

## RESOLUTION AGREEMENT

### Paradise Valley Unified School District Case Number 08-15-1087

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation into allegations that the Paradise Valley Unified School District (“District”) violated Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35. Specifically, the complainants alleged, in relevant part, that in Fall 2014, administrators at the Desert Springs Preparatory Elementary School (Desert Springs) unilaterally changed how students with IEPs would receive reading, writing, and math instruction, without meaningful opportunities for that decision to be properly considered by the students’ IEP teams; and that Desert Springs students who had IEPs were denied an equal opportunity to be taught science, social studies, and history, and have Accelerate Reader (AR) time because special education services were to be provided exclusively during those instruction periods. In the course of the investigation into the complainants’ allegations, OCR became aware of concerns regarding possible similar practices at other elementary schools in the District, as well as parental concerns that when given a choice between having their students receive resource room special education services or receive science and social studies instruction, some parents may have given up their students’ resource room special education services so they could receive science or social studies instruction.

This Agreement arose in the context of concerns regarding services provided to students with disabilities who are not in structured, self-contained classrooms or who receive services only for speech language impairment but who are students receiving special education services from a special education instructor assigned to a resource room pursuant to an IEP. Accordingly, the term “covered students” refers only to elementary students who are receiving special education services from a special education instructor assigned to a resource room pursuant to an IEP.

Prior to the completion of OCR’s investigation, the District voluntarily agreed to resolve the investigation of systemic allegations and related concerns pursuant to Section 302 of OCR’s Case Processing Manual (CPM).<sup>1</sup> This resolution has been entered into voluntarily and does not constitute a finding or admission that the District violated Section 504 or Title II and their implementing regulations.

#### **Remedies and Reporting**

- A. Parameters For Special Education Models Employed at District Elementary Schools. By August 1, 2015, the District agrees to submit to OCR for its review and approval a full set of proposed policies and procedures to ensure that all District elementary schools employ models starting in SY2015-16 for providing special education and related services that are consistent with the legal requirements of Section 504 and Title II. The parameters will, at a minimum, clarify that while each elementary school may choose its own general model for providing special education services (including models or strategies referred to as “pull-out,” “push-in,” “double-dip,” etc.), each such model must include the following protections: (1) provide the least restrictive environment appropriate to the needs of

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<sup>1</sup> The District resolved the individual allegations contained in the complaint directly with the complainants through OCR’s early complaint resolution procedures.

individual students with disabilities; (2) be sufficiently flexible and vest IEP teams with sufficient autonomy and authority, and support their decisions with sufficient budget, so IEP teams are meaningfully able to carefully consider parental input and other factors when making individualized decisions regarding how special education services will be provided to each student with a disability; and (3) generally, except where a properly constituted IEP team decides to the contrary, students with disabilities will have an equal opportunity to participate in and learn all parts of the elementary curriculum as do their nondisabled peers. Within three (3) business days of receiving OCR's approval, the District will communicate these policies and procedures to each elementary school principal and elementary school psychologist, all elementary school resource room personnel, and all parents of covered students.

Reporting: The District will provide to OCR simultaneous copies of all communications regarding OCR-approved policies and procedures sent to principals, school psychologists, resource room personnel, and parents of covered students, including the names, titles, school affiliations, and contact information for each such recipient. By September 1, 2015, and September 1, 2016, the District will provide to OCR documentation that the required communication has been delivered.

- B. Elementary Staff Training. Before the beginning of SY2015-16 and SY2016-17, the District will provide training to all elementary school principals, elementary school psychologists, and elementary school special education teachers assigned to a resource room on the parameters that must be followed to ensure compliance with Section 504 and Title II, regardless of the chosen model to provide special education and related services.

Reporting B.1: By July 1, 2015, the District will submit for OCR's review and approval:

1. The draft training materials; and
2. Identification of the intended trainer(s) and information regarding their qualifications.

Reporting B.2: Subsequent to OCR's approval of the training materials and the trainer(s), the District will provide the training by October 15, 2015.

Reporting B.3: Within 10 days after the training, the District will submit to OCR proof that the training was provided. Such documentation will include:

1. The agenda and handouts for the training;
2. The date and time the training was held; and
3. A written assurance from the District that all required attendees were present during the training.

- C. Audit of Special Education Models. By October 1, 2015, the District agrees to audit each elementary school to determine what model each has adopted and whether each such model, as implemented, satisfies the parameters of Paragraph A, above. During the audit, the District will invite all parents of covered students to submit anonymous or attributed written statements to the District regarding

any input they have with the chosen model or its effective implementation. The District will carefully consider all such input when determining whether changes are needed. The District's audit report to OCR will include the District's overall findings, copies of the parent statements, a description of how the District responded to parent input, and a full description of any changes made to the model. A version of the audit report will also be made available to the public; the public version will not include parent statements.

