

RESOLUTION AGREEMENT

McKinney Independent School District (MISD) OCR Complaint No. 06-15-1700

The U.S. Department of Education, Office for Civil Rights (OCR) and the McKinney Independent School District (MISD or District) enter into this agreement to resolve the allegations in the above-referenced complaint. This agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures OCR that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

Prior to the completion of OCR's investigation, the District agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to resolve the issues of this investigation, the District agrees to take the following actions.

TRAINING

Action Item 1

By **April 20, 2018**, the MISD will provide training, by a qualified individual,¹ to the Section 504/Title II Director(s) Coordinator(s), administrators, teachers, and aides responsible for implementing and/or ensuring compliance with Section 504² at the XXXX XXXX XXXX XXXX (XXXX). The training shall address, at a minimum:

- (a) The MISD's policies and procedures for carrying out its responsibilities under Section 504 and Title II to provide a free appropriate public education (FAPE) to each qualified disabled person who is within the MISD's jurisdiction, regardless of the nature or severity of the person's disability;
- (b) The MISD's obligation to conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services before (1) taking any action with respect to the initial placement of the student in regular or special education and (2) any subsequent significant change in the student's placement, consistent with the Section 504 regulations, at 34 C.F.R. § 104.35;
- (c) The MISD staff members' obligation to fully implement any Section 504 Plan that has been developed for a qualified student with a disability; and
- (d) The MISD's obligation to effectively notify parents of (1) placement decisions, including reevaluations, and (2) the MISD's system of procedural safeguards, in accordance with the Section 504 regulations, at 34 C.F.R. § 104.36.

¹ A person knowledgeable about the laws and issues pertaining to the identification, evaluation and placement of students who are, or are believed to be, disabled.

² The Agreement uses Section 504 in some places for brevity purposes; however, the Title II regulatory requirements are equally applicable.

Reporting Requirement

By **April 27, 2018**, the MISD will provide documentation to OCR evidencing that the training required by Action Item 1 has been completed, including: copies of the materials the MISD used at the training session(s)(e.g., PowerPoint presentation, materials disseminated during the training, etc.); the name(s) and credentials of the individual(s) who conducted the training session(s); the names of all individuals who attended the training session(s); and the date(s) and time(s) the training session(s) occurred.

Action Item 2

By **April 20, 2018**, the MISD will provide training, by a qualified individual,³ for administrators, faculty, and staff at the XXXX regarding the Section 504 and Title II prohibitions of different treatment on the basis of disability in the area of discipline.

Reporting Requirements

By **April 27, 2018**, the MISD will provide documentation to OCR evidencing that the training required by Action Item 2 has been completed, including: copies of the materials the MISD used at the training session(s)(e.g., PowerPoint presentation, materials disseminated during the training, etc.); the name(s) and credentials of the individual(s) who conducted the training session(s); the names of all individuals who attended the training session(s); and the date(s) and time(s) the training session(s) occurred.

Action Item 3

By **April 20, 2018**, the MISD will provide training, by a qualified individual,⁴ to all administrators, faculty, and staff at the XXXX, regarding prohibitions against retaliation by the MISD against individuals for opposing an act or policy that is unlawful under any of the laws that OCR enforces or otherwise asserting rights protected by the laws that OCR enforces, including, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. The training will include examples of adverse actions, including but not limited to actions that relate to the XXXX XXXX.

Reporting Requirement

By **April 27, 2017**, the MISD will provide documentation to OCR evidencing that the training required by Action Item 3 has been completed, including the identity of the individual conducting the training and the individual's qualifications, along with a copy of the materials or a summary of the material covered in such training and sign-in sheets or other documentation showing who attended the training.

³³ A person knowledgeable about the laws and issues pertaining to the prohibition of discrimination based on disability, including the prohibition against different treatment, contained within Section 504 and Title II.

⁴ A person who is knowledgeable about the issues pertaining to the prohibitions against retaliation pursuant to Title Section 504 and Title II.

MEMORANDUM

Action Item 4

By **April 20, 2017**, the MISD will disseminate a memorandum (this memorandum can be sent electronically) to all staff and administrators at the XXXX reminding staff and administrators the following things:

- (a) Students shall be disciplined in a manner consistent with disciplinary policies and procedures of the MISD and XXXX, and commensurate with their culpability;
- (b) Where to locate the MISD and the XXXX policies and procedures concerning student discipline;
- (c) The implementing regulations for Section 504 at 34 C.F.R. § 104.61, and Title II at 28 C.F.R. § 35.134, prohibit retaliation;
- (d) The MISD's policies and procedures concerning retaliation and complaints of retaliation;
- (e) A recipient may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed an OCR complaint or participated in the OCR complaint resolution process;
- (f) A recipient may not harass, coerce, intimidate, or discriminate against any individual because the individual opposed in a reasonable manner any practice made unlawful by a statute that OCR enforces, including Section 504 and Title II, and including when an individual asserts his or her own rights under the statute; and
- (g) In addition to those who exercise their own rights and privileges, an individual who advocates on behalf of others or encourages others to exercise their rights and privileges is protected, even if the individual is not in the position to exercise those same rights and privileges.

Reporting Requirement

By **April 27, 2017**, the MISD will provide OCR with a copy of the memorandum sent to all administrators and staff, as set forth in Action Item 4, including a list of recipients of the memorandum and the MISD's method of distribution.

