

## **VOLUNTARY RESOLUTION AGREEMENT**

### **District of Columbia Public Schools**

*OCR Case No. 11-13-1009*

District of Columbia Public Schools (DCPS) agrees to fully implement this Voluntary Resolution Agreement (Agreement) to resolve Office for Civil Rights (OCR) Complaint No. 11-13-1009. This Agreement does not constitute an admission by DCPS of any violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), or any other law enforced by OCR. Full implementation of this Agreement by DCPS resolves OCR Complaint No. 11-13-1009.

1. The provisions of this agreement are limited to students protected by the above referenced statutes and limited to Twilight Programs at DCPS high schools. As of January 2014, the following DCPS high schools offer Twilight Programs: Anacostia High School (Anacostia), Dunbar High School (Dunbar), Eastern High School (Eastern) and Luke C. Moore High School (LCM). This agreement also applies to any Twilight programs that may be established at other DCPS high schools in the future.
2. For any student who is eligible to enroll in a traditional daytime high school program, DCPS shall not require said student to enroll in a Twilight Program in lieu of a traditional daytime high school program. DCPS will not require that special education students enroll in a Twilight Program by using the IEP process to offer a special education placement at only a Twilight Program.
3. Twilight Programs are an optional and voluntary alternative high school program. For students who meet the participation criteria, enrollment in a Twilight Program is solely the decision of the student's parent/guardian or the adult student. A student with a disability who meets the participation criteria may choose to enroll in a Twilight Program if DCPS determines that the Twilight Program can provide an appropriate education to the student in accordance with the policies and procedures described in item 4 below.
4. By July 8, 2014, DCPS shall develop policies and procedures for determining whether a Twilight Program can provide an appropriate education to a student with a disability, including the special or general education, related services, and accommodations required under the student's IEP or 504 Plan. The policies and procedures shall:
  - a. List the specific programs and school locations to which the policies and procedures apply;
  - b. Explain that prior to the parent/guardian of a student with a disability or adult student with a disability enrolling in a Twilight program DCPS must determine, consistent with the requirements of 34 C.F.R. §§ 104.35(c) and 104.36, whether the program can meet the student's individual educational needs and, if so, if any additional disability-related aids or services are needed;

- c. Explain that the determination must be made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the student's current IEP or 504 plan, the student's current school assignment, and the Twilight Program under consideration;
- d. Explain that in making the determination, the team shall draw upon information from a variety of sources, including using good faith efforts to obtain input from the student's parent/guardian or adult student, and ensure that all such information is documented and carefully considered;
- e. Give examples of the type of data and factors that should be considered in making the determination, including a student's level of academic functioning, courses and credits required for graduation, and whether the program can implement the special or general education, related services and accommodations required by the student's IEP or 504 Plan;
- f. State that if a proposed Twilight Program uses online instruction, the team will consider:
  - i. whether, given the nature and impact of the student's disability, this method of instruction is appropriate to meet the student's individual needs,
  - ii. whether any additional or different services, supports, or modifications are required in the online setting, and
  - iii. whether there are any accessibility concerns for students with disabilities, including those with print or print-related disabilities;
- g. State that if a proposed Twilight Program provides less instructional time than a traditional daytime high school program, the team will consider whether this schedule can meet the student's individual needs;
- h. Specify the special education and related services that can be implemented by each Twilight Program location to help with the determination of whether a particular program is capable of implementing the services a student requires;
- i. Explain that DCPS must notify the parent/guardian or adult student in writing of the team's determination and provide notice of procedural safeguards in conformance with 34 C.F.R. § 104.36;
- j. Explain that if a student enrolled in a Twilight Program does not make educational progress (for example, the student is failing courses), the IEP or 504 Team should reconvene to reconsider whether the program is appropriate for the student; and
- k. Explain how students in each Twilight Program will be afforded an equal opportunity to participate in nonacademic and extracurricular activities, including

how students will be informed of these opportunities and any special arrangements that will need to be made to accommodate program schedules.

Reporting Requirement: By July 8, 2014, DCPS shall provide draft policies and procedures to OCR for approval. DCPS shall ensure that the policies and procedures are included in program handbooks for Twilight Programs as well as any websites for the programs. DCPS shall also include information about the policies and procedures in any form letters it sends to parents or adult students regarding enrollment in Twilight Programs. Furthermore, all program handbooks, websites, and form letters for Twilight Programs shall specify that Twilight Programs are optional and voluntary alternative high school programs and that no student will be required to enroll in a Twilight Program in lieu of a traditional daytime high school program. DCPS shall provide copies of the revised program handbooks, web pages, and parent/student letters to OCR prior to the beginning of the 2014-2015 school year.

5. DCPS shall develop a plan to ensure that the following individuals receive training on the policies and procedures: high school principals, high school special education coordinators, high school 504 Coordinators, Twilight Program coordinators, and relevant central office staff who oversee Twilight Programs and high school special education.