Reporting: By November 1, 2015, the District will submit to OCR the District's audit report, which will include the District's overall audit findings, unredacted copies of the parent statements segregated by school, a description of how the District responded to input expressed by parents at each school, and a full description of any changes made to or planned for the chosen model at each school. The District will provide OCR with a copy of the public version of the audit report as well as the unredacted version required above.

- D. Special Education Students Who Missed Subject Specific Instruction in SY 2014-2015 at Desert Springs Preparatory Elementary School. The District agrees to determine which covered students at Desert Springs failed to receive an equal opportunity to participate in science, social studies or another curriculum area, as compared to their nondisabled peers, based on the Desert Springs' chosen delivery model for special education services for the SY 2014-2015. For each student, the District will communicate with parents by May 28, 2015 and offer to pay for 1) attendance at local summer camps or enrichment activities focused on science or social studies in the summer of 2015 or 2) attendance at summer camps focused on science or social studies at a District location in the summer of 2015.<sup>2</sup> Attendance at summer enrichment or summer camp in the summer of 2015 may be considered by an IEP team convened pursuant to Paragraph E below when considering compensatory education services.

Reporting: By May 28, 2015, the District will provide to OCR a list of students identified pursuant to paragraph D, and the contact information for those students' parents. Simultaneously, the District will also provide OCR with copies of the required correspondence sent to parents of such students.

With regard to the compensatory education services, by August 15, 2015, the District will provide the following documentation for OCR's review: copies of the communication to the parents of students at Desert Springs Elementary School regarding the summer options and a listing of any Desert Springs Elementary School student's attendance at any summer camps or enrichment activities focused on science or social studies.

- E. Special Education Students Who Missed Subject Specific Instruction in SY 2014-2015 at Desert Springs Preparatory Elementary School and Other District Schools. The District agrees to determine which covered students failed to receive an equal opportunity to participate in science, social studies or another curriculum area, as compared to their nondisabled peers, based on the school's chosen delivery model for special education services for the SY 2014-2015. For each student, the

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<sup>2</sup> If a summer camp or summer school is offered in discrete blocks of time instead of daily or hourly periods, such as a week-long camp, the District will offer to pay for sufficient blocks (weeks) of the summer school or camp to cover all hours of subject-specific missed during the academic year, even if the total hours of instruction for a summer camp exceed those missed during the academic year.

District will convene a properly constituted IEP team prior to December 15, 2015 to consider the offer of compensatory education services that may be necessary to address the student's failure to receive instruction in science or social studies during SY 2014-2015.<sup>3</sup> The compensatory education services may, at the IEP team's discretion, be spread out over a period not to exceed two years, if the IEP team determines doing so is in the best educational interest of the student. Compensatory education services may include but are not limited to attendance at summer camps focused on science and social studies (subject to footnote 2 above), private tutoring, on line education, or other remedies as identified by the IEP team for each individual student.

Reporting: By August 15, 2015, the District will provide to OCR a list of students identified pursuant to paragraph E, and the contact information for those students' parents.

With regard to the compensatory education services, by December 15, 2015, the District will provide the following documentation for OCR's review and approval:

1. A list of the individuals who attended the meeting (by name, title, and role in the meeting).
2. Documentation of the District's invitation to the parents to attend the meeting and to obtain their input.
3. A copy or summary of the information that the Team considered in reaching its determination regarding whether and what compensatory services or other remedial measures are appropriate for a student.
4. Notes from the meeting documenting that the IEP Team carefully considered input from persons knowledgeable about the student.
5. Whether the Team determines that a student needs compensatory or remedial services.
6. Documentation of the Team's decisions regarding the type and number of hours of compensatory services or other remedial measures that are appropriate for the student and the bases for those decisions.
7. A plan for the prompt provision of compensatory services or the provision of other remedial measures to the student at no cost to the parents.
8. Documentation that a student's parent or guardian was notified in writing of the compensatory services or other remedial measures offered or taken by the District.

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<sup>3</sup> If a covered student is no longer enrolled with the District, the District remains obligated to use its best efforts to locate the parents and to convene an IEP team meeting to consider the provision of compensatory education services for the covered student under the terms of this Paragraph E.

9. If the Team determines that a student does not need compensatory or remedial services, a written explanation of the reasons for that determination, along with any supporting documentation.

10. Documentation that the District provided a student's parent or guardian notice of the applicable procedural safeguards under Section 504 and Title II.

OCR will require subsequent documentation from the District demonstrating that all compensatory services have been provided to the students.

F. Special Education Students who Missed Special Education or Related Services in SY 2014-2015 at Desert Springs Preparatory Elementary School. The District will use its best efforts by May 28, 2015 to identify which covered students at Desert Springs discontinued receipt of services in the resource room or other special education and related services after their parents were given a choice of either continuing those special education services or receive subject specific instruction such as science or social studies. For each student at Desert Springs, the District will convene a properly constituted IEP team to determine how to best provide compensatory education services by August 15, 2015.

Reporting: By May 28, 2015, the District will report to OCR a list of students identified pursuant to Paragraph F, and the contact information for those students' parents.

