RESOLUTION AGREEMENT

Community High School of Vermont
OCR Compliance Review No. 01-13-5001

In order to resolve Compliance Review No. 01-13-5001, pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 (Title II), and its implementing regulation at 28 C.F.R. Part 35, the Community High School of Vermont (CHSVT) agrees to take the actions detailed below.

I. Section 504 Policies and Procedures

A. CHSVT will develop policies and procedures that provide for the evaluation and placement of students with disabilities in accordance with Section 504 and Title II, and specifically with the Section 504 regulation at 34 C.F.R. §§ 104.3 (definitions), 104.33 (free appropriate public education (FAPE)), 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). The policies and procedures will specify that, for each student who, because of disability needs or is believed to need special education or related services, CHSVT will develop and implement a plan designed to meet the student’s individual educational needs as adequately as the needs of students without disabilities are met. The policies and procedures will also include and/or require the following:

1. Definition of Students with Disabilities

   a. A definition of students with disabilities consistent with the following:

      i. A student has a disability if the student (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

      ii. Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

      iii. Major life activities means functions including but not limited to caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
b. A clarification that the definition of disability provided in the policies and procedures will be construed broadly and consider whether a particular mental or physical impairment substantially limits one or more major life activities, not solely learning, vocational aptitude, or the ability to function in the CHSVT setting, but also including, for example, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working; (ii) not take into account mitigating measures, such as medication being taken by the student or related aids and services or modifications already being provided to the student or used by the student; and (iii) recognize that, if the student has an impairment that is episodic in nature or in remission, the student is eligible to be a student with a disability under Section 504 if the impairment, when active, substantially limits one or more major life activities.

2. Identification of Students with Disabilities

a. The following steps to identify students with disabilities at intake:

i. CHSVT will ensure that at the time the Vermont Department of Corrections (the VTDOC) determines an inmate will be eligible for enrollment at CHSVT, the VTDOC will immediately forward that individual’s (Student’s) identity and any known educational history for the Student to CHSVT. This will include any booking records pertaining to any disability the Student may have.

ii. Within two business days of receipt of the information identified in Action Item I(A)(2)(a)(i) above, CHSVT will request from the Vermont Agency of Education (the AOE), the name of the last known school district the Student attended and any records in the AOE’s possession indicating the Student has previously been identified as a student with a disability, a student with a 504 Plan, and/or a student with an Individualized Education Program (IEP). CHSVT will request that the AOE provide this information to CHSVT within two business days of CHSVT’s request.

iii. Upon receipt of the information identified in Action Item I(A)(2)(a)(i) or (ii) above, CHSVT will contact the Student’s last known school district to obtain the student’s educational records including current and prior 504 Plans and IEPs and any records of the Student being identified as a student with a disability.

iv. As part of its new student intake, CHSVT will make reasonable efforts to identify students with disabilities who have not already been identified above.

1. During intake, staff will ask the new Student if he or she has a disability or has been previously identified as a student with a disability, and if the Student indicates that he or she has, CHSVT
will ensure that the Student’s records are identified consistent with Action Item I(A)(2)(a)(ii) and (iii).

2. Staff will consider whether the Student manifests a disability for which the Student needs or is believed to need special education or related services. Among other things, this will take into consideration any assessments provided to the Student to gauge his or her academic and vocational aptitudes.

b. Continuing Identification Efforts:

i. Following enrollment, CHSVT Staff will continue to consider whether a Student, because of disability, needs or is believed to need special education or related services.

3. Evaluation and Placement

a. CHSVT will ensure that students enrolled at CHSVT who are suspected to have a disability under Section 504 (which may include eligibility under the Individuals with Disabilities Education Act (IDEA)) are appropriately referred, evaluated, placed, and served based on their individualized educational needs. This will include all students who have been previously identified as having a disability and/or are on IEPs or 504 Plans. To the extent that CHSVT staff may not be able to complete this process for a student, due to the student’s limited enrollment time at the school, CHSVT will document the steps it has taken and provide the necessary information to the student’s subsequent school of enrollment, if known.

b. CHSVT will ensure that a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options (the Section 504 team or IEP team) determine whether the student has a disability within the meaning of Section 504 and Title II, i.e., whether the student has a physical or mental impairment that substantially limits one or more major life activities. The Section 504 team or IEP team (“Placement Team”) shall typically include, at a minimum, the Student’s case manager, one of the Student’s teachers, a special education instructor, and the special education coordinator. CHSVT will also consider whether a Student’s therapist or psychiatrist from VTDOC should be present. Because the Placement Team will consist of a group of persons knowledgeable about the individual Student, the composition of the Placement Team for each Student may vary.

