students at the School. X – sentences redacted – X.

The records provided by the School to OCR also show two incidents involving indirect threats to kill by students. X – sentences redacted – X.

iii. Analysis

Additional investigation would be necessary for OCR to make findings with respect to this allegation. For example, we would need to know the national origin of the other students involved in the death threats described above, and what, if any, mitigating or aggravating factors were considered in meting out their punishments. Based on the evidence thus far, we cannot determine, by a preponderance of the evidence, whether the Student was disciplined differently on the basis of race, color, or national origin in violation of Title VI.

V. Non-Compliance Determinations

In the course of our investigation, we obtained sufficient evidence to make non-compliance determinations regarding evaluation and placement of the Student.

a. Evaluation

i. Legal Standard

The Section 504 regulations, at 34 C.F.R. Section 104.35(a), require 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. Section 504 contains a “child find” requirement; that is, it requires districts to annually “undertake to identify and locate every qualified [individual with a disability] residing in [the district's] jurisdiction who is not receiving a public education.”⁵ Because “child find” is an affirmative duty, a district's obligation

⁵ 34 C.F.R. Section 104.32(a).

to evaluate may be triggered even if the parent does not request an evaluation. The district's independent suspicions may trigger the duty.

A student's behavioral challenges could be a sign that the student has a disability and needs special education and related services.⁶ When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause a teacher or other school personnel to believe or suspect that the student has a disability (*i.e.*, to suspect that the behavior is caused by or related to a disability), the district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. A student who experiences behavioral challenges in school may have a disability, even if the behavioral challenges are not accompanied by academic challenges. Some students, due to an as yet unidentified disability, may engage in behaviors that do not conform to school conduct codes because they are not receiving needed educational services, including services to address the student's needs related to his or her behavior. Evidence that the student's behavior is out of the expected range of behaviors of students that age could trigger a school district's obligation to evaluate that student for a disability and need for special education and related services.

ii. Evidence

Extensive records provided by the Recipients to OCR show that the School knew that the Student needed or was believed to need special education or related aids and services because of XXXX for approximately five years.

1. Notice

a. Evaluation for Specific Learning Disability (2011)

The School first became aware that the Student may have XXXX before he even started at the School during the XXXX-XXXX school year. On a "Student Health Inventory" form, the Student's parent X – sentence redacted – X. The Student's "Cumulative School Health Record" from XXXX lists X – sentence redacted – X. On XXXX XX, 2011, the Student's parent signed a consent form for the School to obtain the Student's psychiatric records from his doctor. On XXXX XX, 2011, the Student's parents requested "a comprehensive evaluation to determine whether [their] child needs special education services, and, if so, what services are required."

In response to the Student's parents' request, the School initiated the evaluation process. In XXXX 2011, the Student's parent signed consent for evaluation. The prior written notice and consent for evaluation reads, in part: "X – sentence redacted – X." On XXXX XX, 2011, the Student's doctor faxed a medication form to the School. The form noted the Student's XXXX and XXXX. On XXXX XX, 2011, the Student was evaluated. On XXXX XX, 2011, the School held an eligibility meeting for the Student. The records from the meeting indicate:

- "X – paragraph redacted – X."

⁶ See 34 C.F.R. Section 104.3(j).

- “X – paragraph redacted – X.”
- “X – paragraph redacted – X.”
- “X – paragraph redacted – X.”

Nevertheless, the prior written notice for the meeting reads: “The student did not fall within the State guidelines for a disability.”⁷ The records from the meeting also read: “Although [the Student] has significant problems at school, the special education team feels that his behavior can be addressed through a behavior intervention plan that is followed at home and school.”

Evidence suggests that the evaluation in 2011 was designed to determine if the Student had a XXXX, and was not an evaluation for XXXX. In a meeting on XXXX XX, 2016, the Executive Director told the Student’s parents, about the process in 2011, “We did evaluate for IEP and he did not qualify under XXXX.” Additionally, the Student’s parents report that the eligibility determination was made only with respect to a XXXX.

b. Communications from Medical Providers (2013)

Information sent from the Student’s medical providers to the School in 2013 indicated that the Student needed or was believed to need special education or related aids and services for XXXX. For instance, on XXXX XXX, 2013, the Student’s doctor faxed a medication form to the School. X – sentence redacted – X.

