

## **Modesto City Elementary School District**

### **Resolution Agreement**

**OCR Case No. 09-15-1212**

In order to resolve the issues raised in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Amendments Act of 2008 (Title II), the Modesto City Elementary School District (District), without admitting any violation of the law, agrees to take the actions outlined in this Resolution Agreement.

#### **A. Review and Revise Section 504 Non-Discrimination and Grievance Procedures**

1. Beginning immediately, the District will review its non-discrimination policies and procedures, including its grievance procedures, to ensure that they are in compliance with Section 504 and Title II and its implementing regulations, including but not limited to conflicts among existing policies, and provide OCR with a draft of the revised policies and procedures.

#### **B. Guidance for District and Site Administrators on Section 504 Policies and Procedures**

The District will provide a written guidance memorandum on its Section 504 Policies and Procedures to all District and site level administrators and staff who have responsibility for initiating, developing or coordinating the implementation of Section 504 plans. The guidance memorandum will:

1. Reiterate the District's responsibilities for providing a free, appropriate public education (FAPE) to students with disabilities under Section 504, including a reminder that when the District has reason to believe that a student has a disability and needs or may need special education or related services under Section 504, the District is obliged to conduct an assessment of the student whether or not the parent has provided a diagnosis or other documentation, and whether or not the parent has requested an evaluation or services.
2. Explain the definition of an individual with a disability and the definition of major life activities consistent with Section 504 and Title II.<sup>1</sup>
3. Identify criteria or indicators for when a Section 504 evaluation is necessary and summarize (1) how the Section 504 evaluation process is conducted, (2) required timelines, and (3) the individual responsibilities of administrators and staff.

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<sup>1</sup> See "Dear Colleague Letter," including frequently asked questions, that was issued by OCR on January 19, 2012. See <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.pdf> (DCL); and <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.pdf> (FAQ).

4. Explain the process for documenting Section 504 eligibility decisions and providing written notice of the decision and procedural safeguards to the parents/guardians of the student.

**C. Training for Staff**

The District will conduct in-service training on its Section 504 policies and procedures for the Section 504/Title II Coordinator, Counselors, Nurses, Psychologists, and any other staff members or administrators in the District who have responsibility for identifying or evaluating students with special needs.

1. The training will be conducted by an individual with experience and expertise in Section 504/Title II requirements and will specifically address the following: the definition of student with a disability under Section 504 and Title II, how to identify when a Section 504 evaluation should be conducted, how the Section 504 evaluation and placement process is conducted, required timelines, the individual responsibilities of administrators and staff, and the procedural rights of parents and guardians and notice of the same.
2. The training will cover the following:
  - a. The District and each school's responsibilities generally for providing FAPE to students with disabilities under Section 504.
  - b. The District's Section 504 policies and procedures for identification, evaluation and placement process, and procedural safeguards for parents.
  - c. The definition of an individual with a disability and the definition of major life activities consistent with Section 504 and Title II.
  - d. Each school's specific responsibility for conducting an evaluation of a student under Section 504 if it believes or has reason to believe that the student needs or may need special education or related services due to a disability, the academic and behavioral indicators for determining when such an evaluation is needed, and examples of circumstances where evaluation may be appropriate.
  - e. The full range of services that can be provided under Section 504 including special education and related aids and services.

**D. Individual Remedy**

1. By **June 15, 2016**, after providing proper written notice to the Student's parent/guardian, a group of knowledgeable persons, including the parent/guardian, will determine whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide appropriate regular and/or special

- education or related services from November XX, 2014 to April XX, 2015. If compensatory services are needed, within one week of its determination, the group will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond June 15, 2017. The District will provide the Student's parent/guardian notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing. Within two weeks of the decision as to whether compensatory and/or remedial services are needed pursuant to process described in this Section, the District will submit to OCR documents supporting the group's decision. The documentation will include the participants in the meeting, the information considered, an explanation for decisions made, and a description of and schedule for providing any compensatory and/or remedial services to the Student.
2. OCR will, prior to approving the District's decision and plan for providing the proposed services, review the documentation to ensure that the District met the requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, and, as applicable, Title II, at 28 C.F.R. 35.160, in making these determinations.

#### **E. Reporting**

1. 504 Non-Discrimination and Grievance Procedures: By **September 15, 2016**, the District will submit a draft of its non-discrimination policies and procedures, provided pursuant to Section A for OCR's review and approval. **By November 30, 2016**, the District will adopt the revised policies and provide OCR with proof that it has done so.
2. Guidance memorandum/training materials: By **July 8, 2016**, the District will provide OCR with a draft of the guidance memorandum described in Section B, and draft training materials for the training described in Section C for review and approval. Within five business days after receiving OCR's approval of the memorandum, the District will distribute the guidance memorandum. The District will provide OCR with documentation of the distribution of the memorandum within five days of its distribution.
3. Training: By **October 31, 2016**, the District will provide OCR with documentation establishing that the training outlined in Section C has been completed, including who conducted the training, materials used, and a list of attendees at the training including their titles and positions in the District.

4. Individual Remedy:

- a. By **June 30, 2017**, the District will provide documentation to OCR of the dates, times and locations that compensatory and/or remedial services were provided pursuant to Section D, a description of what was provided, and the name(s) of the service provider(s).

**F. Monitoring**

- 1. 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 of the Rehabilitation Act of 1973 at 34 C.F.R. §§104.33-104.36, and Title II of the Americans with Disabilities Act of 1990, as amended in 2008, which were at issue in this case.
- 2. 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 Institute has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 of the Rehabilitation Act of 1973 at 34 C.F.R. §§104.33 and Title II of the Americans with Disabilities Act of 1990, as amended in 2008.
- 3. 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.

\_\_\_\_\_/s/\_\_\_\_\_  
Authorized representative of the District

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05/06/2016  
Date