

## **RESOLUTION AGREEMENT**

### **Schenectady City School District Case No. 02-10-5001**

The Schenectady City School District (the District) enters into the following Agreement to resolve Compliance Review No. 02-10-5001. The review addressed whether black and/or Hispanic students were subjected to discrimination on the bases of race, national origin and/or disability, in the pre-referral and/or referral of these students for special education evaluation. The District enters into this Agreement to ensure its compliance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and its implementing regulation, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs or activities receiving financial assistance from the U.S. Department of Education (the Department), 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, which prohibit discrimination on the basis of disability in programs, services or activities receiving financial assistance from the Department, 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, which prohibit discrimination on the basis of disability by certain public entities. The District agrees to take the following actions:

#### **Action Item I: Expert**

By December 1, 2013, the District will retain an expert/outside consultant (expert), mutually agreed upon by the District and OCR, with expertise in addressing the overrepresentation of minority students in special education. The expert will review the District's procedures for screening, identification, evaluation and placement of students in special education and/or the provision of related aids and services. The expert will examine the root cause(s) of the overrepresentation of minority students in special education. The expert will make recommendations as to what measures the District should take to ensure that it is making appropriate determinations as to its screening, identification, evaluation and placement of students in special education and/or the provision of related aids and services to address the overrepresentation of minorities in special education and the root causes of this overrepresentation. The expert may be an independent contractor(s) for the District and/or an employee(s) of the District. The District, after retaining its expert, shall promptly provide the expert with all appropriate information the expert believes is necessary to engage in this process. As part of the expert's review and assessment, the following may be considered:

- A. Access to, awareness and participation (or lack of participation) of students in early intervention programs and activities;
- B. Parent involvement and awareness of regular education interventions and the Building-Level team procedures;
- C. The effectiveness of regular education interventions available to students at all schools and of the training provided to teachers regarding use of these interventions; particularly of informal classroom interventions, Building-Level Team interventions, and

interventions outside of the classroom and/or after school hours such as after school programs, tutoring, mentoring or other programs designed to help students succeed; and,

- D. The appropriateness of the use of “retention” as a regular education intervention;
- E. Availability of high quality reading programs for all elementary school students that are focused on improving the reading performance of such students; and
- F. The resources the District may need to provide to each school to ensure that the recommendations of the expert and provisions of this Agreement are implemented at each school in the District.

**REPORTING REQUIREMENTS:**

- 1) By October 1, 2013, the District will submit for OCR’s approval the name and credentials of the expert the District proposes to retain.
- 2) Within 30 days after OCR’s approval of the expert the District proposes to retain, the District will submit documentation to OCR demonstrating that it has retained the expert.
- 3) By January 31, 2014, the District will submit the expert’s recommendations to OCR, along with the District’s reason(s) for accepting or rejecting each recommendation; and, a description of changes the District plans to make to implement the recommendations.
- 4) By July 1, 2014, 2015, and, 2016, for schools years 2013-2014, 2014-2015, and 2015-2016, respectively, the District will provide to OCR documentation demonstrating its implementation of the expert’s recommendations.

**Action Item II: Screening of Students**

- A. By November 29, 2013, the District will develop a universal screening process to identify students in need of extra assistance as early as possible in their academic careers and early each school year, on an annual basis, with a goal of ensuring that students are not inappropriately referred for a special education evaluation. The plan will include, at a minimum, the methods staff will use to screen students; the steps the District will take to train all District staff on use of the screening process; and the means by which the District will monitor the implementation and success of the screening process, and will, as needed, modify the screening in future years.
- B. By January 15, 2014, the District will begin implementation of the universal screening process and any other screening improvements identified by the expert, for use in its various schools.

**REPORTING REQUIREMENTS:**

- 1) By November 29, 2013, the District will submit a copy of the plan developed in accordance with Action Item II (A) above, along with the name(s) of all District personnel involved in developing the plan.
- 2) By July 1, 2014, 2015, and 2016, the District will submit documentation to OCR demonstrating implementation of the universal screening process in the preceding school year; a copy of its assessment of the success of the process and any resulting modifications that were implemented; and a description of its plans for conducting the screening in the upcoming school year.

**Action Item III: Building-Level Teams and Interventions**

By August 15, 2014, the District will ensure, with the assistance of the expert, that every school in the District has implemented a systematic, team-based means of providing intervention strategies for students experiencing academic or behavior difficulties.

