

San Bernardino County Superintendent of Schools
Resolution Agreement
OCR No. 09-15-1398

San Bernardino County Superintendent of Schools (SBCSS) agrees, without admitting to any violation of law, to implement the following Resolution Agreement (Agreement) to resolve the issues investigated by 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 Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008, (Title II or ADA) in the above-referenced OCR case numbers.

I. Review of Annual Student Instructional Time

- A. By March 30, 2017, a SBCSS Instructional Review Team composed of the Area Director, Special Education Principal, Special Education Teachers, and a Program Specialist from the Desert Mountain Special Education Local Plan Area (SELPA) will review the daily schedules for all of its students who received special education services through placement at the Student's school for the 2014 – 15 school year, including the Student who is the subject of this matter, to ensure that the daily instructional minutes received by the students were at least equal to the instructional minutes received by students without disabilities at the Student's school (344 minutes of daily instruction). In performing the review, the SBCSS will ensure that daily instructional minutes for its students do not include time between class periods, breakfast/lunch time, time loading and unloading the school bus, and any other non-instructional periods of time unless such periods of time are explicitly recognized to be instructional time by the SBCSS Instructional Review Team after reviewing the 2014-15 IEP documents or each student's individualized education program (IEP) team and the student's IEP specifically includes a provision stating such periods of time will be considered instructional.
- B. For each student identified as having received less instructional minutes than the 344 instructional minutes for students without disabilities, by March 30 2017, 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 SBCSS's failure to provide appropriate regular and/or special education or related services during the 2014 – 2015 school year. If so, within one (1) 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 December 31, 2017. The SBCSS will provide the student's parent/guardian with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing. In the event that a student who has been identified as having received less instructional minutes is no longer enrolled in or receiving services from the SBCSS, the SBCSS will undertake reasonable efforts to locate and contact the student's parent/guardian.

Reporting Requirements

- C. Within two (2) weeks of completing the review of the students' schedules as required by paragraph (I)(A) of this Agreement, the SBCSS will provide to OCR a detailed report that summarizes the results of the SBCSS's review, including: the name or other identifying information of each student whose schedule was reviewed; a list of the schedule or other records reviewed for each student; the determination reached for each student; and, the reasons or bases that support the determination reached for each student (the SBCSS will also include any reasons or bases that support an opposite determination for each student). The SBCSS will retain all records reviewed for each student and will provide them to OCR upon OCR's request, including, a copy of the applicable IEP for each student for whom a determination has been made that instructional time will include the period of time between classes, breakfast/lunch, and loading/unloading of the school bus.
- D. Within two (2) weeks of reaching the decision regarding whether compensatory and/or remedial services are needed for any student as required by paragraph (I)(B) of this Agreement, the SBCSS will submit to OCR documents supporting the group's decision. The documentation submitted will include documentation showing: the participants in the meeting; an explanation for decisions made; the information considered; and, a description of and schedule for providing any compensatory and/or remedial services (if any) to each student. OCR will, prior to approving the SBCSS's decision and plan for providing the proposed services, review the documentation to ensure that the SBCSS met the requirements of the regulations 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. The SBCSS will also provide to OCR a report of the reasonable efforts it took to locate and contact the parents/guardians of any student identified as having received less instructional minutes who is no longer enrolled in or receiving services from the SBCSS.
- E. By December 31, 2017, the SBCSS will provide documentation to OCR, for each student identified as needing compensatory and/or remedial services as required by paragraph (I)(B) of this Agreement, of the dates, times, and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).

II. Review of Student Instructional Time During IEP Team Meetings

- A. By March 30, 2017, the SBCSS Instructional Review Team identified in paragraph (I)(A) of this Agreement will perform a review of each IEP team meeting held for each of the students in the Student's classroom in this matter during the 2014 – 15 school year and determine: (a) the date of the meeting; (b) the starting time of the meeting; (c) the location of the meeting; (d) the end time of the meeting (and overall

length of the meeting); (e) if the meeting was held in the students' classroom, then where the students were during the time the meeting was being held there; (f) what instruction, if any, was being provided to the students during the time that a meeting was taking place in their classroom; (g) who was providing the instruction to the students if not the regular classroom teacher and the qualifications of the individual providing the instruction; and, (h) whether the students were deprived of instructional time because of each IEP team meeting being held in their classroom and, if so, the amount of instructional time. If documentation of the ending time and length of a meeting is not maintained by the SBCSS, then it may obtain the information from staff who have personal knowledge and recollection of the information or from any parent/guardian who attended the IEP team meeting.

- B. For any instance in which it has been determined that the students in the classroom were deprived of instructional time because of an IEP team meeting being held in the classroom, by March 30, 2017, after providing proper written notice to each student's parent/guardian, a group of knowledgeable persons, including the parent/guardian, will determine whether each student needs compensatory and/or remedial services as a result of the deprivation of instructional time. If so, within one (1) 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 December 31, 2017. The SBCSS will provide each student's parent/guardian with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing. In the event that a student who has been identified as having received less instructional time because of an IEP team meeting being held in the classroom is no longer enrolled in or receiving services from the SBCSS, the SBCSS will undertake reasonable efforts to locate and contact the student's parent/guardian.