Then, on XXXX XX, 2013, XXXX faxed records to the School in response to a request from a staff member at the School. The records indicated that the Student had been diagnosed with XXXX and XXXX, and had been admitted to XXXX. The records read, in relevant part:

- “X – paragraph redacted – X.”
- “X – paragraph redacted – X.”
- “X – paragraph redacted – X.”

Yet, the School did not evaluate the Student. The Student’s father reported, “Each time we [requested an evaluation] we were told [the Student is] not eligible because of good grades and the school is doing everything that they can anyway.”

c. Section 504 Plan (2015)

In a letter dated XXXX XX, 2015, the Student’s private psychiatrist wrote to the School:

X – paragraph redacted – X.

⁷ The Complainant reported that the School used a standard that a student must be two years below grade level in order to have an IEP. The Student’s father reported that the School said the Student’s grades were too good to have an IEP.

On XXXX XX, 2015, the School held a Section 504 meeting at which the Student was found eligible for a Section 504 plan. The “Primary Disability” was listed as XXXX” on the School’s checklist. The box for “XXXX” concerns was checked on the “Section 504 Referral Form.” A “Section 504 Accommodation Plan,” dated XXXX XX, 2015, lists the Student’s “Disability Description” as “XXXX.”

d. Discipline Records (2011 to 2016)

Discipline records provided by the School to OCR show that the Student had long-lasting, frequent behavioral challenges that were a sign that he had or might have had a disability and needed special education and related services. For example:

- X – paragraph redacted – X.

e. XXXX 2016

On XXXX XX, 2016, during a X – sentence redacted – X. The School immediately issued a XXXX to the Student, and ordered him to undergo a threat assessment. On XXXX XX, 2016, the School conducted a threat assessment of the Student. The assessment noted:

X – paragraph redacted – X.

Additionally, the assessors checked boxes throughout the form noting a history of behavioral and emotional concerns for the Student. The assessors concluded, “X – sentence redacted – X.”

On XXXX XX, 2016, the Student’s father emailed the Executive Director:

[The Student] has a history of behavioral problems since preschool. X – sentences redacted – X.

f. Other Evidence

X – section redacted – X.

2. Evaluation (XXXX to XXXX 2016)

On XXXX XX, 2016, the School initiated the process to evaluate the Student for XXXX. The Executive Director told the Student’s parents, “We did evaluate for IEP and he did not qualify under XXXX ... We believe that with an XXXX diagnosis he may qualify.” The Student’s father signed a request for an IEP and a consent form for the School to evaluate the Student. The School completed the evaluation of the Student between XXXX XX, 2016 and XXXX XX, 2016.

3. Eligibility Determination (XXXX 2016)

On XXXX XX, 2016, the School convened an IEP team meeting for the Student. The team found the Student eligible under XXXX and developed an IEP for him. The IEP reads:

X – paragraph redacted – X.

iii. Analysis

Again, the Section 504 regulations, at 34 C.F.R. Section 104.35(a), require 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. The Student has attended the School since XXXX 2011. The first time the School evaluated the Student for XXXX was XXXX 2016 – after the School changed the Student’s placement (see Section V(b) below).⁸ In the over five years in between, the Student’s behaviors, as well as communications from the Student’s parents and medical and mental health providers, put the School on notice that the Student needed or was believed to need special education or related aids and services because of a disability. Moreover, School staff demonstrated their suspicions by, for example: (a) XXXX; and (b) XXXX.

⁸ Even if the XXXX 2015 Section 504 meeting could have been considered an evaluation, the School failed to re-evaluate between XXXX 2015 and XXXX 2016, despite ample evidence of a need for re-evaluation.