- A. The District will develop written policies and procedures regarding Building-Level Teams, to be provided to all schools, which encompass the following, at a minimum:
  - o Guidelines on the purpose and composition of the teams;
  - o A description of training to be provided to team members and other staff members;
  - o Procedures for referring students to the team and oversight to ensure consistency of the referral process in each school, including:
    - specificity regarding the circumstances under which a student should be referred to the team;
    - the timeliness of referrals to the team after identification of the need for referral;
    - the extent to which informal classroom interventions should be attempted prior to referral to the team and the suggested timeframes for such; and
    - documentation of the reasons for the referral to the team;
  - o Procedures for conducting team meetings to ensure consistency in the conduct of these meetings at each school, including:
    - specificity regarding the timeliness of the convening of team meetings after teacher referrals of students to the team;
    - attendance and participation of principals and/or assistant principals in each team meeting; and,
    - documenting decisions made at each team meeting for each student, including the date the student was referred to the team, the date of the

meeting, the interventions recommended, and the date the team will follow-up regarding the effectiveness of the interventions;

- B. The District will develop written policies and procedures regarding team-prescribed interventions, to be provided to all schools, which encompass the following, at a minimum:
- Procedures for providing team-prescribed interventions to ensure consistency in the provision of these interventions at each school, including:
    - specificity regarding the availability of staff to provide team-prescribed interventions; including speech and occupational therapy services;
    - the amount of time that team-prescribed interventions should be provided;
    - how teachers and other staff should document the provision of the team-prescribed interventions; and
    - the use of “retention” as an intervention, if determined to be appropriate under the procedures.
  - Procedures, timeframes, and objective criteria, including measures of feedback from parents, for evaluating the effectiveness of pre-referral interventions prescribed by the team, and determining next steps if the prescribed interventions are deemed ineffective; and
  - Documentation schools are to use to track the success of intervention strategies and consideration of alternate pre-referral interventions and/or consideration of referral for special education.
- C. The District will review and revise its materials that are distributed to District personnel, parents/guardians, students, and other stakeholders regarding Building-Level Teams and team-prescribed intervention strategies to reflect any changes made pursuant to Action Items III (A) and (B) above. The materials will, at a minimum:
- Clarify how parents can request intervention strategies prior to referral for a special education evaluation; and,
  - State that the District’s intervention strategies are not a substitute for and shall not delay timely and appropriate evaluations and/or special education services.

**REPORTING REQUIREMENTS:**

- 1) By September 15, 2014, the District will submit to OCR a copy of all documentation provided to schools pursuant to Action Items III (A) and (B) above.
- 2) By September 15, 2014, the District will submit to OCR a copy of the materials provided District personnel, parents/guardians, and other stakeholders pursuant to Action Item III (C) above.

- 3) By July 1, 2015, 2016, and 2017, the District will submit documentation to OCR demonstrating implementation of the Building-Level Team process in the preceding school year; and, a description of any plans to modify the process in the upcoming school year, including the reason(s) for such modifications.

**Action Item IV: Professional Development/Training**

- A. By November 1, 2013, and by the same date annually thereafter, the District will provide training to all teaching staff designed to increase awareness of the overrepresentation of black and Hispanic students in special education, specifically in the categories of emotionally disturbed (ED), mentally retarded (MR), and learning disabled (LD). The training will emphasize that the purpose and significance of placement in special education is designed only to serve students with disabilities. The training will also address the identification of possible non-disability related causes of academic or behavior deficits; and, the provision of appropriate regular education interventions and behavior management techniques that can be implemented in the regular education classroom to address these deficits.
- B. By August 15, 2014, and by the same date annually thereafter, the District will provide District-wide training to all members of each school's building level team on the intervention process and on intervention strategies for students. The training will address the identification of possible non-disability related causes of academic or behavior deficits; and, the provision of appropriate regular education interventions and behavior management techniques that can be implemented in the regular education classroom to address these deficits.
- C. By August 15, 2014, and by the same date annually thereafter, the District will provide all teachers with training on the building-level teams, including, but not limited to the following:
  - o the purpose of the team;
  - o its written procedures for referring students to the building-level teams, focusing on the circumstances under which a student should be referred to the team, the timeliness of referrals to the team after identifying the need for referral, the extent to which informal classroom interventions should be attempted prior to referral, including suggested timeframes, and the need to document the reason(s) for the referral and the types of, and extent to which, informal interventions were provided prior to the referral;
  - o the team's process for discussing the student and developing a plan to provide additional interventions; and
  - o documentation used by the team, including documentation used to evaluate the effectiveness of interventions.

**REPORTING REQUIREMENTS:**

- 1) By November 15, 2013, 2014, and 2015, the District will submit to OCR a copy of all materials disseminated in the training provided to teachers as a result of Action Item IV (A) above; and a list of all individuals who attended the training.
- 2) By August 29, 2014, 2015, and 2016, the District will submit to OCR a copy of all materials disseminated in the training provided to members of each school's building level team as a result of Action Item IV (B) above; and a list of all individuals who attended the training.
- 3) By August 29, 2014, 2015, and 2016, the District will submit to OCR a copy of all materials disseminated in the training provided to teachers as a result of Action Item IV (C) above; and a list of all individuals who attended the training.

