

**Resolution Agreement**  
**Pickerington Local School District**  
**OCR Complaint Docket #15-15-1434**

The Pickerington Local School District (the District) submits to the U.S. Department of Education, Office for Civil Rights (OCR), this Resolution Agreement to resolve the above-referenced complaint and to ensure compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, (Section 504) and with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, (Title II) and its implementing regulation at 28 C.F.R. Part 35.

Accordingly, the District agrees to take the following actions:

1. By May 16, 2016, the District will determine which students qualified for placement in the District's Kindergarten Literacy Intervention Program (KLIP) during the 2015-2016 school year based on the results of the relevant assessments. The District will then identify any students who were excluded from the program because they had academic goals and/or interventions in their Individualized Education Programs (IEPs) or because they had already otherwise been identified as needing special programming due to a disability (the Students). The District will also determine, generally, appropriate education and/or other remedial services to compensate for the Students' exclusion from KLIP during the 2015-2016 school year. The services should be aligned with the educational benefits they would have received had they been enrolled in KLIP.<sup>1</sup>
2. By June 13, 2016, the District will convene meetings of groups of persons knowledgeable about each of the Students and the Students' educational placements during the 2015-2016 school year (the Teams), including the Students' parents, relevant teachers and any other relevant and/or required District staff. The District will invite the Students' parents to participate in the Team meetings described and, in the event that the Students' parents are unable to attend, the District will provide the Students' parents with a meaningful opportunity to provide input regarding, at least, the following: (a) the logistics (i.e. time and location) associated with any compensatory education and/or other remedial services, (b) whether the student should not have been placed in KLIP for a legitimate non-discriminatory reason, and (c) whether, where appropriate, the student will need accommodations (pursuant to a Section 504 plan and/or IEP) during the provision of compensatory education. The Teams will meet separately for each student and will take the following actions:
  - a. If, at the meeting for any particular student held pursuant to paragraph #2, above, the Team, in accordance with Section 504 and Title II, determines that a student should

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<sup>1</sup> According to the District's information, KLIP is designed to assist students with "Letter Identification," "Letter Sounds," "Rhyming," "Reading," "Phonological Awareness," "Number Identification," "Counting," "Fine Motor Skills," and "Gross Motor Skills." Instruction includes "Daily Read Alouds," "Literacy Centers," "Hands-on Learning Experience," and "Small group, large group, and one-on-one instruction." The handout indicates that KLIP provides, daily, 30 minutes for math interventions and 1 hour and 55 minutes for literacy interventions.

- not have been placed in KLIP for a legitimate non-discriminatory reason (not the existence of academic goals and/or interventions in their IEP or because they had already otherwise been identified as needing special programming), the District will not be required to determine what compensatory education or remedial services is required for the student, but will document the reasons for its decisions and the information considered when making its decision that the student would not otherwise be eligible for KLIP.
- b. Draft a written plan for providing the Students with any compensatory education and/or other remedial services deemed appropriate pursuant to paragraph #1. The plan will identify the nature and amount of the services, if any, to be provided at no cost (including transportation) to the Students' parents, by whom the services will be provided, and when they will be provided. The services should be provided outside of the Students' regular school day and, as noted in paragraph #1, should be aligned with the educational benefits they would have received had they been enrolled in KLIP. The services need not be provided one-on-one, but may be provided in a group setting, as is comparable with KLIP. For any student that is not currently enrolled in the District, the plan should also identify where the services will be provided.
3. By June 30, 2016, the District will send notification, in writing, to the parents of the Students of the Teams' decisions regarding paragraph #2. The notification should include a detailed description of the outcome of the review, the nature and amount of any compensatory education or remedial services to be provided, including what services will be provided, where and how often the services will be provided, who will provide them and a notice that services and transportation will be provided by the District at no cost to the Students' parents. For those students for which compensatory education and/or remedial services has been determined appropriate, the notification will offer the compensatory education and/or remedial services to the Students' parents and request the parents' consent or denial of said education and/or services. Where appropriate, the District will also notify the Students' parents, in writing, of the procedural safeguards afforded them under Section 504, including the right to challenge the determinations regarding compensatory education services through an impartial due process hearing.

