

## RESOLUTION AGREEMENT

### **North East Independent School District OCR Complaint No. 06-16-1315**

The North East Independent School District (NEISD or District) agrees to resolve the allegations of discrimination on the basis of disability and race contained in complaint number 06161315 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 Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulation, at 34 C.F.R. Part 100; 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.

### TRAINING, PROFESSIONAL DEVELOPMENT, AND EDUCATIONAL CLIMATE

#### **Action Item 1**

By **November 1, 2017**, the NEISD will provide training, by a qualified individual,<sup>1</sup> to all staff and administrators at the XXXX XXXX XXXX (XXXX), including but not limited to staff members who are directly involved in processing, investigating and/or resolving complainants or other reports of harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment) and all counselors, teachers, administrators, or other personnel who are likely to receive reports of harassment and/or bullying. The training should include instruction including but not limited to:

- (a) In-depth instruction on what type of conduct constitutes harassment, including addressing examples of harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment), and a discussion about the negative impact that such harassment has on the educational environment;
- (b) The responsibility of staff to report incidents of possible harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment), and the procedures for doing so, and instruction on how to recognize, prevent and respond appropriately to such harassment;
- (c) The NEISD's responsibility under Title VI, Title IX, Section 504, and Title II to address incidents of harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment) about which it knows or reasonably should have known;
- (d) Identification of designated staff at the NEISD and XXXX specifically who is/are available to answer questions or concerns regarding the NEISD's policies, practices, regulations or other issues related to harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment);

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<sup>1</sup> A person who is knowledgeable about the issues pertaining to the prohibitions against harassment and discrimination more generally pursuant to Title VI, Title IX, Section 504, and Title II, and statutory and regulatory requirements pursuant to each law.

- (e) Identification of the individual(s) designated as Section 504 Coordinator, Title II Coordinator, and Title IX Coordinator, and where individuals can find the respective Coordinator's address, phone number, and email address;
- (f) The NEISD's responsibility to take immediate and appropriate action to investigate incidents of harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment);
- (g) An outline of NEISD policies with respect the prohibition of discrimination, including but not limited to harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment); Title IX grievance procedures, and where individuals can find the respective NEISD policies;
- (h) How to conduct investigations concerning harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment) 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 NEISD's anti-harassment policy in accordance with the NEISD's Student Code of Conduct; and
- (i) If an investigation reveals that discriminatory harassment has occurred, the NEISD'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;
- (j) The duty of the NEISD to respond to incidents of harassment based on race, color, national origin, disability, and sex (including sex stereotyping/gender-based harassment) 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.

#### Reporting Requirement

By **November 11, 2017**, the NEISD will provide documentation to OCR evidencing that the training required by Action Item 1 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 2**

By **November 1, 2017**, the NEISD will provide training, by a qualified individual,<sup>2</sup> to all XXXX and XXXX XXXX XXXXI (XXXX) students and instructional staff addressing harassment, including but not limited to, harassment based on race, color, national origin, disability, and sex (including sex stereotyping/gender-based harassment), in order to promote respect and tolerance for others and to avert the establishment of a hostile environment for students enrolled in the NEISD. This training may be provided either as an independent assembly, class presentation, or as part of the NEISD's current curriculum/enrichment programs or lessons (e.g., Student Orientation). The training will include:

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

- (a) A reminder of the NEISD'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 NEISD's harassment policies and procedures, including an explanation of what harassment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-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 NEISD 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 **November 11, 2017**, the NEISD will provide documentation to OCR evidencing that the orientation required by Action Item 2 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 3**

By **November 1, 2017**, the NEISD 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 directly involved with special education services, Section 504, and or Title II; XXXX administrators; XXXX faculty; and XXXX counselors; The training will be conducted by an individual who is knowledgeable about the laws and issues pertaining to disability discrimination and the evaluation of students who are or are believed to be disabled. 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 NEISD'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 NEISD's jurisdiction, regardless of the nature or severity of the person's disability;
- (c) The NEISD'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 effect 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 NEISD 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; and

- (e) The NEISD’s policies and procedures for carrying out its obligation to provide procedural safeguards pursuant to Section 504, at 34 C.F.R. § 104.36

Reporting Requirement

By **November 11, 2017**, the NEISD will provide documentation to OCR evidencing that the training required by Action Item 3 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 sheets or other documentation showing who attended the training.

