

Resolution Agreement
Larimore Public School District #44
OCR Docket # 05-15-1248

The Larimore Public School District #44 (District) voluntarily enters into this Resolution Agreement (Agreement) to ensure compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 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. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35, with respect to the allegation of disability discrimination raised in the above-referenced complaint. Specifically, the District has voluntarily agreed to resolve the allegation that it discriminated against Student A, based on his disability (XXXXXXXXXXXXXXXX) by failing to provide XXX with a free and appropriate public education (FAPE) during the 2014-15 school year. By entering into this Agreement, the District does not admit any violation of Section 504 or Title II with regard to the allegation that the it failed provide Student A with a FAPE during the 2014-15 school year

Additionally, the District agrees to take corrective action to resolve the Section 504 and Title II compliance violations identified by OCR during this investigation.

Review of Policies, Practices, and Procedures

1. *Consultant.* The District agrees to retain an independent third-party consultant, subject to OCR approval, with whom the District agrees to collaborate in a review of the District's Section 504 and Title II policies, practices, and procedures (hereafter Section 504 Policies). The District will provide the consultant with all appropriate information the consultant believes to be necessary to evaluate the District's Section 504 Policies, including but not limited to its written policies and its practices, and procedures related to the District's compliance with the Section 504 regulation at 34 C.F.R. §§ 104.4(a), 104.7 (a) and (b), 104.8, 104.33, 104.35, and 104.36.

REPORTING REQUIREMENT: By October 15, 2015, the District will provide OCR with documentation demonstrating the implementation of item #2, including the name and credentials of the consultant and the proposed contract between the District and consultant.

2. *Notice of Non-Discrimination.* In collaboration with the Consultant, the District will review and revise, as necessary, its Notice of Non-Discrimination, which shall be included in all of the District's recruitment or application materials, to include the following:
 - a) Notice to all students, parents/guardians, and employees that it does not discriminate on the basis of disability in education programs or activities that it operates and that it is required by Section 504 not to discriminate in that manner;
 - b) Notice to all students, parents/guardians, and employees of the name or title, office, email address, and telephone number of the designated Section 504 Coordinator;

- c) Notice to all students, parents/guardians, and employees that inquiries concerning the application of Section 504 and its implementing regulation may be referred to the Section 504 coordinator or to OCR.

REPORTING REQUIREMENT: By November 15, 2015, the District will provide OCR with a proposed draft of its revised notice of non-discrimination, which OCR shall review, and the District shall publish within 15 days of OCR's approval of the notice..

3. *Non-Discrimination Policy.* In collaboration with the Consultant, the District will review and revise, as necessary, its Non-Discrimination Policy, which shall be widely disseminated and published, to include the following:

- a) A statement to all students, parents and staff that will be published on the District's website and posted in prominent locations at all District schools, stating that the District does not tolerate acts of discrimination or harassment, including discrimination or harassment based on disability, in its programs, services, or activities;
- b) Adequate definitions of prohibited discrimination and harassment, with specific examples and an explanation that the procedures apply to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- c) Appropriate contact information for the designated District and School staff members to whom students and parents may report allegations of harassment and/or discrimination, as well as the name of an alternate staff member if the complaint is to be filed against the contact person;
- d) A statement encouraging any student who believes that he or she has been subjected to discrimination or harassment based on disability to report to the District or School the discrimination or harassment, and noting the District's commitment to conducting a prompt investigation;
- e) A statement warning that students or staff found to have engaged in acts of discrimination or harassment based on disability will be promptly disciplined and make clear that such discipline may include for students, if circumstances warrant, suspension or expulsion, and for employees, termination; and
- f) A prohibition against retaliation against complainants or persons who participate in the grievance process or who request evaluations for special education and related services, report disability discrimination, or participate in related proceedings.

REPORTING REQUIREMENT: By November 15, 2015, the District will provide OCR with a proposed draft of its revised non-discrimination policy, which OCR shall review and the District shall publish pursuant to item #6 of this Agreement.

4. *Grievance Procedures.* In collaboration with the Consultant, the District will review and revise, as necessary, its Grievance Procedures to include the following:

- a) Notice that the grievance procedures apply to complaints filed by students or on their behalf alleging discrimination or harassment carried out by employees, other students, or third parties;

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- b) Provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and individual(s) accused of discrimination to present witnesses and other evidence;
- c) Designated and reasonable prompt timeframes for the major stages of the complaint process;
- d) Written notice to the complainant and individual(s) accused of discrimination of the outcome of the complaint;
- e) An assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate;
- f) Notice that the District prohibits retaliation against complainants or persons who participate in the grievance process or who request evaluations for special education and related services, report disability discrimination, or participate in related proceedings; and
- g) Provisions to ensure adequate documentation of all proceedings.

REPORTING REQUIREMENT: By November 15, 2015, the District will provide OCR with a proposed draft of its revised grievance procedures, which OCR shall review and the District shall publish pursuant to item #6 of this Agreement.

