

RESOLUTION AGREEMENT
Baltimore County Public Schools
OCR Docket Number: 03-22-1016

Baltimore County Public Schools (the District) agrees to resolve the above-referenced complaint by entering into this Resolution Agreement (Agreement) with the U.S. Department of Education's Office for Civil Rights (OCR) to address the violations identified by OCR during its investigation of this complaint. The District submits this Agreement to ensure compliance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities.

In order to address the identified violations of Section 504 and Title II, the District agrees to the following terms:

ACTION STEPS AND REPORTING REQUIREMENTS

The District acknowledges its obligation to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction in accordance with Section 504, at 34 C.F.R. § 104.33, and Title II, at 28 C.F.R. § 35.130, including adherence to the requirements of 34 C.F.R. § 104.35 (evaluation and placement) and § 104.36 (procedural safeguards).

Section A: The Student

Action Step A.1

Within 30 days of signing this Agreement, the District will compile documentation of the 401 hours of compensatory tutoring it asserts were provided to the Student to remedy the denial of FAPE due to the lapse in HHS tutoring services during the [Redacted content] school year.

Action Step A.2

Within 30 days of signing this Agreement, the District will invite the Complainant, in writing via regular mail, as well as by email, to attend an IEP meeting for the Student to discuss the FAPE impact on the Student due to the lapse in HHS tutoring services during the [Redacted content] school year, and whether the Student showed any regression for which additional compensatory services are owed. The invitation to the Complainant will be sent at least fifteen (15) days in advance of the meeting, unless the Complainant agrees to waive this requirement.

At this meeting, the IEP team, including the Complainant, the team will discuss the Student's overall progress and how the missed instruction during the [Redacted content] school year affected his progress. The Team will review the documentation of the 401 hours of compensatory education provided by the District required in Action Step A.1. above. The team

will determine whether additional hours or other compensatory services are appropriate to remediate any educational loss the Student experienced by a lack of HHS services. In making this determination, the IEP team will adhere to the requirements of 34 C.F.R. § 104.35 (evaluation and placement) and § 104.36 (procedural safeguards). The District will ensure that accurate meeting minutes are kept to document this meeting, including documenting information considered from all sources and all decisions made by the team, which includes the Complainant.

The team will ensure that the compensatory education or other remedial services shall be delivered in a manner so as not to hinder the delivery of any services that are required by the Student's current educational program.

Action Step A.3

Within 21 days of the team meeting required in Action Step A.2, the District will provide the Complainant with written notice, by regular mail and email, of the outcome of the meeting. The written notice will provide:

- a) the District's determination regarding any additional compensatory hours owed to the Student;
- b) a description of the compensatory and/or remedial educational services to be provided;
- c) the subject areas covered;
- d) the amount of services;
- e) a process for rescheduling hours missed due to either complainant or teacher cancellation; and where and when the services will be provided, including the appropriate beginning and ending dates for the services.

Section A Reporting Requirements:

A.1 Within 21 days of the IEP team meeting required by Action Step A.2 and the IEP team's decision regarding compensatory services for the Student, the District will provide OCR with documentation demonstrating that it held the required IEP meeting, determined if the Student is owed any additional compensatory services, and developed a schedule for providing the services. OCR will review the documentation to ensure that the District has met the procedural and other requirements of the Section 504 implementing regulation, at 34 C.F.R. §§ 104.34, 104.35, and 104.36, in making these determinations.

The documentation submitted to OCR shall include:

- a) a narrative summary of the District's determination;
- b) the written offer sent to the Complainant for the IEP team meeting;
- c) a list of meeting participants;
- d) the information considered by the IEP team;

- e) the District’s documentation of the 401 hours of compensatory tutoring provided to the Student;
- f) an assessment of the calculation of any additional compensatory services owed to the Student to remedy any regression he experienced during the 2021-2022 school year due to the denial of FAPE;
- g) an explanation for all decisions made;
- h) a description of the types of compensatory education or other remedial service options discussed;
- i) the notice of procedural safeguards provided to the Complainant; and
- j) a copy of the meeting minutes.