Comments by School staff in XXXX and XXXX 2016 may explain why, at least in part, the School failed to evaluate the Student for XXXX. On XXXX XX, 2016, the Student's parents met with staff at the School. During the meeting, the Executive Director said, "Our resources are not enough. . . . We can only provide options not resources." The Counselor said, "[W]e have not been able to help. This is not working."

Then, on XXXX XX, 2016, the Student's parents again met with School staff. The Executive Director told the Student's parents:

- "At this point [the Student] needs other help as none of us are meeting his needs;"
- "IEPs are usually for learning disabilities and academic disabilities. Historically we have not had the resources to provide services for [XXXX] IEP. The few [XXXX] IEP's we have had the students received the support from the district;"
- "Districts have the resources to take care of academics as well as social emotional;" and
- The School does "not have the ability to service these disabilities."

Finally, on XXXX XX, 2016, the Executive Director emailed the Student's father: "During our XXXX XX meeting, we were all in agreement that [the Student] could not receive an appropriate education in our school's program due to his immediate need for affective support."

In short, the School failed to evaluate the Student – who needed or was believed to need special education or related aids and services for XXXX – in a timely manner. Comments by the Executive Director imply that the Student was not evaluated for XXX because the School believed it could not or would not serve students with XXXX.

b. Placement

i. Legal Standard

The Section 504 regulations, at 34 C.F.R. Section 104.35(c), require that placement decisions 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.

ii. Evidence

On XXXX XX, 2016, the Executive Director wrote a schedule for the Student that read:

This is in effect indefinitely until [the School] Administration deems behavior appropriate to return as a full time student. Parent will be responsible for pickup during lunch/recess and return during Reading. Student will be exempt from

Theme and must be picked up from school at XXXX on full days and XXXX on early release. Student is not to be on campus outside of this schedule.

Pursuant to the schedule, the Student would only be allowed at School for four and a half hours per full school day, while the regular full school day for other students was eight hours and five minutes; and for three hours per early release school day, while the regular early release school day for other students was five hours and 35 minutes.⁹

Then, on XXXX XX, 2016, the Student's parents met with staff at the School. The Executive Director gave the Student's father only two options. The first option was to keep the Student at home (with no time at School) while they explored other schools for the Student.¹⁰ The second option was to send the Student back to the School with the following daily conditions: (a) allow searches of his pockets and backpack at 8:00 a.m.; (b) go to two classes – XXXX and XXXX – in the morning; (c) be picked up by a parent and then brought back to school for reading from XXXX p.m. to XXXX p.m.; (d) no specials (*i.e.*, elective classes); (e) no lunch; and (f) no recess.¹¹ The Student's father chose the latter option.

Next, on XXXX XX, 2016, the Student's father emailed the Executive Director, "As you know, [the Student] has access only to minimal educational services this time. Because of this, we would like [the Student] to return to school following a re-entry meeting." The Executive Director replied the following day, "During our XXXX XX meeting, we were all in agreement that [the Student] could not receive an appropriate education in our school's program due to his immediate need for XXXX support."

Finally, on XXXX XX, 2016, after the Student was found eligible for an IEP, the Counselor, Executive Director, SRO, and an assistant principal created a "Reentry Plan with Schedule" for the Student. The Student's parents were not involved. The Plan involved: X – remainder of paragraph redacted – X.

iii. Analysis

The evidence shows that the Executive Director – and not a group of persons as required by Section 504 – changed the Student's placement on XXXX XX, 2016, even though the Student had a Section 504 plan at the time. The evidence further shows that, at the XXXX XX, 2016 meeting, when the Student had a Section 504 plan, the Executive Director again unilaterally eliminated all placement options except two very restrictive options. On XXXX XX, 2016, while the Student had a Section 504 plan, the Executive Director unilaterally decided to keep the Student out of school. Finally, on XXXX XX, 2016, after the Student was found eligible for an IEP and an IEP was developed for him, School staff made placement decisions for the Student without involving his parents. Therefore, the School made placement decisions for the Student without the decision being made by a group of persons knowledgeable about the student, the evaluation data, and the placement options.

⁹ X – citation redacted – X.