**Action Item V: Special Education Evaluations**

- A. By November 29, 2013, the District will conduct a review of the most recent evaluation of all students in the special education categories of ED, MR, and LD in order to assess whether the student was appropriately determined to be eligible for the specific special education category in which the student has been placed based on the published criteria for the applicable special education category. The District will also review whether each student in the special education categories of ED, MR, and LD was placed in the regular educational environment (i.e., the least restrictive environment), unless it was demonstrated that the education of the student in the regular environment could not be satisfactorily achieved even with the use of supplementary aids and services.
  - o For any student who this review reveals may not have met special education eligibility criteria, the District will immediately commence a re-evaluation to determine whether the student is in fact eligible for special education and/or eligible for the special education category in which the student was placed. A District-level administrator will oversee all re-evaluations conducted under this item to ensure that teams consistently apply the District's eligibility criteria. For any students who this review determines were improperly found eligible for special education or for the special education category in which the student was placed, the District will provide by the end of the 2013-2014 school year all necessary compensatory and/or remedial services to address any deficits resulting from the improper placement.
  - o For any students who this review reveals was not placed in the least restrictive environment, the District will immediately convene an appropriate IEP/Section 504 meeting of knowledgeable individuals and commence a re-evaluation to determine the proper placement for the student and implement the placement as soon as determined to be educationally appropriate by the IEP/Section 504 team.

- B. Effective immediately, the District will ensure that all students initially determined to be in need of special education and/or related aids and services are appropriately classified, with special emphasis on the classifications of ED, MR, and LD.

**REPORTING REQUIREMENTS:**

- 1) By December 16, 2013, the District will submit to OCR a list of students whose records were reviewed as part of the implementation of Action Item V (A) above, with the race or national origin of each student; and, will indicate for which students it determined a re-evaluation was warranted and provide a description of the outcome of each re-evaluation, including the dates of any services provided or changes in placements.
- 2) By July 1, 2014, 2015, and 2016, the District will provide to OCR a list of students, by race and national origin, initially classified as eligible for special education in the just completed school year, along with a copy of documentation demonstrating that they were classified and placed appropriately.

**Action Item VI: English Language Learner (ELL) Students**

- A. Effective immediately, the District will ensure that Building-Level Teams and special education personnel evaluate students who are ELL (as indicated by the student's Primary Home Language Other than English (PHLOTE) and Home Language Questionnaire (HLQ) form), and who have or are suspected of having disabilities, utilizing tests and other evaluation materials in their dominant language. The District will adapt its disability pre-referral, referral, evaluation, and placement policies, procedures, and practices to ensure that ELL students are not misidentified and placed as students with disabilities; and, that they are not denied appropriate services because they are ELLs. To that end, the District will ensure:
- availability of certified staff to evaluate ELL students in their dominant languages;
  - availability of evaluation materials in languages other than English;
  - consideration of the need for language acquisition and alternative language services;
  - consideration of student's PHLOTE/HLQ; and,
  - maintenance of the PHLOTE/HLQ in the student's special education file.
- B. By November 29, 2013, the District will conduct a review of all students who are ELL (as indicated by the student's PHLOTE/HLQ form), and who are currently identified as students with disabilities under IDEA and/or Section 504, to determine whether each student's identification, placement, and services are appropriate. The District will ensure that students who require both ELL services and special education receive both; and determine what, if any, compensatory and/or remedial services are needed to address any deficits resulting from the improper placement of any student. The District provide any necessary compensatory and/or remedial services, with an end date not to exceed June 30, 2014.

**REPORTING REQUIREMENTS:**

- 1) By December 31, 2013, the District will provide to OCR a copy of its special education procedures and alternative language program procedures, revised consistent with Action Item VI (A) above.
- 2) By December 31, 2013, the District will provide to OCR a list of all of its ELL students currently identified as students with disabilities under IDEA or Section 504; documentation demonstrating the review described in Action Item VI (B) above; a description of the alternative language services and special education services provided to each student; and what, if any, compensatory services were deemed necessary for each student as a result of this re-evaluation and by June 30, 2014, will provide documentation of the provision of any necessary compensatory services.
- 3) By July 1, 2014, 2015, and 2016, the District will provide the following information to OCR for the just completed school year:
  - a) The names of ELL students evaluated by the Building-Level Team and at the special education evaluation level;
  - b) The language in which each of these students were evaluated;
  - c) The name(s) of the evaluator(s), and any language certification of the evaluator(s); and,
  - d) The types/names of the evaluation materials used to evaluate each of these students.

