

## **RESOLUTION AGREEMENT**

### **Northside Independent School District OCR Complaint No. 06161157**

The Northside Independent School District (NISD or District) agrees to resolve the allegations of discrimination on the basis of disability contained in complaint number 06161157 filed with the U.S. Department of Education, Office for Civil Rights (OCR). The District submits this Resolution Agreement (Agreement) to ensure compliance 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. § 12132, and its implementing regulation at 28 C.F.R. Part 35.

### **INDIVIDUAL STUDENT RELIEF**

#### **Action Item 1**

By **September 15, 2017**, after providing proper written notice to the Student's parent/guardian, a group of knowledgeable persons, including the parent(s)/guardian(s), will determine whether the Student needs compensatory and/or remedial services as a result the District's failure to provide appropriate regular and/or special education or related services during the XXXX school year. If so, **within 1 week** of its determination, the group will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond **December 1, 2017**. The group of knowledgeable persons will also determine whether as a result of the effects of bullying and/or harassment, the Student's needs have changed such that the Student is no longer receiving a FAPE. If the group of knowledgeable persons determines that the Student's needs have changed, the group will determine additional or different services, accommodations, and/or related aids which are needed by the Student. The group will also ensure that needed changes or additions are implemented promptly and that the determination of what changes or additions are needed avoids putting the onus on the Student to avoid or handle bullying or harassment. The NISD will provide the Complainant notice of the procedural safeguards including the right to challenge the group's determinations through an impartial due process hearing.

#### **Reporting Requirements:**

- a) **Within 2 weeks** of making its decisions with respect to the Student as indicated in Action Item 1 (**by September 29, 2017**), the NISD will submit to OCR documents supporting the group's decisions. The documentation submitted shall include documentation showing the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing

any special education and/or related aids and services to the Student, and demonstrating that notice of procedural safeguards was provided to the Complainant.

- b) **Within 2 weeks** of the decision as to whether compensatory and/or remedial services are needed **(by September 29, 2017)**, the District will submit to OCR documents supporting the group's decision. The documentation submitted shall include documentation showing the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing any compensatory and/or remedial services (if any) to the Student. OCR will, prior to approving the District's decision and plan for providing the proposed services, review the documentation to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.
- c) **Within 2 weeks** of OCR's approval of the District's decision and plan for providing the proposed services the District will provide documentation to OCR of the dates, times and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).

## **Action Item 2**

By **October 1, 2017**, the NISD will complete an investigation into all allegations of harassment based on disability identified in reference to this complaint. Any information identified by previous investigatory actions taken by the NISD concerning the respective allegations can be utilized in addition to all new or additional information obtained through investigatory actions pursuant to this agreement in reaching investigatory determinations. As part of the investigation, the NISD will meet with and interview the Student and the Complainant and provide them with the opportunity to identify witnesses and any other information. The NISD will interview any witnesses they identify, including but not limited to the Student's XXXX, if XXXX makes XXXX available for interview. If the NISD determines that the allegations are substantiated, in whole or in part, the NISD will take actions necessary to appropriately address the harassment. In addition, the NISD will take steps to prevent any recurrence of the harassment and remedy the effects of the harassment toward the Student.

### **Reporting Requirement:**

By **October 11, 2017**, the NISD will provide documentation to OCR indicating findings of the investigation required by Action Item 2.

## **Action Item 3**

By **October 11, 2017**, the NISD will provide written notice to the Complainant of the outcome of its investigation, identified by Action Item 2, and the District will provide reimbursement or direct payment, as determined by the Student’s parents, for private counseling by a licensed professional of the parents’ choice, with expertise in the areas of bullying/disability harassment during the 2016-2017 and/or 2017-2018 school years. The amount of payment provided by the District will not exceed \$540.00 per school year. By **November 11, 2017**, the District will reimburse the Complainant for out-of-pocket expenses incurred during the 2015-2016 school year and through the date of signature for this Agreement, related to anxiety, depression, and any other physical or mental impairment reasonably related to or exacerbated by harassment of the Student, including services for counseling, independent psychological assessments, treatment by the Student’s primary care physician and the cost of prescription medication for the Student.<sup>1</sup> The District may require documentation from the Complainant regarding the expenses incurred.

