

RESOLUTION AGREEMENT
Albuquerque Public Schools
Case number 08-10-1106

To resolve concerns identified by the U.S. Department of Education, Office for Civil Rights (OCR) during investigation of this complaint under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and their implementing regulations at 34 Code of Federal Regulations (C.F.R) Part 104 and 28 C.F.R. Part 35, respectively, Albuquerque Public Schools (District) agrees to the following actions:

1. The District will submit for OCR's review and approval draft revised policies and procedures regarding the provision of reasonable accommodations for employees with disabilities to ensure compliance with 34 C.F.R. § 104.12 and 28 C.F.R. § 35.140. The policies and procedures will be in writing and, at minimum, address the following:
 - a. Statements acknowledging:
 - i. the District's obligation under the regulations implementing Section 504 and Title II to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee with a disability, unless the District can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity; and
 - ii. *reasonable accommodation* means modifications or adjustments to a job application process, the work environment, the way in which a job is customarily performed, or employment policies that enable a qualified individual with a disability to be considered for the position, perform the essential functions of the job, or enjoy benefits and privileges of employment equal to those available to a similarly-situated employee without a disability;
 - b. How an employee with a disability may request a reasonable accommodation;
 - c. The type of documentation an employee must provide to demonstrate that the employee has a disability and needs a reasonable accommodation, and how often updated documentation may be required;
 - d. A description of the process that will be used to determine whether and which accommodations will be provided, which will reflect an interactive process to include a trained Human Resources staff member and the requesting employee;
 - e. Assurance that the District will propose for consideration during the interactive process only accommodations that can reasonably be expected to afford the qualified individual with a disability an opportunity to enjoy benefits and privileges of employment equal to those available to a similarly-situated employee without a disability and attain the same level of job performance as co-workers with similar skills and abilities;

- f. A description of the process to be followed to resolve any impasse in the interactive process;
- g. A proscription against telling an employee to voluntarily resign or separate from APS instead of seeking a reasonable accommodation; and
- h. Safeguards, including accountability, for ensuring that all agreed-upon reasonable and necessary accommodations are implemented.

Reporting Requirement 1: Within 90 days¹ of this agreement, the District will submit draft policies and procedures in accordance with Item 1 to OCR for review and approval.

- 2. The District will modify the draft revised policies and procedures on reasonable accommodation in accordance with any concerns addressed by OCR and will submit the draft policies and procedures to OCR for review and approval. Within 60 days of obtaining OCR's approval, the District will adopt, implement, and disseminate to all employees the revised policies and procedures. Dissemination will include publication in relevant employee handbooks and notices and a permanent webpage linked from the Human Resources home page (available either to the public or restricted to employees) and every job announcement.

Reporting Requirement 2: Within 30 days of the District's adoption of revised policies and procedures, the District will provide documentation demonstrating completion of Item 2.

- 3. The District will submit for OCR's review and approval a draft outline for training on its policies and procedures prohibiting retaliation, intimidation, and harassment of people with disabilities in accordance with Section 504 and Title II. This training will include, at a minimum, a discussion of the Section 504 and Title II prohibition against retaliation, intimidation, and harassment on the basis of disability; examples of proscribed retaliation, intimidation, and harassment on the basis of disability (including a proscription against telling an employee to voluntarily resign or separate from APS instead of seeking a reasonable accommodation); and information on the recourse available to those who believe they have been subjected to retaliation, intimidation, or harassment. In addition, the District will submit the name and qualifications of the individual(s) who will provide the initial training or ensure that the training is implemented. The approved training can be completed via online modules

Reporting Requirement 3: Within 45 days of this Agreement, the District will provide OCR the draft training and identification of individual(s) to provide the initial training.

¹ All timeframes are expressed as calendar days.

4. The District will modify the draft training and selection of the trainer in accordance with any concerns addressed by OCR until OCR approves both. Within 45 days following OCR's approval or within 15 days of the beginning of School Year 2015-2016, whichever is later, and annually thereafter, the District will provide the training to all Human Resources personnel, all Equal Opportunity Services personnel, and other relevant personnel

Reporting Requirement 4: Within 15 days of the completion of the initial training, the District will provide OCR documentation establishing it has provided the initial training required by Term 4, including the dates of training, identification and qualifications of the trainer(s), a list of participants, and copies of training materials.