**REPORTING REQUIREMENTS:** By July 15, 2016, the District will provide OCR with documentation to demonstrate its implementation of paragraphs #1, #2, and #3, including: (i) a list of the Students identified pursuant to #1; (ii) documentation showing when the Teams met pursuant to paragraph #2, who was present, what was discussed, the Teams' decisions, and the bases for those decisions; (iii) copies of any meeting minutes; (iv) a copy of any plan developed for any student pursuant to paragraph #2; (v) documentation of any input provided by the Students' parents and, where appropriate, showing that procedural safeguards were provided to the parents; (vi) a copy of the notification and/or offer sent to the Students' parents pursuant to paragraph #3 and a copy of each parent's response; and (vii) any other documentation relevant to the determinations reached in accordance with paragraphs #1, #2, and/or #3. Should the District determine that no compensatory education or other remedial services are appropriate for a particular student, the District will provide a written explanation of the reasons for its determinations, along with any supporting documentation. OCR will review the documentation

submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35, and 104.36, in making its determinations.

4. By December 31, 2016, the District will provide any compensatory and/or remedial services deemed appropriate pursuant to paragraphs ##1-2 for those students whose parents consented to the offer of compensatory education and/or remedial services.

**REPORTING REQUIREMENT:** By December 31, 2016, the District will provide documentation to OCR 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).

5. By September 1, 2016, the District will revise its KLIP policy and/or procedure documents, parent informational materials, and any other KLIP-related materials, to ensure compliance with Section 504 and Title II. Such revisions will include, but are not limited to, removing any language that excludes students with disabilities for eligibility because of the services they receive as a part of their free appropriate public education (FAPE), such as services contained in a Section 504 plan or IEP, revising language in KLIP documents to clarify that any kindergarten student with a disability will be considered for the program, regardless of whether the student has academic goals/interventions in his or her IEP and/or Section 504 plan, or has otherwise already been identified as needing special programming and/or interventions, and including a list of assessment tools used to determine eligibility for KLIP, as well as a list of objectively based, qualifying factors, that must be considered by the District's team when determining which of the eligible students will participate in KLIP, and what weight should be given to each factor. The procedure document should also include an objective list of criteria for removing a student from KLIP once they are no longer eligible.
6. By September 1, 2016, the District will send a memorandum to all of the District's elementary school administrators, KLIP teachers, Section 504 coordinators, and any other District or school-level staff involved in administering KLIP or selecting students for KLIP, clarifying that any kindergarten student with a disability will be considered for the program, regardless of whether the student has academic goals/interventions in his or her IEP and/or Section 504 plan, or has otherwise already been identified as needing special programming and/or interventions. The memorandum will note that, before a student with a disability is ultimately placed in KLIP, the student's Section 504 and/or IEP team will meet to determine whether placement in the program is appropriate for the individual student.

**REPORTING REQUIREMENTS:** By September 15, 2016, the District will submit to OCR copies of the documents revised pursuant to paragraph #5, the memorandum created pursuant to paragraph #6, and a copy of any documentation (e.g. e-mails) confirming that the memorandum described in paragraph #6 was distributed to the relevant District staff. By December 31, 2016, the District will submit to OCR documentation showing its implementation of the revised procedure document including, at a minimum, the following:

- a. the names and titles of the District staff who are responsible for implementing the KLIP enrollment policy and procedure;
- b. the total number of kindergarteners enrolled in the District and the number of students who were assessed for participation in KLIP;
- c. the name of each student who was considered eligible for KLIP for the 2016-2017 school year, whether or not they are identified as a student with a disability, and whether or not they qualified for KLIP for the 2016-2017 school year;
- d. how many of those students found to be eligible were placed in KLIP and the supporting reasons for the District's decisions;
- e. how many of the KLIP students are students with disabilities;
- f. how many of the KLIP students are students with disabilities that have a Section 504 plan and/or IEP with reading, math, or other academic goals/interventions; and
- g. for any students with disabilities who were not placed in the KLIP program, the reason the students with disabilities were not placed in KLIP despite otherwise qualifying for the program and the copies of the Section 504 plan or IEP in which those decisions are documented.

## **GENERAL REQUIREMENTS**

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 and its implementing regulation at 34 C.F.R. § 104.4, and Title II and its implementing regulation at 28 C.F.R. § 35.130, which were at issue in this complaint.

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 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 and its implementing regulation at 34 C.F.R. § 104.4, and Title II and its implementing regulation at 28 C.F.R. § 35.130.

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/

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Superintendent or Designee

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Date