Reporting Requirements:

- a) By **October 20, 2017**, the NISD will provide OCR a copy of the letter to the Complainant required by Action Item 3.
- b) By **October 20, 2017**, the District will provide written verification to OCR that it provided reimbursement or direct payment for private counseling by a licensed professional as required by Action Item 3 of this Agreement, including the name of the provider, documentation submitted by the Complainant, and the total amount of reimbursement and/or direct payment by the District.
- c) By **November 20, 2017**, the District will provide written verification to OCR that the complainants have been reimbursed for items listed Action Item 3 of this Agreement, including the documentation submitted by the Complainant and the total amount of reimbursement provided by the District.

**TRAINING AND PROFESSIONAL DEVELOPMENT**

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<sup>1</sup> The amount reimbursed or provided to the Complainant will not exceed \$540.00 per school year for the 2015-2016, 2016-2017, and 2017-2018 school years. The reimbursement or direct payments indicated in Action Item 3 concern specifically medical expenses related to anxiety, depression, and any other physical or mental impairment reasonably related to or exacerbated by harassment of the Student, as indicated in the allegations and issues investigated pursuant to complaint 06-16-1157.

#### **Action Item 4**

By **September 1, 2017**, the NISD will provide training, by a qualified individual<sup>2</sup>, to all staff at the XXXX XXXX XXXX (XXXX) who are directly involved in processing, investigating and/or resolving complaints or other reports of disability harassment, and any counselors, teachers, or other XXXX personnel who are likely to receive reports of disability harassment. The training should include instruction regarding:

- (a) In-depth instruction on what type of conduct constitutes disability-based harassment, including addressing examples of disability-based harassment, and a discussion about the negative impact that such harassment has on the educational environment;
- (b) The NISD's responsibility under Section 504 and Title II to address disability-based incidents of harassment about which it knows or reasonably should have known;
- (c) The responsibility of staff to report incidents of possible harassment based on disability and the procedures for doing so, and instruction on how to recognize, prevent and respond appropriately to such harassment;
- (d) Identification of designated staff at XXXX who is/are available to answer questions or concerns regarding the NISD's policies, practices, regulations or other issues related to disability-based harassment;
- (e) The NISD's responsibility to take immediate and appropriate action to investigate incidents of disability harassment;
- (f) How to conduct disability harassment investigations in an adequate, reliable, and impartial manner, including the appropriate standards to apply in such investigations, an outline of the appropriate disciplinary measures for violations of the NISD's anti-harassment policy in accordance with the NISD's Student Code of Conduct;
- (g) If an investigation reveals that discriminatory harassment has occurred, the NISD's responsibility to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring;
- (h) The duty of the NISD to respond to incidents of disability harassment as stated in (b)-(g) above even if the misconduct is also covered by an anti-bullying policy, and regardless of whether the student has complained, asked the school to take action, or identified the harassment as a form of discrimination; and
- (i) Notice of the existence and substance of OCR's July 25, 2000, Dear Colleague Letter (available at: <http://www2.ed.gov/ocr/docs/disabharassltr.html>) and OCR's October 26, 2010, Dear Colleague Letter

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<sup>2</sup> A person who is knowledgeable about the issues pertaining to the prohibitions against disability-based harassment and discrimination more generally pursuant to Section 504 and Title II, and statutory and regulatory requirements pursuant to each law.

(available at:<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>) addressing the responsibilities of District personnel related to disability-based harassment and harassment more generally (providing printed copies of said Letters to all trainees, including its <http://> citation).

**Reporting Requirement:**

By **September 12, 2017**, the NISD will provide documentation to OCR evidencing that the training required by Action Item 4 has been completed, including the identity of the individual conducting the training and the individual's qualifications, along with a copy of the materials or a summary of the material covered in such training and sign-in sheet(s) or other documentation showing who attended the training.

**Action Item 5**

By **October 1, 2017**, the NISD will provide training to all XXXX students and instructional staff addressing harassment, including but not limited to, disability-based harassment, in order to promote respect and tolerance for others and to avert the establishment of a hostile environment based on disability for students enrolled in the NISD. This training may be provided either as an independent assembly, class presentation, or as part of the School's current curriculum/enrichment programs or lessons (e.g., Student Orientation). The training will include:

- (a) A reminder of the NISD's commitment to having a school environment free from all harassment and an explanation regarding what students should do if they believe they or other students are being harassed;
- (b) A review of the NISD's harassment policies and procedures, including an explanation of what disability-based harassment is, as well as disciplinary sanctions related to findings of violations of its harassment policies and the policy prohibiting retaliation;
- (c) The name and contact information of a NISD employee, such as a counselor, who the students may contact if they wish to confidentially discuss any concerns they have; and
- (d) Distribution of written materials during the program that contain the information discussed.