¹⁰ Notably, the Executive Director also told the Student's father, "While we want to walk hand in hand with you to find the right fit we cannot pay for private [placement] if that is the choice."

¹¹ Notes from the meeting provided by the School to OCR.

c. Manifestation Determination

i. Legal Standard

The exclusion of a student with a disability from his program or school for more than ten consecutive days in a school year, 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. The manifestation determination requirement applies regardless of whether a student has an IEP or Section 504 plan, if the school has a basis of knowledge that the student is a child with a disability.

ii. Evidence

According to records provided by the School to OCR, the School issued the Student a XXXX OSS as punishment for his behavior during XXXX. After the short-term suspension ended, the Student's father voluntarily kept the Student out of school for the following six weeks.¹² However, on XXXX XX, 2016, the Student's father emailed the Executive Director, "As you know, [the Student] has access only to minimal educational services this time. Because of this, we like [the Student] to return to school following a re-entry meeting." The Executive Director replied on XXXX XX, 2016: "During our XXXX XX meeting, we were all in agreement that [the Student] could not receive an appropriate education in our school's program due to his immediate need for affective support." The Student returned to the School on XXXX XX, 2017.

iii. Analysis

On XXXX XX, 2016, the Executive Director effectively excluded the Student from the School. The Student was then not allowed to return to School until the beginning of the spring semester (XXXX XX, 2017). Thus, the Executive Director excluded the Student well over ten consecutive school days, which amounts to a significant change in placement. However, the School did not conduct a manifestation determination as required by Section 504.

VI. Conclusion

We find, by a preponderance of the evidence, that the School discriminated against the Student by denying him FAPE, and thereby violated Section 504 and Title II. Specifically, the School:

- Failed to evaluate the Student in a timely manner;

¹² Again, according to the Complainant, the Student's father chose to keep the Student out of school because the School threatened to involve law enforcement if the Student exhibited any further misbehavior.

- Made unilateral placement decisions for the Student rather than a group of people knowledgeable about the Student as required by Section 504; and
- Failed to conduct a manifestation determination before significantly changing the Student's placement.

During our investigation, and before interviews were conducted and additional data were requested, the Recipients indicated their desire to voluntarily enter into an agreement to resolve all of the Complainant's allegations pursuant to Section 302 of our *Case Processing Manual* (CPM). We reviewed this request and determined that it was appropriate to enter into an agreement without completing a full investigation of the remaining issues:

- Whether the School failed to implement the Student's Section 504 plan during XXXX on XXXX XX, 2016;
- Whether the School failed to follow the Student's Section 504 plan and then his IEP during his exclusion from the School; and
- Whether the School disciplined the Student differently than other students on the basis of national origin.

We thank the Recipients for voluntarily entering into an agreement with OCR to resolve these issues. OCR is closing the investigative phase of this case effective the date of this letter.

The case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the Recipients demonstrating that the terms of the Agreement have been fulfilled. We will provide the Recipients with written notice of any deficiencies regarding implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. The monitoring phase will be completed when OCR determines that the Recipients have fulfilled all of the terms of the Agreement. When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Title VI, Section 504, Title II, and their implementing regulations. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the Recipients, copied to the Complainant, stating that this case is closed. If the Recipients fail to implement the Agreement, we will take appropriate action, as described in the Agreement.

This letter addresses only the issues listed previously and should not be interpreted as a determination of the Recipients' compliance or noncompliance with Title VI, Title II, Section 504, or any other federal law in any other respect.

This letter is a letter of findings and a resolution letter issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Individuals filing a complaint or participating in our resolution process are protected from retaliation by Federal law. Please be advised that neither the District nor the School may harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual may file another complaint alleging such treatment.

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, personal information, which if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions, please contact Jason Langberg, the attorney assigned to the case, at XXXX or XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Supervisory General Attorney

Enclosure: Resolution Agreement

cc (with enclosure): XXXX, the School's Executive Director (via mail)
Walt Kramarz, the District's Attorney (via email)
XXXX, the School's Attorney (via email)

cc (without enclosure): Kathy Anthes, Colorado Commissioner of Education