**Action Item 4**

By **November 1, 2017**, the NEISD will formally reaffirm in writing to students, staff, and parents at XXXX and XXXX its obligation to address incidents of harassing conduct based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment) consistent with NEISD harassment policy, and the regulatory requirements of Title VI, Title IX, 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 race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment) will be promptly disciplined in accordance with the NEISD’s Student Code of Conduct. The statement will also reaffirm in writing the prohibitions against retaliation by the NEISD against individuals for opposing an act or policy that is unlawful under any of the laws that OCR enforces or otherwise asserting rights protected by the laws that OCR enforces, including, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975.

Reporting Requirement

By **November 11, 2017**, the NEISD will submit a written report to OCR documenting how and when the notifications described in Action Item 4 were issued. The NEISD will also submit copies of the notifications to OCR.

**Action Item 5**

By **November 1** of the **2017-2018** and **2018-2019** school years, following approval by OCR, the NEISD will conduct annual climate checks at XXXX, to assess the effectiveness of the NEISD’s steps (pursuant to this Agreement and otherwise) to improve the climate with respect to harassment based on race, color, national origin, disability, and/or sex (including sex stereotyping/gender-based harassment). The climate check may be accomplished through anonymous written or electronic surveys distributed to students, provided that students receiving the survey also are notified of a contact person, such as a counselor, should they wish to discuss the issues raised in person. The NEISD may provide this survey and information to XXXX

students during the student training/orientation described in Action Item 2, and/or in writing or electronically through other correspondence to students. The survey and information additionally may be included as part of a larger survey addressing other topics. Students who receive the survey may voluntarily opt not to complete the survey. Information gathered during the climate checks will be used to inform future proactive steps by the NEISD to ensure that students are not subjected to a hostile environment based on race, color, national origin, disability, or sex (including sex stereotyping/gender-based harassment).

#### Reporting Requirements

- i. By **October 1** of the **2017-2018** and **2018-2019** school years, the NEISD will provide OCR for review and approval, the climate survey(s) it proposes to use and the methods by which it will administer the surveys.
- ii. By **November 11** of the **2017-2018** and **2018-2019** school years, the NEISD will provide OCR the results of its annual climate check and inform OCR whether, based on the results of the climate check, it has determined that further proactive steps are necessary.

#### **Action Item 6**

By **November 30, 2017**, following approval by OCR, the NEISD will implement a self-evaluation program (“Monitoring Program”) for assessing and monitoring the school climate at XXXX to gauge the effectiveness of its anti-harassment efforts. The Monitoring Program will include establishment of a working group (“Committee”) comprised of students, parents, teachers, and administrators to discuss matters concerning harassment and bullying, and suggest measures for improving the effectiveness of the district's anti-harassment and anti-bullying programs. The NEISD may create two subcommittees within the Committee, one composed only of XXXX students (Subcommittee 1), and the other composed of parents, teachers, and administrators (Subcommittee 2). With regards to Subcommittee 1, the NEISD should strive to include a diverse population of students, including but not limited to: 10-20 students from each grade (i.e., 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>), students who identify with different races/ethnicities, students of different sexes/genders, students who are involved in athletics, students who are involved in other extra curricular activities, and students not involved in athletics or extracurricular activities. Subcommittee 2 should include a District-level administrator, at least one administrator from XXXX, at least two parents of students who attend XXXX and any other individuals that the NEISD determines appropriate, such as representatives from relevant community-based organizations, to advise the NEISD regarding how best to foster a positive educational climate free of harassment and bullying based on race, color, national origin, disability, and/or sex (including sex stereotyping/gender-based harassment)<sup>3</sup>. The NEISD may utilize an existing

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<sup>3</sup> If the Committee is not separated into two subcommittees, the Committee should include the identified individuals for both subcommittees. The formation of two subcommittees is one option for the formation of the Committee. Subject to approval by OCR, other structures or formations for the Committee may be sufficient.

group as Subcommittee 2, if the existing group meets the aforementioned elements for Subcommittee 2.