c. In making eligibility, evaluation, and plan/placement determinations, the Placement Team will ensure that tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; tests and other evaluation materials include those tailored to address specific areas of educational – including social and emotional – need and not merely those which are designed to provide a single general intelligence quotient;
tests are selected and administered so that they accurately reflect student aptitude or achievement level and not a student’s impaired sensory, manual, or speaking skills (except when those skills are factors that the test purports to measure); and testing and medical assessment (if needed) are provided at no cost to a student or, where applicable, their parent(s) or guardian(s).

d. Reevaluations shall be conducted periodically based on student need and not on CHSVT resource constraints, and shall be conducted prior to a significant change in placement, including but not limited to disciplinary removals of more than 10 days (which should follow the requirements for manifestation determinations, discussed below), as well as the exit of a student from a Section 504 plan or IEP (except in the case of the student’s graduation with a regular diploma).

e. Students identified as having a disability requiring regular or special education and/or related aids and services will be placed on a 504 plan and/or IEP by the Placement Team, as required by law. Each Plan will at minimum:

i. Identify the specific general or special education and related services, supplementary aids and services, and program modifications or supports required to meet the individual needs of the student;

ii. describe the instructional setting and method of service delivery;

iii. identify by title the personnel responsible for providing instruction and/or services; and,

iv. specify the frequency and duration of the services to be provided.

f. In interpreting evaluation data and in making plan/placement decisions, the Placement Team will draw upon a variety of sources, including appropriately recent aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and will ensure that information is carefully considered and documented.

g. As part of the policies and procedures, CHSVT will develop written criteria, consistent with the applicable requirements of the Section 504 regulation regarding the provision of a FAPE (e.g., implementation of an IEP developed in accordance with the IDEA is one means of meeting these requirements), for determining, and documenting in writing, when a student with a disability no longer requires a Section 504 plan or IEP. The criteria could include consideration of, among other things, the current nature and severity of the student’s disability; the student’s academic, vocational, social, behavioral, and emotional progress and current needs; and whether the student no longer has a physical or mental impairment that substantially limits one or more major life activities – understanding that this definition of disability is to be broadly construed, without taking into account mitigating measures.
h. CHSVT will ensure that when a student with a disability enrolls with either a Section 504 plan or IEP, there will be no significant change in the instructional setting or duration and frequency of services unless: (1) there has been an evaluation, (2) a meeting of the Placement Team, and (3) documentation by the Placement Team of the individualized educational justification for such a change consistent with the requirements of Section 504.

i. CHSVT will develop written opt-out procedures, which will include written notice to the students, and where applicable parent(s)/guardian(s), of the consequences of the opt-out from a Section 504 plan or IEP, as well as a meeting between the student, where applicable, his or her parent(s)/guardian(s) and a CHSVT special educator to discuss these consequences; and

4. **Procedural Safeguards**

   CHSVT will develop, and submit for OCR’s approval, notice of the procedural safeguards afforded to students and, where applicable, parents/guardians under Section 504 at 34 C.F.R. § 104.36, including notice, an opportunity to examine relevant records, and their right to challenge determinations concerning students’ identification, evaluation, reevaluation, and placement through requesting that CHSVT provide an impartial hearing and a review procedure;

B. CHSVT will develop a procedure to ensure that all CHSVT staff members responsible for implementing provisions of Section 504 plans and IEPs for students with disabilities are notified of the students’ plans and of staff responsibilities to implement the plans, including, as appropriate, the need to address disability-based needs that go beyond the academic and vocational, e.g., social and emotional needs.

C. Within 30 calendar days of receiving written approval from OCR of the revised Section 504 policies and procedures developed pursuant to Action Items I(A) and (B) of the Agreement, CHSVT will adopt and implement the policies and procedures. CHSVT will notify all students, parents/guardians (where applicable) and CHSVT staff members identified in Action Item I(B) of the newly revised policies and procedures developed pursuant to Action Item I(A) of this Agreement by written correspondence, email, or both and will ensure that each of its electronic and printed publications of general distribution that provide information about CHSVT programs, activities, policies and procedures – including but not limited to student and staff handbooks, announcements, bulletins, and course or program descriptions – contain either reference to or the full text of the policies and procedures, as appropriate. Inserts may be used pending the reprinting of these publications.

D. Within 30 calendar days of receiving written approval from OCR of the revised Section 504 policies and procedures, CHSVT will review its website and publications for students, staff, and third parties to ensure that they are consistent with CHSVT’s revised policies and procedures. As part of this process, CHSVT will ensure that its website and publications correctly state that students at CHSVT are entitled to a Free Appropriate Public Education.
**Reporting Requirement:** By [date], CHSVT will submit to OCR for review the revised Section 504 policies and procedures in Action Items I(A) and (B). Within 60 calendar days of receiving OCR’s approval of the revised Section 504 policies and procedures, CHSVT will submit documentation of its implementation of the revised policies and procedures, as well as its notification to students, parents/guardians where applicable, and employees of the revised policies and procedures developed pursuant to Action Item I of this Agreement, including copies of the notification issued to CHSVT’s students, parents/guardians where applicable, and employees, the link to the policies and procedures on CHSVT’s website, and any revised documents or inserts. CHSVT will also confirm to OCR that it has completed its review of its website and publications and made any appropriate changes.