INDIVIDUAL STUDENT

Action Item 5

By **March 16, 2018**, if the Student attends school within the District, after providing written notice to the Student's parent(s)/guardian(s), a group of knowledgeable persons, including the Student's parent(s)/guardian(s) will conduct a Section 504 placement meeting to determine the individual needs of the Student pursuant to Section 504, at 34 C.F.R. § 104.35. The group of knowledgeable persons will:

- (a) Assess and determine the Student's needs on an individualized basis;
- (b) Determine which regular or special education aids and related services should be provided to the Student and in what educational setting;

- (c) Make placement decisions in compliance with 34 C.F.R. § 104.33-35;
- (d) Notify the Complainant in writing (via certified mail, return receipt requested) of the MISD's determinations made pursuant to this Action Item and provide the Complainant notice of the MISD's system of procedural safeguards, including the right to challenge the group's determination through an impartial due process hearing;
- (e) Determine whether the Student needs compensatory and/or remedial services as a result of:
(1) a failure to provide appropriate regular and/or special education or related services during the XXXX school year and (2) any educational loss suffered by the Student due to the MISD's alleged in-school and out-of-school suspensions of the Student during the XXXX school year; and
- (f) If the group of knowledgeable persons determines that the Student needs compensatory and/or remedial services, within 1 week of its determination, the group will develop a plan for providing timely compensatory and/or remedial services, including a timeline for completion.

If the Student no longer attends school within the District, the MISD will formally notify the Complainant in writing that if the Student reenrolls in the District the MISD will conduct a Section 504 placement meeting to determine the individual needs of the Student pursuant to Section 504, at 34 C.F.R. § 104.35, including specifically the actions indicated above (i.e., Action Item subpart 4(a) through Action Item subpart 4(f)).

Reporting Requirement

If the Student attends school within the District, **Within 2 weeks** of the decisions of the group of knowledgeable persons concerning the Student's placement, which regular or special education aids and related services should be provided to the Student in the educational setting, and whether compensatory and/or remedial services are needed, the MISD will provide OCR with all documents pertaining to the Section 504 meeting and decisions, documentation showing the participants in the meeting, the information considered, any determinations made, meeting minutes or notes including an explanation for decisions made, and a description of and schedule for providing any compensatory and/or remedial services (if any) to the Student. If the Student no longer attends school within the District, **Within 2 weeks** of providing the formal notification to the Complainant, indicated within Action Item 5, the MISD will provide OCR with a copy of the formal written notification, documentation demonstrating that it has been provided to the Complainant, and any other relevant supporting documentation which demonstrates completion of the requirements outlined under Action Item 5.

Action Item 6

By **March 16, 2018**, the MISD will review the Student's discipline record pertaining to (1) in-school suspensions received by the Student during the XXXX school year; (2) out-of-school suspensions received by the Student during the XXXX school year; (3) any notations and/or documentation of the MISD's contemplation of the Student XXXX XXXX XXXX XXXX on the basis of the aforementioned discipline. The MISD will review the basis for the Student's receipt and/or consideration for the above indicated discipline. The MISD will review all

information contained within the Student’s disciplinary records and other supporting information necessary to assess the basis for the MISD’s disciplinary determinations. As part of the review, the MISD will assess and determine:

- (a) Whether all disciplinary actions/considerations concerning the Student are consistent with disciplinary policies and procedures of the MISD and XXXX, and commensurate with the Student’s culpability;
- (b) Whether all disciplinary actions/considerations concerning the Student are consistent with disciplinary determinations/considerations concerning other students;
- (c) Whether any disciplinary actions/considerations were a result of, based on, or motivated by the Student’s disabilities; and
- (d) Whether any disciplinary actions/considerations were a result of, based on, or motivated by the Complainant filing a XXXX XXXX XXXX XXXX with OCR, or otherwise were retaliation prohibited pursuant to Section 504 at 34 C.F.R. § 104.61, and Title II at 28 C.F.R. § 35.134.

If the MISD determines that each of the disciplinary actions/considerations was warranted, the MISD will provide OCR with a narrative, explaining the basis of this determination. If the MISD determines that any/all of the disciplinary actions/considerations were not warranted and/or not consistent with disciplinary policies and procedures of the MISD and XXXX, and commensurate with the Student’s culpability, the MISD will expunge the Student’s discipline record pertaining to the respective disciplinary actions/considerations. Within two weeks of expunging the Student’s discipline record, the MISD will provide the Complainant with a copy of the Student’s discipline record (this may be done electronically) showing that the discipline record has been expunged.

Reporting Requirement

By **March 30, 2018**, the MISD will provide OCR a copy of: (1) a narrative, explaining the basis for any determination by the MISD that the disciplinary actions/considerations were warranted if applicable; (2) the Student’s discipline record concerning the actions set forth in Action Item 6, demonstrating that they have been expunged, if applicable pursuant to the requirements of Action Item 6; and (3) any documentation that the MISD provided to the Complainant concerning the Student’s discipline record being expunged, if applicable.

The District understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff, and request such additional reports or data, as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4, 104.33, and 104.61 and Title II, at 28 C.F.R. §§ 35.130 and 35.134. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to

enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the District's representative below.

Dr. Rick McDaniel, Superintendent (or designee)
McKinney Independent School District

Date