**Reporting Requirement:**

By **October 11, 2017**, the NISD will provide documentation to OCR evidencing that the orientation required by Action Item 5 has been completed, including the identity of the individual(s) presenting the orientation and the individual's qualifications, along with a copy of the materials or a summary of the material covered in such orientation and sign-in sheet(s) or other documentation showing who attended the orientation.

### **Action Item 6**

By **January 19, 2018**, the NISD will provide training regarding its obligation under Section 504 and Title II to provide a FAPE to all qualified students with disabilities residing within its jurisdiction, as well as its obligation to refrain from retaliating against any person for the exercise of any right protected by Section 504 or Title II. The training should be provided to all relevant personnel, including, but not limited to, District administrators, school administrators, faculty, and counselors. The training will be conducted by an individual or individuals knowledgeable about the laws and issues pertaining to disability discrimination, the evaluation of students who are or are believed to be disabled, disability-based harassments, and retaliation. The training shall address, at a minimum:

- (a) The identification and evaluation of all students, who because of disability, need or are believed to need special education or related aids and services;
- (b) The NISD's policies and procedures for carrying out its responsibilities under Section 504 and Title II to provide a free and appropriate public education (FAPE) to each qualified disabled person who is within the NISD's jurisdiction, regardless of the nature or severity of the person's disability;
- (c) The NISD's policies and procedures for carrying out its responsibilities to evaluate and re-evaluate students pursuant to Section 504, at 34 C.F.R. § 104.35;
- (d) The potential effects of bullying or harassment on any basis of a student with a disability who is receiving IDEA FAPE services or Section 504 FAPE services, including that such bullying or harassment can result in denial of FAPE that must be remedied under Section 504, that the NISD has an ongoing obligation to ensure that a qualified student with a disability who receives IDEA FAPE services or Section 504 FAPE services continues to receive FAPE, and the potential need for reevaluation of a student if it is suspected that the student's individual needs have changed pursuant to bullying or harassment;
- (e) The NISD's policies and procedures for carrying out its obligation to provide procedural safeguards pursuant to Section 504, at 34 C.F.R. § 104.36; and
- (f) The NISD's obligation to refrain from retaliating against any person because that person, or anyone else, exercised any right or privilege pursuant to Section 504 or Title II.

#### **Reporting Requirement:**

By **February 9, 2018**, the NISD will provide documentation to OCR evidencing that the training required by Action Item 6 has been completed, including the identity of the individual(s) conducting the training and the individual's qualifications, along with a copy of the materials or a summary of the material covered in such training and sign-in sheets or other documentation showing who attended the training.

### **Action Item 7**

By **June 16, 2017**, the NISD will formally reaffirm in writing to students, staff, and parents at XXXX its obligation to address incidents of harassing conduct based on disability that are sufficiently severe, pervasive or persistent so as to create a hostile environment consistent with its harassment policy, and the regulatory requirements of Section 504 and Title II. The statement will include the appropriate contact information for the staff member(s) designated as the official(s) to whom students and parents may report allegations of harassment and will warn that students found to have engaged in acts of harassment or other acts that create a hostile environment based on disability will be promptly disciplined in accordance with the NISD's Student Code of Conduct.

#### **Reporting Requirement:**

By **June 26, 2017**, the NISD will submit a written report to OCR documenting how and when the notifications described in Action Item 7 were issued. The NISD will also submit copies of the notifications to OCR.

The District understands that OCR will not close the monitoring of this agreement until OCR determines that the NISD has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4, 104.33, and 104.35, and Title II, at 28 C.F.R. §35.130 which were at issue in this case. The District also 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 implementing Section 504, at 34 C.F.R. §§ 104.33, 104.34, 104.35 and 104.36, and Title II, at 28 C.F.R. § 35.130 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.

This Agreement has been entered into voluntarily by the NISD and does not constitute an admission by the NISD that it is not in compliance with Section 504 or Title II or their implementing regulations.

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**Dr. Brian T. Woods, Superintendent**  
**Northside ISD**

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**Date**