**II. Training**

A. Within 60 calendar days of adopting the revised Section 504 policies and procedures in Action Items I(A) and (B), CHSVT will provide training to VTDOC case managers, CHSVT’s teachers, its Section 504 and Title II Co-coordinators, and other staff involved in the identification, evaluation, and placement of students with disabilities, as well as to its students currently on Section 504 plans and IEPs, about the revised Section 504 policies and procedures, revised grievance procedures developed pursuant to Item 5 of this Agreement, below, and the general requirements of Section 504 and Title II concerning the evaluation and placement of students with disabilities, as well as the general antidiscrimination requirements as articulated under 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.

**Reporting Requirement:** Within 120 calendar days of receipt of OCR’s approval of the Section 504 policies and procedures, CHSVT will submit information to OCR documenting the date(s) of the training(s); the names and qualifications of each person delivering the training(s); and the name and job title of all staff persons who attend the training(s), as well as the names of all students who attended the training(s).

**III. Student Specific Remedies/Group Remedies**

A. CHSVT agrees to identify students for whom it may have erroneously denied disability-related services, by identifying the class of impacted students and taking appropriate remedial action, as described below.

B. By [date], CHSVT will create a methodology to identify students still enrolled at CHSVT who (i) had been exited from their 504 plan(s) or IEPs, or (ii) whose plans were adjusted at intake or at any time during their matriculation at CHSVT.

C. Within seven calendar days of the completion of Action Item III(B), CHSVT will review the files of students identified pursuant to the methodology in Action Item III(B) to determine if these actions comported with Section 504 thus identifying students who may have been inappropriately exited or inappropriately subject to a material change in services. The review process will satisfy the following:
- consideration of the depth and breadth of the evaluation materials on file, including the date of the evaluation materials, the nature of the disability, and the age of the student;

- the review of evaluative information will include identifying the recency of the evaluation used to determine exiting and/or changes to a student’s Section 504 plan or IEP, and whether the student had been reevaluated regularly and prior to being exited;

- consideration of whether a group of persons knowledgeable about the student and the evaluative data made the decision.

D. Within 14 calendar days of the completion of Action Item III(B), for each student identified in Action Item III(C), CHSVT will convene the Placement Team and develop a new IEP or Section 504 plan, as necessary, consistent with Action Item I(A)(3) (Evaluation and Placement). The Placement Team will also determine whether the student needs compensatory and/or remedial services as a result of the determinations noted above, and shall maintain detailed minutes of such team meetings and determinations. If a student is determined to be entitled to compensatory services but exits CHSVT prior to receiving those services, CHSVT will offer the compensatory services at one of its off-site locations.

E. If CHSVT determines that additional or updated data are needed to complete any of the assessments above, then CHSVT must administer such assessments and other evaluation measures as may be needed to produce the necessary data within 14 calendar days of the Placement Team meeting.

**Reporting Requirement:**

A. Within seven calendar days of completing Action Item III(B), CHSVT will report the methodology used to OCR.

B. Within 14 calendar days of completing Action Item III(C), CHSVT will complete the reevaluation of student files and report to OCR for its review and approval the following:

   a. A list of current students who were identified pursuant to the methodology in Action Item III(B) as (i) having been exited from their 504 plan(s) or IEPs, or (ii) having plans that were adjusted at intake or at any time during their matriculation at CHSVT;

   b. A list of current students who were identified pursuant to Action Item III(C) as having possibly been inappropriately exited or inappropriately subject to a material change in services, including for each student:

      i. The student’s name;
ii. Minutes from the Placement Team’s meeting; and

iii. To the extent not already included in the minutes

1. The date the Placement Team meeting occurred pursuant to Action Item III(D) and the names of those present at the meeting;

2. A description of any changes made to the student’s IEP or 504 plan;

3. A description of any assessments and other evaluation measures provided to the student in order for CHSVT to complete its evaluation;

4. A description of any IEP-related and compensatory and/or remedial services to be provided to the student, if any;

c. A list of the students whose files were reviewed using the methodology developed in Action Item III(B) who were not identified pursuant to Action Item III(C) as having possibly been inappropriately exited or inappropriately subject to a material change in services, including for each student:

i. The student’s name;

ii. The date the student’s file was reviewed;

iii. Documentation showing the participants in the meeting reviewing that student’s file.

CHSVT 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, CHSVT understands that during the monitoring of this Agreement, if necessary, OCR may visit CHSVT to interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether CHSVT has fulfilled the terms and obligations of this Agreement. Upon CHSVT’s satisfaction of the commitments made under this Agreement, OCR shall close this case.

CHSVT understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statutes and regulations. Before initiating such proceedings, OCR shall give CHSVT written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the CHSVT’s representative below.