5. The District will prohibit its Equal Opportunity Services or Human Resources department employees from initiating a conversation or discussion with an employee about voluntarily resigning or separating from the District during the interactive process. However if an employee who is seeking accommodations and is engaged in the interactive process voluntarily requests information from Equal Opportunity Services, Human Resources or any other District employee regarding options for resigning, retiring and/or any benefits related to the same, the District may respond to such inquiries without violating this agreement.

Reporting Requirement 5: Within 45 days of this Agreement, the District will provide documentation to show that it has complied with Term 5 of the Agreement.

6. The District will review the list it provided to OCR of seven (7) current or former employees who inquired about ADA accommodations and were advised of their option to resign or retire in order determine if they are currently employed by the District. If they are currently employed, the District will further determine if the employee sought accommodation(s) and, if so, whether the District is currently providing the accommodation(s). If any of the seven (7) identified employees are no longer employed with the District, it will determine whether the employees retired or resigned contemporaneous to or within 6 months after inquiring about ADA accommodations.

Reporting Requirement 6: Within 45 days of this Agreement, the District will submit documentation to OCR detailing the current employment and accommodation status of the seven (7) employees.

7. After OCR concurs that the District has correctly identified any of the seven (7) individuals, the District will send a copy of the policies approved according to Term 1 of this Agreement to any of the seven (7) employees it identifies as no longer employed by the District alerting them to the change in its policy and asking them to contact the District if they have any feedback, suggestions, or concerns about the new policy.

Reporting Requirement 7: Within 30 days of OCR’s concurrence that the District has correctly identified any of the seven (7) individuals as no longer employed by the District, the District will send documentation to OCR to show that it has sent copies of the policies and procedures approved according to term 1 of this Agreement to the identified former employees.

8. The District will make every reasonable effort to identify and expunge from the Complainant’s employment record all documents directly related to complaints filed by the Complainant since February 1, 2010, with any State or Federal civil rights enforcement agency or the District. The documents may be maintained in a sealed file separate from the Complainant’s employment record and held in custody by the Human Resources director or a designee. The documents will otherwise be maintained and disposed of in accordance with District policy for employment records.

Reporting Requirement 8: Within 45 days of this Agreement, the District will provide written attestation from the director of Human Resources that the records were expunged as required, including a catalogue of all documents identified under this item. District will further provide the name, title, and contact information for the individual designated to hold these records.

9. The District will designate a single employee to respond to any outside employment (paid or unpaid) or volunteer-activity inquiries with respect to the Complainant’s employment history with the District; the designated employee will be an individual not known to have participated in the events leading to or investigated in this complaint. The District will direct the designated employee to consistently offer no less than a neutral reference (for example, dates of employment, job title, certification, classification, and time in service) and will provide the designated employee with guidance on how to fulfill this duty. If the designated employee gives any additional information with respect to the Complainant’s employment history, the information will not convey negative information nor be intended to generate a negative inference. This provision does not preclude or in any way restrict the District’s rights or obligations to disclose Complainant’s employment file or related information in response to a valid employment information release, executed by Complainant, or court order. This practice will remain in place at least through June 30, 2016.

Reporting Requirement 9: Within 45 days of this Agreement, the District will provide OCR with the name, title, and contact information for the employee designated to satisfy this item, along with a copy of the directive given to the designated employee and the accompanying guidance.

The District understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 and Title II at 34 C.F.R. Part 104, and 28 C.F.R. Part 35, respectively, which were at issue in this case.

The District understands that by signing this agreement, it agrees to provide data and other 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 students, 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 and Title II at 34 C.F.R. Part 104, and 28 C.F.R. Part 35, respectively, which were at issue in 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 a minimum of sixty (60) calendar days to cure the alleged breach.

For Albuquerque Public Schools:

/s/

Superintendent

Date