Reporting Requirements

- C. Within two (2) weeks of completing the review of the students' IEP team meetings as required by paragraph (II)(A) of this Agreement, the SBCSS will provide to OCR a summary of the results of its review, including: the name or other identifying information of each student's IEP team meeting that was reviewed; a list of the records reviewed for each team meeting; a summary of any interview or conversation with participants of each team meeting or any teacher that was done in order to make any of the determinations required by paragraph (II)(A); the determination reached for each team meeting; and, the reasons or bases that support the determination reached for each meeting (the SBCSS will also include any reasons or bases that support an opposite determination for each student). The SBCSS will retain all records reviewed for each meeting and will provide them to OCR upon OCR's request.
- D. Within two (2) weeks of reaching the decision regarding whether compensatory and/or remedial services are needed for any student as required by paragraph (II)(B)

of this Agreement, the SBCSS will submit to OCR documents supporting the group's decision. The documentation submitted will include documentation showing: the participants in the meeting; an explanation for decisions made; the information considered; and, a description of and schedule for providing any compensatory and/or remedial services (if any) to each student. OCR will, prior to approving the SBCSS's decision and plan for providing the proposed services, review the documentation to ensure that the SBCSS met the requirements of the regulations 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. The SBCSS will also provide to OCR a report of the reasonable efforts it took to locate and contact the parents/guardians of any student identified as having received less instructional time because of an IEP team meeting being held in the classroom who is no longer enrolled in or receiving services from the SBCSS.

- E. By December 31, 2017, the SBCSS will provide documentation to OCR, for each student identified as needing compensatory and/or remedial services as required by paragraph (II)(B) of this Agreement, of the dates, times, and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).

III. Memorandum Reaffirming Nondiscriminatory Instruction

- A. By March 1, 2017, the SBCSS will create a memorandum or similar document for distribution to all of its educators that states the obligation of the SBCSS, under Section 504 and Title II, to provide instruction to its students with disabilities that is equal to that received by their peers without disabilities in such areas as the length of their school day, the minutes of instruction provided during each class period, and the location, nature, and condition of the facilities in which they receive instruction. The memorandum will state examples of discriminatory instruction, such as shortening a school day, depriving students of class instruction time for any reason not also applied to students without disabilities, providing instruction in inferior or remote locations to that being used by students without disabilities, providing less qualified teachers than those being provided to students without disabilities, and any other examples of discriminatory instruction.
- B. Within ten (10) days of developing the memorandum required by paragraph (III)(A) of this Agreement, the SBCSS will submit the memorandum to OCR for review and approval.
- C. Within fifteen (15) days of OCR's completion of its review and approval of the memorandum required by paragraph (III)(A) of this Agreement, the SBCSS will disseminate a copy of it to all faculty, staff, and administrators involved in the provision of special education or other instructional services to students with disabilities.

The SBCSS will also provide a copy of the memorandum to each parent/guardian of a student with a disability to whom it is providing services. The SBCSS may complete this by either U.S. mail or e-mail. The SBCSS will, however, use U.S. mail when a parent does not have an e-mail address, the SBCSS is unable to obtain a parent's e-mail address, or the parent/guardian has not authorized the SBCSS to communicate with him or her by means of e-mail.

Included with the parental mailings will be a brief explanation of the reason(s) for the memorandum and the identifying and contact information for the SBCSS Section 504/Title II coordinator with an advisement that the coordinator may be contacted with any questions or comments.

In addition to disseminating a copy of the memorandum to faculty, staff, administrators, and parents, the SBCSS will post the memorandum to its website and at all SBCSS locations at which other SBCSS documents are posted in order to inform faculty, staff, students, parents, or the public of such information. The memorandum will remain posted at these locations for at least one year following the signing of this Agreement.

Reporting Requirement

- D. Within ten (10) days of completing the requirements of paragraph (III)(C) of this Agreement, the SBCSS will provide a written statement to OCR that verifies that it completed the requirements. The verification will state the total number of copies distributed, the date(s) of distribution, the method(s) of distribution, a copy of the explanation that was mailed to the parents, the number of mailings (detailed by U.S. mail and e-mail) sent to the parents, the date on which the mailings were sent to parents, the number posted, the dates of posting, and the locations of posting.

IV. Training

- A. By September 1, 2017, the SBCSS will provide training to all faculty, staff, and administrators involved in the provision of special education or other instructional services to students with disabilities. The training will include discussion of the memorandum developed pursuant to paragraph (III)(A) of this Agreement and will include a sufficient period of time that allows for questions and answers.
- B. The training will be provided either by OCR staff or by a trainer approved by OCR. If the latter, the SBCSS will provide to OCR, for review and approval, the name and credentials of the trainer, as well as the materials to be used, no later than 30 days prior to the date of training.

Reporting Requirement

- C. Within thirty (30) days of completing the training required by paragraph (IV)(A) of this

Agreement, the SBCSS will provide to OCR written verification that the training has taken place. The verification will state the date(s) on which the training occurred and the number of faculty, staff, and administrators who attended on the date(s). The SBCSS will also provide a copy of the sign-in sheet for the training, including the names and titles of those attending and if any faculty, staff or administrators did not attend, and all documents provided to the attendees.

V. Monitoring

The SBCSS understands that OCR will not close the monitoring of this Agreement until OCR determines that it has fulfilled the terms of this Agreement and it is in compliance with Section 504, Title II, and their respective implementing regulations.

The SBCSS 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, it understands that during the monitoring of this Agreement, if necessary, OCR may visit the SBCSS, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether it has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II which were at issue in this matter.

The SBCSS 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 SBCSS written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

By: _____/s/_____
San Bernardino County Superintendent of Schools
Richard Frederick, Desert/Mountain Area Director

Date: 12/19/2016