The Committee will review any surveys or other results from the climate checks referenced in Action Item 5 to identify student and parent concerns and to determine where and when/if harassment based on race, color, national origin, disability, and/or sex (including sex stereotyping/gender-based harassment) at XXXX occurs (e.g. classrooms, hallway, cafeteria, etc.). The NEISD may, if it chooses, not involve Subcommittee 1<sup>4</sup> in the review of surveys submitted pursuant to Action Item 5, in order to protect the anonymity of individuals completing the surveys. Subcommittee 1<sup>5</sup> should be involved in otherwise gauging the effectiveness of the NEISD's anti-harassment efforts, discussing matters concerning harassment and bullying, and suggesting measures for improving the effectiveness of the district's anti-harassment and anti-bullying programs.

#### Reporting Requirements

- i. By **October 1, 2017**, the NEISD will provide OCR, for review and approval, a draft of the Monitoring Program.
- ii. By **December 10** of the **2017-2018** and **2018-2019** school years, the NEISD will provide a written report to OCR summarizing the results of the monitoring program for the respective school year.

### **INDIVIDUAL STUDENT RELIEF**

#### **Action Item 7**

By **November 1, 2017**, the NEISD will complete an investigation into all allegations of harassment based on XXXX XXXX XXXX XXXX XXXX XXXX, identified in reference to this complaint. All information identified by previous investigatory actions taken by the NEISD 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 NEISD will meet with and interview the Student, the Student's parents, and the XXXX and provide them with the opportunity to identify witnesses and any other information. The NEISD will interview any witnesses they identify. If the NEISD determines that the allegations are substantiated, in whole or in part, the NEISD will take actions necessary to appropriately address the harassment. In addition, the NEISD will take steps to prevent any recurrence of the harassment and remedy the effects of the harassment toward the Student.

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<sup>4</sup> The NEISD may choose to not involve XXXX students in the review of surveys submitted pursuant to Action Item 5, if XXXX students are part of a separate subcommittee, or if XXXX students are otherwise involved in the Committee through another Committee formation or structure.

<sup>5</sup> Or XXXX Students, if XXXX students are otherwise involved in the Committee through another Committee formation or structure.

Reporting Requirement

By **November 11, 2017**, the NEISD will provide documentation to OCR indicating findings of the investigation required by Action Item 7.

**Action Item 8**

By **December 1, 2017**, the NEISD will provide written notice to the Complainant of the outcome of its investigation and, if the NEISD substantiates the harassment as a result of the investigation, the NEISD will issue, by certified mail, a written offer to the Student to provide counseling/academic/therapy services for the assessment and/or treatment of any psychological harm or any of the lingering effects from the harassment. The NEISD's letter will inform the Student and the Complainant that they have ten (10) calendar days from the date of the letter to accept the offer by providing written notice of their acceptance.

Reporting Requirement

By **December 11, 2017**, the NEISD will provide OCR a copy of the letter to the Complainant required by Action Item 8.

**Action Item 9**

By **November 1, 2017**, the NEISD will convene a group of knowledgeable persons, including the Student's parent(s)/guardian(s)<sup>6</sup>, to 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 group will also determine whether the Student needs compensatory and/or remedial services as a result of the NEISD's failure to reevaluate her starting from approximately December 2015. If so, within one 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 **March 15, 2018**. The NEISD will provide the Student's parent(s)/guardian(s) notice of the procedural safeguards including the right to challenge the group's determinations through an impartial due process hearing.

Reporting Requirement

Within 2 weeks of making its decisions with respect to the Student as indicated in Action Item 9, the NEISD will submit to OCR documents supporting the group's decisions. The documentation submitted shall include documentation showing the participants in the

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<sup>6</sup> If the XXXX is identified by the Student's parent(s)/guardian(s) as an individual who should be involved in the educational determinations of the Student, the XXXX should be included.

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, a description of and schedule for providing any compensatory and/or remedial services to the Student, and demonstrating that notice of procedural safeguards was provided to the Student's parent(s)/guardian(s).

The District understands that OCR will not close the monitoring of this agreement until OCR determines that the NEISD has fulfilled the terms of this agreement and is in compliance with the regulations implementing Title VI, at 34 C.F.R. § 100.3; Section 504, at 34 C.F.R. §§ 104.4 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 Title VI, at 34 C.F.R. § 100.3; Section 504, at 34 C.F.R. §§ 104.4 and 104.35; and Title II, at 28 C.F.R. §35.130.

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 NESD and does not constitute an admission by the NESD that it is not in compliance with Title VI, Section 504 or Title II, or their implementing regulations.

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Date

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Dr. Brian Gottardy, Superintendent  
North East ISD