**Action Item VII: Data Maintenance and Evaluation**

A. Effective immediately, the District will maintain the following data:

- the number of students, by race and national origin, enrolled in each District school in the most-recently completed school year;
- the number of students, by race and national origin, in special education in the District in the most-recently completed school year;
- the number of students, by race and national origin, in the special education categories of MR, ED, and LD in the most recently completed school year;
- a list of students, by race or national origin, and school, who were referred to the building-level team due to academic or behavioral concerns in the most-recently completed school year; including for each, the date of referral to the team, the date of the initial building level team meeting, whether the principal and/or assistant principal participated in the meeting, the interventions recommended (if any), the date the team followed up regarding implementation of the team-prescribed interventions (if any), and whether the student was referred for a special education evaluation, and if so, on what date; and
- a list of students, by race or national origin, and school, who were referred for initial special education evaluation in the most recently completed school year, and the outcome of each evaluation.

- B. Using the data maintained pursuant to Action Item VII (A) above, and other information gathered during the implementation of this Agreement, the District will annually evaluate the effectiveness of its screening, intervention, evaluation, and placement processes and identify improvements necessary in these areas to ensure that it is making appropriate determinations and addressing the overrepresentation of minorities in special education.
- C. The District will analyze its data related to teacher referrals of elementary school students to the Building-Level Team, to determine whether students of all races and national origins were treated equitably in this regard. At a minimum, the District will analyze referrals made by each elementary school teacher to determine whether black and/or Hispanic students were referred by any particular teacher at a disproportionate rate when compared to their representation in that teacher's classroom. If so, the District will determine whether over-referral by a particular teacher was based on race or national origin; and take appropriate actions to address any problems noted.
- D. The District will also analyze data related to the provision of team-prescribed interventions, to determine whether students of all races and national origins were treated equitably in this regard. At a minimum, the District will determine whether all interventions prescribed by the team to each student were provided, whether teams met timeframes for meeting to determine the effectiveness of team-prescribed interventions, and whether teams were consistent in determinations made regarding whether additional interventions were necessary or whether a referral for special education evaluation was necessary.

**REPORTING REQUIREMENTS:**

- 1) By July 1, 2014, 2015, and 2016, the District will provide to OCR the data referenced in Action Item VII (A) above for the just completed school year.
- 2) By July 1, 2014, 2015, and 2016, the District will provide to OCR the evaluation referenced in Action Item VII (B) above, and a description of any steps to be taken in response to the evaluation.
- 3) By July 1, 2014, 2015, and 2016, the District will provide to OCR the analysis of teacher referrals prepared for the just completed school year referenced in Action Item VII (C) above. At a minimum, the information provided for each school year will indicate:
  - o The name of each elementary school teacher, and the teacher's school and grade level;
  - o The number of students enrolled, by race and national origin, in the teacher's classroom;
  - o The number of students referred to the team by the teacher, by race and national origin;

- The District’s analysis of whether referrals by the teacher were disproportionate for black and/or Hispanic students; and if so, how the District addressed any problems identified with regard to the over-referral; and
  - An assessment of whether each teacher referred students of different racial and ethnic backgrounds for similar reasons.
- 4) By July 1, 2014, 2015, and 2016, for the just completed school year, the District will provide to OCR the analysis of the provision of team-prescribed interventions as referenced in Action Item VII (D) above. At a minimum, the information provided for each school year will indicate:
- The name of each elementary school teacher, and the teacher’s school and grade level;
  - The number of students who received team-prescribed interventions in each teacher’s class;
  - The District’s analysis of whether all interventions prescribed by the team were provided; and if not, how the District addressed any problems identified;
  - The number of ELL students who received team-prescribed interventions;
  - The number of speech and occupational therapy service providers available to provide services;
  - The number of students who received team-prescribed interventions at each elementary school;
  - The date that each student was referred to the team;
  - The date that the team met to evaluate each student referred;
  - Any classroom interventions attempted for each student, including how long each intervention was attempted and the outcome;
  - The District’s analysis of whether teams met timeframes for meeting to determine the effectiveness of team-prescribed interventions for these students; and
  - The District’s analysis of whether teams were consistent in determinations made regarding whether additional interventions were necessary or whether a referral for special education was necessary.

The District understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with Title VI and its implementing regulation at 34 C.F.R. §§ 100.3(a) and (b), Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4(b) and 104.33 – 104.36, and Title II and its implementing regulation at 28 C.F.R. §§ 35.130(a) and (b), which were 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, 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 District has fulfilled the terms of this Agreement and is in compliance with Title VI and its implementing regulation at 34 C.F.R. §§ 100.3(a) and (b), Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4(b) and 104.33 – 104.36, and Title II and its implementing regulation at 28 C.F.R. §§ 35.130(a) and (b), which were at issue in this case. Prior to the conclusion of OCR’s monitoring, the District will provide documentation establishing that any disparities relating to the identification, evaluation and placement of students in special education are not the result of discrimination prohibited by Title VI and its implementing regulation. 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 recipient written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

For the District:

\_\_\_\_\_/s/\_\_\_\_\_  
Superintendent or designee

Date 9/25/13