By August 15, 2015, the District will provide the following documentation for OCR's review and approval:

1. A list of the individuals who attended the meeting (by name, title, and role in the meeting).
2. Documentation of the District's invitation to the parents to attend the meeting and to obtain their input.
3. A copy or summary of the information that the Team considered in reaching its determination regarding whether and what compensatory services or other remedial measures are appropriate for a student.
4. Notes from the meeting documenting that the IEP Team carefully considered input from persons knowledgeable about the student.
5. Whether the Team determines that a student needs compensatory or remedial services.
6. Documentation of the Team's decisions regarding the type and number of hours of compensatory services or other remedial measures that are appropriate for the student and the bases for those decisions.
7. A plan for the prompt provision of compensatory services or the provision of other remedial measures to the student at no cost to the parents.

8. Documentation that a student's parent or guardian was notified in writing of the compensatory services or other remedial measures offered or taken by the District.
9. If the Team determines that a student does not need compensatory or remedial services, a written explanation of the reasons for that determination, along with any supporting documentation.
10. Documentation that the District provided a student's parent or guardian notice of the applicable procedural safeguards under Section 504 and Title II.

G. Special Education Students who Missed Special Education or Related Services in SY 2014-2015 at Other Schools. The District will use its best efforts by October 15, 2015 to identify which covered students discontinued receipt of services in the resource room or other special education and related services after their parents were given a choice of either continuing those special education services or receive subject specific instruction such as science or social studies. For each student, the District will convene a properly constituted IEP team to determine how to best provide compensatory education services by December 15, 2015.

Reporting: By October 15, 2015, the District will provide to OCR a list of students identified pursuant to paragraph G, and the contact information for those students' parents.

With regard to compensatory education services, by December 15, 2015, the District will provide the following documentation for OCR's review and approval:

1. A list of the individuals who attended the meeting (by name, title, and role in the meeting).
2. Documentation of the District's invitation to the parents to attend the meeting and to obtain their input.
3. A copy or summary of the information that the Team considered in reaching its determination regarding whether and what compensatory services or other remedial measures are appropriate for a student.
4. Notes from the meeting documenting that the IEP Team carefully considered input from persons knowledgeable about the student.
5. Whether the Team determines that a student needs compensatory or remedial services.
6. Documentation of the Team's decisions regarding the type and number of hours of compensatory services or other remedial measures that are appropriate for the student and the bases for those decisions.
7. A plan for the prompt provision of compensatory services or the provision of other remedial measures to the student at no cost to the parents.

8. Documentation that a student's parent or guardian was notified in writing of the compensatory services or other remedial measures offered or taken by the District.
9. If the Team determines that a student does not need compensatory or remedial services, a written explanation of the reasons for that determination, along with any supporting documentation.
10. Documentation that the District provided a student's parent or guardian notice of the applicable procedural safeguards under Section 504 and Title II.

H. Remedies Specific to Desert Springs Elementary Preparatory School. Starting no later than May 28, 2015, and through August 31, 2016, the District will appoint a Parent Liaison who will help Desert Springs personnel and parents prepare for and hold IEP meetings. This Parent Liaison will attend all IEP meetings for covered students at Desert Springs.<sup>4</sup> The Parent Liaison's main role during the Desert Springs IEP meetings will be to ensure each student's IEP Team has carefully considered parental input and placement options; he or she will be considered a full member of each such Team. The Parent Liaison will not be subordinate to the Desert Springs principal, school psychologist, or other Desert Springs personnel for performance appraisals, contract renewals, or any other HR processes. The Parent Liaison will be chosen by the District based on his or her interpersonal skills, a history of success in working with parents and District- and School-level officials, knowledge of placement options available in the District, and knowledge of special education laws and policies and their proper implementation. With respect to his or her role as Parent Liaison, the selected individual will report directly to the District's Superintendent, Special Education Director, or District-level designee and will make recommendations regarding budget and personnel issues needed to fully effectuate this provision and other aspects of the Agreement.<sup>5</sup>

Reporting: By May 28, 2015, the District will provide to OCR the resume for the person chosen as Parent Liaison, including the person's training history; a description of duties assigned to the person in the role of Parent Liaison; and, if the person is a District employee, his or her supervisory chain of command.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that 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 (a) and (b), 104.8, and 104.21, and Title II, at 28 C.F.R. §§ 35.130, 35.149, and 35.160, which were at issue in this case.

The District also 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, including

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<sup>4</sup> The District may decide, but is not required by this Agreement, to have the Parent Liaison also attend IEP meetings for students on the autism spectrum who are placed in a structured classroom environment in Desert Springs.

<sup>5</sup> The Parent Liaison may be an outside contractor or a District employee who has ancillary responsibilities.

simulated website accounts and passwords, 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 (a) and (b), 104.8, and 104.21, and Title II, at 28 C.F.R. §§ 35.130, 35.149, and 35.160, 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.

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For Paradise Valley Unified School District

\_\_\_May 15, 2015\_\_\_\_\_

Date