A.2 Within 15 days of the conclusion of the delivery of the Student’s compensatory hours, the District will provide documentation to OCR confirming the delivery, including the dates, times, and locations that the services were provided.

Section B: District Students who missed HHS tutoring services in [Redacted content]

Action Step B.1

Within 90 days of signing this Agreement, the District will assess and calculate the hours for all students with disabilities who were enrolled in HHS during the [Redacted content] school year, including students with disabilities receiving accommodations under either Section 504 plans or IEPs. The District will provide a calculation for make-up hours already provided by the District to date. The District will assess the number of hours not yet made up by each affected student in the District as well.

Action Step B.2

Within 90 days of signing this Agreement, the District will provide all legal guardians/parents of the affected students with written notice, by regular mail and email, of the calculation for HHS hours to still be provided. The District will invite legal guardians/parents of the affected students, in writing via regular mail as well as by email, to attend a Section 504 or IEP meeting (whichever is applicable to each respective student), at least fifteen (15) days in advance of the meeting, unless the legal guardians/parents agrees to waive this requirement.

At this meeting, the team, will discuss the denial of a free appropriate public education (FAPE) that resulted from the loss of HHS tutoring hours and its impact on the student. The team will consider the number of missing hours, including a calculation of total hours missed and any make-up hours already provided by the District. The team will also discuss how the missed instruction during the [Redacted content] school year affected the student’s progress, and will determine whether additional hours or other compensatory services are appropriate to remediate any educational loss experienced by the lack of HHS services. The schedule on how the hours will be provided to the affected student will be discussed and decided upon by the team. In making this determination, the placement team will adhere to the requirements of 34 C.F.R. § 104.35 (evaluation and placement) and § 104.36 (procedural safeguards). The District

will ensure that accurate meeting minutes are kept to document this meeting, including documenting information considered from all sources and all decisions made by the team.

NOTE: If the District provided written notice and conducted team meetings pursuant to Action Step B.2 prior to signing this Agreement, it need not complete this step again, but must provide documentation to OCR consistent with all subparts of the Section B reporting requirements below.

Action Step B.3

Within 21 days of each meeting with legal guardians/parents of affected students, the District will provide all legal guardians/parents of the affected students with written notice, by regular mail and email, of the outcome of the assessment. If it is determined that compensatory education or other remedial educational services will be provided to the student, the written notice will provide:

- a) a description of the compensatory and/or remedial educational services to be provided, including a description and amount of any services provided already;
- b) where and when the services will be provided, including the appropriate beginning and ending dates for the services; and
- c) any transportation that will be provided in conjunction with these services.

The compensatory education or other remedial services shall be delivered in a manner so as not to hinder the delivery of any services that are required by each student's current educational program. If the Section 504 or IEP team determines that no educational loss remains to be compensated, the District will provide an explanation of its decision to the parents or guardians, including the basis for its decision, along with a notice of the procedural safeguards, including the right to challenge the team's determination through an impartial due process hearing.

Section B Reporting Requirements:

- B.1 Within 90 days of signing this Agreement, the District will provide OCR with its assessment of the calculation of missing tutor hours for all affected students during the [Redacted content] school year, pursuant to Action Step B.1. This will include a calculation of hours awarded since the District last provided OCR with data on their calculation. This submission shall be in Microsoft Excel format and, unless the District will be providing unique identifiers on all documents submitted for reporting requirements B.2 and B.3, the District shall not use unique identifiers in this spreadsheet.
- B.2 Within 120 days of signing this Agreement, the District will provide OCR with copies of notices sent to the affected families.
- B.3 By July 1, 2024, for each of the affected students, the District will provide OCR with:

- a. Documentation for each family that did not respond/declined to meet in response to the notice sent pursuant to Action Step B.2; and
- b. Documentation for each family that did request to meet in response to the notice sent pursuant to Action Step B.2. The documentation will include the following regarding the meeting:
 - i. a list of meeting participants;
 - ii. the information considered by the IEP/Section 504 team;
 - iii. an assessment of the calculation of missing tutor hours for the student;
 - iv. an explanation for all decisions made, including the team’s decision as to the hours remaining to be provided to the affected student, the schedule for those hours, and a system for scheduling make-up session due to either parent or HHS instructor cancellation;
 - v. a description of additional compensatory education or other remedial service options that the team determined that the District owed to each student due to the denial of FAPE during the 2021-2022 school year;
 - vi. the notice of procedural safeguards provided to the parents/guardians; and
 - vii. a copy of the meeting minutes.

Section C: Training

Action Step C.1

Within 60 days of signing this Agreement, the District will provide training for all Director level staff in the District’s Academic Programs and Options Department, including the Director of Home and Hospital Services, on the District’s obligations to provide a FAPE to all students with disabilities as defined under Section 504 within their respective departmental programs and activities. The training will include the following specific information:

1. FAPE obligations exist when students are receiving alternative forms of instruction, such as instruction through the District’s HHS; and
2. If a student misses services or instruction required through their IEP or Section 504 Plan due to District’s inability to provide instructors or programming, the determination of whether a student was denied FAPE as well as the amount of compensatory education owed are decisions that must be made by a team of persons knowledgeable about the student.

Within 90 days of signing this Agreement, District staff in the District’s Division of Curriculum and Instruction will develop a procedure for ensuring FAPE is provided to District students who miss HHS due to extenuating staffing circumstances.

Section C Reporting Requirements

- C.1 Within 60 days of signing this Agreement, the District will provide OCR with a copy of the training materials, agenda, and confirmation of all participants who attended the training required under Action Step C.1.
- C.2 Within 90 days of signing this Agreement, the District will provide OCR with a copy of its procedure for ensuring FAPE is provided to District students who miss HHS due to extenuating circumstances, for OCR review and approval.

Section D: Record-Keeping

Action Step D.1

- 1. By July 1, 2024, the District will develop an electronic tracking system to track tutoring services for students with disabilities enrolled in HHS. The District will ensure that the electronic system also tracks determinations made by IEP teams or Section 504 multidisciplinary teams regarding compensatory services for students with disabilities enrolled in HHS, including the reason for the determination. For each student determined to be in need of compensatory services, the District will provide the exact minutes, type, and date of related aids and services provided as compensatory education and who delivered the services.
- 2. The District will train and/or provide written guidance to the relevant District level and school level staff on the use of this tracking system.

Section D Reporting Requirements

- D.1 By July 1, 2024, the District will provide documentation to OCR illustrating its HHS tutoring tracking system, as required by Action Step D.1 above.
- D.2 By July 1, 2024, the District will provide OCR with the name and contact information for a designated staff member knowledgeable about the tracking system. The designated staff member will provide to OCR quarterly data of tutoring services and compensatory services provided to students with disabilities enrolled in HHS during the [Redacted content] and [Redacted content] school years, listed by Student ID number.
- D.3 By July 1, 2024, the District will provide OCR with documentation that District level and school level staff received training on the HHS tracking system during the 2023-2024 school year or document that there is training scheduled to occur in the 2024-2025 school year.
- D.4 By July 1, 2024 and July 1, 2025, the District will provide OCR with a report from its data tracking system detailing compensatory services provided and still owed for all students with disabilities enrolled in HHS.

By signing this Agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirement of this Agreement. 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. The District understands that

OCR will not close the monitoring of this Agreement until such time as OCR determines that the District is in compliance with 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 complaint.

The District understands that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings to enforce the specific terms of this Agreement and the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the District 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 District's representative below.

_____/s/_____
Superintendent or Designee

9/26/2023
Date