

RESOLUTION AGREEMENT

New York City Department of Education Case No. 02-23-1005

In order to resolve Case No. 02-23-1005, the New York City Department of Education (NYCDOE) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35.

The NYCDOE affirms that it cannot through contractual or other arrangements deny, on the basis of disability, a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service enjoyed by others receiving the aid, benefit, or service; and/or provide significant assistance to any entity that discriminates against a NYCDOE student on the basis of disability, pursuant to the regulations implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i), (v), and (vi) and Title II, at 28 C.F.R. § 35.130.

Action Item 1: Notice to Parents/Guardians and NYCDOE Administrators

By April 15, 2023, the NYCDOE will issue a letter to the administrators, classroom staff, and administrative staff who interact with parents/guardians of students at the XXXXXXXX XXXXXXXXXXXX XXXXXX XXXXXXXX XXXXXXXX XXXXXX at XXXXXXXXXXX XXXXXXXXXXX XXXXXXXX (the Center), parents/guardians of students enrolled in the Center, and central NYCDOE employees who respond to escalations relating to students with disabilities in NYCDOE XX and XXX-XXXXXXXXXXXX programs regarding the requirements of Section 504 and Title II, including that the Center (1) may not discriminate against students on the basis of disability; (2) may not exclude or limit the participation of students in the Center's activities on the basis of disability; (3) may recommend to a parent/guardian or to the appropriate Committee on Preschool Special Education (CPSE) that a student be evaluated for services as deemed appropriate based on their demonstrated needs, but must continue to serve that student and not discharge the student from the Center based on the child's perceived or actual disability regardless of whether the parent/guardian consents to the evaluation; and (4) must take into account the needs of students with disabilities on an individual basis in determining the aid, benefits, or services to be provided.

Reporting Requirement:

By April 30, 2023, the NYCDOE will provide to OCR a copy of the letter it sent to the Center, parents/guardians of students enrolled in the Center, and relevant NYCDOE administrators consistent with Action Item 1.

Action Item 2: Student Participation in the Center

To ensure that the Center is complying with the requirements of Section 504 and Title II, the NYCDOE will provide information about the Center's NYCDOE-contracted XX/XXX-

XXXXXXXXXXXX program (the Program) to OCR for school year 2022-2023, and for school year 2023-2024. Specifically, and as further outlined below, NYCDOE will provide information regarding requests the Center received and/or implemented for participants in the Program for aid, benefits, and services to meet the needs of students with disabilities and/or suspected of having disabilities; (2) students the Center referred for special education evaluations; and (3) Program participants who were discharged from the Center.

Reporting Requirement:

- 1) By July 15, 2023, and again by July 15, 2024, the NYCDOE will provide to OCR the following information for school years 2022-2023 and 2023-2024, respectively:
 - (a) A list of Program participants including enrollment status (i.e., partial-day or full day);
 - (b) A list of requests the Center received and/or implemented regarding aids, benefits, and services to meet the needs of students with disabilities and/or suspected of having disabilities; and the Center's response to the requests;
 - (c) A list of Program participants the Center referred for special education evaluations and whether each student was determined eligible to receive special education and related aids and services;
 - (d) A list of Program participants who were discharged from the Center (including the participant's disability status and classifications, if applicable) along with the following information:
 - (i) the date on which the student was discharged from the Center;
 - (ii) an explanation for the student's discharge (to the extent known), including any applicable NYCDOE/Center policies and/or procedures relied upon in making the decision; and
 - (iii) copies of all related documentation, including correspondence between NYCDOE or Center staff and the student's parent/legal guardian and/or among NYCDOE or Center staff regarding the student's discharge from the Center, all relevant policies or procedures, emails, memoranda, reports, notes, logs, forms, and/or meeting minutes.

Action Item 3: Training

- (a) By May 15, 2023, the NYCDOE will provide training (which may be held asynchronously and/or remotely) to all Center classroom and administrative staff who interact with families, and administrators, including the Center's Director and teachers, and central NYCDOE employees who respond to escalations relating to students with disabilities in NYCDOE XX and XXX-XXXXXXXXXXXX programs, regarding the requirements of

Section 504, at 34 C.F.R. §104.38 and 104.4(b)(1)(i), (v), and (vi); and Title II, at 28 C.F.R. § 35.130(b)(1)(ii), (iv) and (vii), including that:

- (i) the Center may not, on the basis of disability, exclude qualified individuals with disabilities from the program or activity; must take into account the needs of such persons in determining the aid, benefits, or services to be provided; may recommend to a parent/guardian or to the appropriate Committee on Preschool Special Education (CPSE) that a student be evaluated for services as deemed appropriate based on their demonstrated needs, but must continue to serve that student and not discharge the student from the Center based on the child's perceived or actual disability regardless of whether the parent/guardian consents to the evaluation; and
- (ii) the NYCDOE may not through contractual or other arrangements deny, on the basis of disability, a qualified individual with a disability the opportunity to participate or benefit from the aid, benefit, or service enjoyed by others receiving the aid, benefit, or service; and/or
- (iii) the NYCDOE may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability.

Reporting Requirement:

By May 31, 2023, the NYCDOE will submit documentation to OCR demonstrating that the NYCDOE provided trainings in accordance with Action Item 3 above, including the name(s) and credentials of the trainer(s); the date(s) of the training(s); a short summary of the material covered; copies of any training materials distributed; and proof of attendance by relevant Center staff.

By signing this Agreement, the NYCDOE agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. Further, the NYCDOE understands that during the monitoring of this Agreement, if necessary, OCR may visit the NYCDOE, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the NYCDOE has fulfilled the terms and obligations of this Agreement. The NYCDOE understands that OCR will not close the monitoring of this Agreement until OCR determines that the NYCDOE has demonstrated compliance with all the terms of this Agreement and is in compliance with Section 504, and its implementing regulation at 34 C.F.R. Part 104, and Title II and its implementing regulation at 28 C.F.R. Part 35, which were at issue in this case.

The NYCDOE understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statute(s) and regulation(s).

Before initiating such proceedings, OCR will give the NYCDOE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the NYCDOE's representative below.

3/17/23
Date

/s/
Toni Gantz, Executive Deputy Counsel
New York City Department of Education