5. Policies and Procedures Related to the Identification and Evaluation of Students with Disabilities, Including Due Process Procedures and Procedural Safeguards (504 Policies). In collaboration with the Consultant, the District will review and revise, as necessary, its 504 Policies to include the following:

- a) a statement setting forth the District's commitment to providing a free appropriate public education (FAPE) to all qualified individuals enrolled in the District consistent with the requirements of 34 C.F.R. § 104.33;
- b) an explanation of the procedures under which staff, parent(s), and guardian(s) may make an initial request for an evaluation, including a narrative description of all steps necessary to make the request, identification of the person(s) at the District to whom a request may be made, the information that must be provided in making a request, and a description of any assistance the District provides to parent(s) and guardian(s) in making such requests;
- c) an explanation of the procedures governing the District's response to staff, parent(s) and guardian(s) requests for evaluation, including a narrative description of the steps the District takes to record and process such requests, the timeframe in which the District will respond to the request, and the notice provided to parent(s) and guardian(s) about the District's response to a request for an evaluation; and
- d) publication of the District's procedural safeguards, which shall provide an opportunity for the parents/guardians of students:
 - i) to examine relevant records;
 - ii) to obtain an impartial hearing with opportunity for participation by the parents/guardians or their counsel; and
 - iii) to seek a review procedure.

REPORTING REQUIREMENT: By November 15, 2015, the District will provide OCR with a proposed draft of its revised 504 policies, which OCR shall review and the District shall publish pursuant to item #6 of this Agreement.

6. *Adoption and Publication.* Within 30 days after OCR's approval of the proposed changes to the District's revised policies referenced in items ##3-5, the District will publish and widely disseminate them.

REPORTING REQUIREMENT: Within 30 days after OCR's approval of the proposed changes to the District's, the District will provide OCR with documentation demonstrating implementation of item #6, including a copy of the policies, the URL for the policies' inclusion on the District websites, a description of all places in which the policies are posted or printed, and description of how the policies were distributed to students, parents/guardians, and employees.

Training

7. *Training:* Following OCR's approval of the District's revised policies referenced in items ##3-5 of the Agreement, the District will retain the Consultant, or another impartial third party subject to OCR approval, to provide training to all School teachers, administrators, and school aides, and any other District personnel charged with supervising District students, on the Section 504 regulation at 34 C.F.R. §§ 104.4(a), 104.7 (a) and (b), 104.8, 104.33, 104.35, 104.36, which prohibit disability discrimination, require the District to designate a Section 504 coordinator, to adopt grievance procedures, to provide notice of its nondiscrimination policies and procedures, and to provide a FAPE; govern the evaluation and placement procedures; and which require the District to maintain procedural safeguards. The training will also cover the District's revised policies referenced in items ##3-5. In addition, the District shall evaluate its staff's understanding of the training information and materials with a formal assessment. Thereafter, the District shall provide annual training to all District teachers, administrators, school aides, and any other District personnel charged with supervising District students on its revised Section 504 Policies.

REPORTING REQUIREMENTS: By January 31, 2016, and annually thereafter until OCR concludes its monitoring of the District's compliance with the Agreement, the District will provide to OCR documentation describing the trainings it has provided to School teachers, administrators, aides, and other District personnel, including sign-in sheets, agendas, all materials distributed, a copy of the assessment instrument, and a narrative summary of the results of the evaluation.

Individual Remedies

8. *FAPE.* After providing proper written notice to Student A's legal guardian (at least three business days before the proposed meeting, the District will convene a group of

knowledgeable persons to determine whether Student A was denied a FAPE during the 2014-15 school year as the result of any failure to implement Student A's Section 504 plan(s). If the group determines that Student A was denied a FAPE during the 2014-15 school year, it shall determine whether Student A is in need of compensatory and/or remedial services as a result of the District's denial of FAPE, including any changes to or modification of Student A's grades and/or attendance records. In addition, the District will provide Student A's legal guardian with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

REPORTING REQUIREMENT: By October 15, 2015, the District will report the results of the group's determination regarding the provision of any compensatory and/or remedial services for Student A. The District shall provide OCR with a copy of the notice provided to Student A's legal guardian, documentation showing the participants in the meeting, a narrative statement providing an explanation for the group's decisions, a description of the information that the group considered, a description of and, if applicable, a schedule for providing any compensatory and/or remedial services to Student A, and documentation that the District provided the procedural safeguards to Student A's legal guardian. Prior to approving the proposed services, OCR will review the documentation to ensure that the group 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 determination.

Other Student Remedies

9. *Other Student Remedies.* The District will provide the parents/guardians of all District students who currently have a Section 504 plan with a copy of the District's revised policies referenced in items ##3-5. In addition, the District will offer each parent/guardian the opportunity to request a team meeting to revise the student's Section 504 plan pursuant to the District's revised policies.

REPORTING REQUIREMENT: By January 31, 2016, the District shall provide documentation confirming that it sent the letters described in item #9 above to each parent/guardian. In addition, where applicable, the District will provide documentation that it convened a meeting in response to a parent/guardian's request, including but not limited to documentation showing the participants in the meeting, a narrative statement providing an explanation for the group's decisions, a description of the information that the group considered, and any revised 504 plan.

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 the regulations

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implementing Section 504 at 34 C.F.R. §§ 104.4(a), 104.7 (a) and (b), 104.8, 104.33, 104.35, and 104.36, and Title II at 28 C.F.R. § 35.130(a), which were at issue in this case.

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 the regulations implementing Section 504 at 34 C.F.R. §§ 104.4(a), 104.7 (a) and (b), 104.8, 104.33, 104.35, and 104.36, and Title II at 28 C.F.R. § 35.130(a), which were at issue in this case.

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.

For the District

Date