

Resolution Agreement
Southern Kern Unified School District
OCR Case No. 09-14-1187

In order to resolve the issues raised under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 in the above-referenced complaint filed with the Office for Civil Rights (OCR), and without admitting any unlawful or wrongful acts or other liability or conceding any violation of Federal law with respect to the issues raised in the complaint, the Southern Kern Unified School District (District) agrees to implement this agreement.

Individual Remedies

1. By **March 10, 2015**, the District will convene a meeting of the Student's IEP team to determine whether, as a result of the effects of the incident(s) in early spring semester 2014 at XXXXXXX Middle School, the Student's needs have changed such that she is not receiving a free appropriate public education (FAPE).¹ The IEP team will discuss, among other items, whether the Student requires self-advocacy or other social skills supports to proactively address her peer relationships and communications with responsible adults. By **March 20, 2015**, the District will provide to OCR the notes of the IEP team meeting and, if the Student's IEP has been changed as a result of such meeting, a copy of the updated IEP.
2. At each annual IEP meeting for the Student, the IEP Team will specifically discuss whether the Student has experienced negative interactions with her peers and, if so, how the District has responded. If the Student has experienced negative interactions with her peers, and the District has determined that such negative interactions constituted bullying or harassment of the Student, the IEP team will also discuss what impact such negative interactions have had, on the Student's access to a FAPE. In addition, the IEP Team will specifically discuss whether the Student should continue to receive counseling and/or one-on-one support related to the effects of any negative interactions with peers.

Disability Harassment Guidance

3. By **May 15, 2015**, the District will provide to OCR for its review and approval written guidance for District and school staff regarding the District's responsibility to respond to disability-based discrimination. The guidance developed by the District will describe how to appropriately and effectively respond to allegations of harassment of students based on disability, and include reference to the appropriate District policies and procedures. The guidance will be written at a level appropriate for staff without a legal or policy background. The guidance will cover the following topics, at minimum:

¹ See October 21, 2014 Dear Colleague Letter from Assistant Secretary for Civil Rights Catherine E. Lhamon concerning the obligation of elementary and secondary schools to respond to the bullying of students with disabilities, available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf> .

- a. The District's responsibility under Section 504 of Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, to respond appropriately and effectively to notice of disability-based harassment, regardless of whether a formal complaint is filed;
- b. How to identify harassing conduct, including peer-to-peer harassment; the guidance will provide examples of the type of conduct and behavior that is covered by the District's harassment policy;
- c. An overview of the District's discrimination complaint procedures applicable to complaints of disability-based discrimination, including harassment; an explanation of how a student, parent, or other party may report harassment and/or file a complaint (formally and informally);
- d. The District's procedures, protocols and expectations School personnel should follow (e.g., reporting to a site administrator) if they witness or receive reports or information concerning harassment, even when a formal complaint is not filed by a student or parent.
- e. The District's protocols and expectations for the steps site administrator(s) should take (e.g. notifying the District Coordinator) if they receive reports or information concerning harassment based on disability;
- f. That, if possible disability harassment is reported, students and parents must be notified of their right to file a formal complaint and be provided with a copy of the appropriate discrimination complaint procedures;
- g. That when a report of disability harassment is received, site administrators will take interim measures, as appropriate, to ensure the safety of the reporting student and the school community, in order to address any on-going harassment and to prevent retaliation against the reporting student and witnesses;
- h. That the District will take corrective measures when disability harassment occurs, including actions to address the effects of the harassment on the victim such as, where appropriate, provision of educational resources and counseling, as well as other steps to address any impact on the individual harassed, witnesses and the broader student body, and ensure, where appropriate, that the offending student is counseled about the nature and seriousness of the offense and, where applicable, receives progressive disciplinary consequences; and
- i. That when a student with a disability is subjected to bullying or harassment, the District will promptly convene a meeting of appropriate individuals to determine whether the student's current placement continues to provide the student with a FAPE.

6. The guidance will include a copy of the current complaint form(s) and other forms to be used by students, parents, or personnel in the reporting and response to allegations of student disability harassment, and will instruct personnel to dispose of all obsolete versions.
7. OCR commits to providing its edits to the guidance described above (or its approval) to the District within 30 days of receiving the draft. By **August 12, 2015**, the District will distribute it to all certificated personnel and classified personnel who routinely interact with students. Within one week of the District's distribution of the guidance, the District will provide OCR with evidence sufficient to demonstrate that the guidance has been distributed in accordance with this agreement.

Grievance Procedure Notice

8. By **May 15, 2015**, the District will provide to OCR for its review and approval a draft notice of its grievance procedures to be distributed to all parents at XXXXXXX Middle School. The notice will state that discrimination, including harassment, on the basis of disability is prohibited and will provide a clear description of students' and parents' right to file a complaint of disability discrimination, including peer harassment, and the options for filing such a complaint.
9. OCR commits to providing its edits (or its approval) to the notice described in paragraph 3 to the District within 10 days of receiving the draft. By **August 21, 2015**, the District will complete distribution of the notice to all parents with students enrolled at XXXXXXX Middle School. Within one week of the completion of the distribution of the notice, the District will provide OCR with evidence sufficient to demonstrate that the notice has been distributed in accordance with this agreement.
10. At the beginning of the 2015-2016 school year, the District will post the notice on its website and include the notice in its annual notice to all parents with students enrolled in the District. By **September 30, 2015**, the District will provide OCR with evidence sufficient to demonstrate that the notice has been distributed in accordance with this paragraph.

Investigation Training

11. By **April 30, 2015**, the District will provide to OCR for its review and approval a draft outline of investigation training to be provided to District administrators with responsibility to investigate and respond to student disability harassment allegations. The District will provide training by a person with appropriate expertise on how to investigate and respond to allegations that a student has been subjected to disability harassment. The training topics will include:
 - a. using interim measures to protect a student who is the target of alleged harassment;
 - b. determining the applicable District policies and procedures to apply to the investigation;

- c. gathering and evaluating evidence, including evidence gathered through interviews;
 - d. interviewing and documenting interviews of individuals who have information related to the complaint, including but not limited to the complainant, the person alleged to have harassed the student, witnesses, and anyone mentioned as having relevant information;
 - e. ensuring impartiality;
 - f. making credibility determinations;
 - g. the appropriate standards for determining whether disability harassment has occurred;
 - h. developing findings of fact and the conclusion(s) as to whether or not discrimination (including harassment) occurred, and the rationale for such conclusion(s);
 - i. when an investigation substantiates that disability harassment occurred, determining remedial actions to repair the educational environment for the student;
 - j. when an investigation substantiates that disability harassment occurred, determining the consequences to be imposed on any individual found to have engaged in harassment; and
 - k. protecting the targeted student from reoccurrences of the conduct and acts of retaliation.
12. OCR commits to providing its edits to the investigation training (or its approval) to the District within 30 days of receiving the draft training for review.
13. By **September 1, 2015**, the District will provide OCR with evidence sufficient to demonstrate that the investigation training has been completed, such as sign-in sheets.

Other Provisions

14. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that during the monitoring of this Agreement, 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 Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 C.F.R. part 104, and Title II of the Americans with Disabilities Act and its implementing regulations at 28 C.F.R. part 35, which were at issue in this case.

15. 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 Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 C.F.R. part 104, and Title II of the Americans with Disabilities Act and its implementing regulations at 28 C.F.R. part 35.

16. 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.

_____/s/_____
Jeffrey Weinstein
Chief Administrative Officer
Southern Kern Unified School District

03/11/2015
Date