Reporting Requirement: DCPS shall provide a copy of its draft training plan to OCR at the same time it provides a copy of its draft policies and procedures (by July 8, 2014). After OCR's approval of the training plan, DCPS shall implement the plan prior to the beginning of the 2014-2015 school year and provide verification to OCR that the required individuals have received training.

6. For students with disabilities who are enrolled in Twilight Programs as of the end of the 2013-2014 school year and who are expected to continue in a Twilight Program in the 2014-2015 school year, DCPS shall convene IEP or 504 team meetings prior to the beginning of the 2014-2015 school year to determine whether the student's continued enrollment in the Twilight Program is appropriate to meet his or her individual educational needs. All meetings shall be conducted in conformance with the policies and procedures described in item 4 above.

Reporting Requirement: By September 15, 2014, DCPS shall provide OCR with a list of all students with disabilities who were enrolled in Twilight Programs as of the end of the 2013-2014 school year. For each student who continued enrollment in a Twilight Program for the 2014-2015 school year, DCPS shall provide documentation that it convened the required meeting to determine the appropriateness of the student's continued placement in the program, including the IEP or 504 Plan in effect before the meeting, an explanation of the team's determination and the information it considered in making this determination, any revisions to the IEP or 504 Plan made at the meeting, and any meeting notes. For each student who did not continue enrollment in a Twilight Program for the 2014-2015 school year, DCPS shall indicate the student's current educational placement within DCPS or indicate that the student is no longer enrolled in DCPS and the reason (e.g., graduation, drop out, transfer to another district, et cetera).

7. Enrollment of new students with disabilities in Twilight Programs shall be in conformance with the policies and procedures described in item 4.

Reporting Requirement: By December 31, 2014, DCPS shall provide OCR with a list of all students with disabilities newly enrolled in a Twilight Program for the 2014-2015 school year, and the date of each student's enrollment in the program. For each student, DCPS shall provide documentation that it convened a meeting prior to the student's enrollment in the program in accordance with the policies and procedures described in item 4, determined that the program can meet the student's individual educational needs, and determined whether any additional disability-related aids or services are needed. The documentation shall include a copy of the IEP or Section 504 Plan in effect before the meeting, a copy of any new IEP or Section 504 Plan developed or revised at the meeting, any meeting notes, and, if not already included in the meeting notes, an explanation of how the Twilight Program will meet the student's individual educational needs.

8. DCPS's current student information system does not capture or store the names of students assigned to the Twilight Program. For purposes of this Agreement, DCPS will make a good faith effort to identify all students with disabilities that were enrolled in a Twilight Program for any period of time during the 2011-2012, 2012-2013, and 2013-2014 school years. A "good faith effort" shall include, at a minimum, contacting Twilight Program coordinators, guidance counselors, and teaching staff (including special education teaching staff) at each Twilight Program site to request that they locate or compile program rosters for each school year. DCPS shall determine whether each identified student is entitled to free supplemental educational services to compensate for DCPS failing to provide the student an appropriate education in the Twilight Program. Specifically, a student shall be entitled to free supplemental educational services if the student's placement in Twilight was not appropriate to meet his or her individual educational needs, including if DCPS did not provide special education, related services, or accommodations required by the student's IEP or Section 504 Plan during the student's enrollment in Twilight. If DCPS determines that the student is entitled to supplemental educational services, it shall inform the parent or adult student of its determination and its proposed plan for providing such services. The student's parent/guardian or adult student may choose to accept or reject these proposed services.

Reporting Requirements:

1. By July 15, 2014, DCPS shall provide OCR with:
  - a. A complete and accurate list of all students with disabilities it is able to identify as being enrolled in a Twilight program at any time during the 2011-2012, 2012-2013, and 2013-2014 school years, including each student's entry and exit date;
  - b. A description of the "good faith efforts" undertaken by DCPS to compile this list;
  - c. each IEP or Section 504 Plan that was in effect for each student during the period of time the student was enrolled in Twilight; and

- d. an explanation of DCPS's determination regarding supplemental educational services for each student. If DCPS determines that a student is entitled to supplemental educational services, DCPS shall explain how it determined the type and amount of services to be provided and how it plans to provide such services. If DCPS determines that a student is not entitled to supplemental educational services, it shall explain the basis for this determination.
2. By December 31, 2014, DCPS shall provide OCR with documentation demonstrating that it provided free supplemental educational services to each student that was entitled to such services. If it was not able to provide services because a student was not available or refused services, DCPS shall provide documentation of its attempts to reach the student and documentation that it offered the services.

DCPS understands that OCR will not close the monitoring of this Agreement until OCR determines that DCPS has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, which was 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, DCPS understands that during the monitoring of this Agreement, if necessary, OCR may visit DCPS, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether DCPS has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, which was at issue in this case.

DCPS 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 DCPS written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

By: \_\_\_\_\_  
 /s/  
 Kaya Henderson, Chancellor  
 District of Columbia Public Schools

Date: 5/20/14