

RESOLUTION AGREEMENT

Amherst Independent School District OCR Complaint No. 06161407

The Amherst Independent School District (AISD or District) agrees to resolve the allegations of discrimination on the basis of disability, race, and sex, and the allegation of retaliation contained in complaint number 06161407 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; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulation, at 34 C.F.R. Part 106; 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 AND PROFESSIONAL DEVELOPMENT

Action Item 1

By **August 31, 2017**, the AISD will provide training, by a qualified individual,¹ who is not an employee or representative of the AISD, to all staff and administrators at the AISD, including but not limited to staff members who are directly involved in processing, investigating and/or resolving complaints or other reports of harassment based on race, color, national origin, disability, sex, gender, or nonconformance with gender norms, 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, sex, gender, and nonconformance with gender norms, 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, sex, gender, and nonconformance with gender norms, and the procedures for doing so, and instruction on how to recognize, prevent and respond appropriately to such harassment;
- (c) The AISD's responsibility under Title VI, Title IX, Section 504, and Title II to address incidents of harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms about which it knows or reasonably should have known;
- (d) 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;

¹ 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) The AISD's responsibility to take immediate and appropriate action to investigate incidents of harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms;
- (f) An outline of AISD policies with respect the prohibition of discrimination, including but not limited to harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms; Title IX grievance procedures, and where individuals can find the respective AISD policies;
- (g) How to conduct investigations concerning harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms 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 AISD's anti-harassment policy in accordance with the AISD's Student Code of Conduct;
- (h) If an investigation reveals that discriminatory harassment has occurred, the AISD'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; and
- (i) The duty of the AISD to respond to incidents of harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms 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 **September 10, 2017**, the AISD 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 **October 10, 2017**, the AISD will provide training to all AISD students and instructional staff addressing harassment, including but not limited to, harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms, in order to promote respect and tolerance for others and to avert the establishment of a hostile environment for students enrolled in the AISD. This training may be provided either as an independent assembly, class presentation, or as part of the AISD's current curriculum/enrichment programs or lessons (e.g., Student Orientation) The training will include:

- (a) A reminder of the AISD'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 AISD's harassment policies and procedures, including an explanation of what harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms 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 AISD 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 20, 2017**, the AISD 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 **August 31, 2017**, the AISD 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, who is not an employee or representative of the AISD, and 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 AISD'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 AISD's jurisdiction, regardless of the nature or severity of the person's disability;
- (c) The AISD'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 AISD 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 AISD'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 **September 10, 2017**, the AISD 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 **August 31, 2017**, the AISD will provide training, by a qualified individual,² who is not an employee or representative of the AISD, to all staff and administrators at the AISD, regarding prohibitions against retaliation by the AISD 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. The training will include examples of adverse actions, including but not limited to actions that relate to the disciplinary process.

Reporting Requirement

By **September 10, 2017**, the AISD 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 sheets or other documentation showing who attended the training.

Action Item 5

By **October 10, 2017**, the AISD will formally reaffirm in writing to students, staff, and parents at AISD its obligation to address incidents of harassing conduct based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms consistent with AISD 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, sex, gender, or nonconformance with gender norms will be promptly disciplined in accordance with the AISD's Student Code of Conduct. The statement will also reaffirm in writing the prohibitions against retaliation by the AISD 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.

² A person who is knowledgeable about the issues pertaining to the prohibitions against retaliation pursuant to Title VI, Title IX, Section 504, and Title II.

Reporting Requirement

By **October 20, 2017**, the AISD will submit a written report to OCR documenting how and when the notifications described in Action Item 5 were issued. The AISD will also submit copies of the notifications to OCR.

POLICIES AND PROCEDURES

Action Item 6

The AISD shall review and if necessary revise its policies and procedures, concerning discrimination based on sex, gender, and nonconformance with gender norms, as contained in the AISD Student Handbook, on the AISD website, within the AISD's written policies, and in any other relevant policy or procedures documents to identify the AISD's Title IX Coordinator, and provide the address, phone number, and email address for the designated title IX Coordinator.

Reporting Requirement

By **September 10, 2017**, the AISD will submit to OCR a copy of all proposed policy revisions for OCR's review and approval. **Within 30 days** of the completion of review and approval of proposed policies by OCR, revised policies shall be published and the AISD shall provide OCR with appropriate evidence demonstrating that the policies have been published. If the AISD determines that current District policies and procedures are in compliance, the AISD will provide an explanation or supporting bases for OCR's review and approval.

INDIVIDUAL STUDENT RELIEF

Action Item 7

By **October 31, 2017**, the AISD will complete an investigation into all allegations of harassment based on race, color, national origin, disability, sex, gender, and nonconformance with gender norms identified in reference to this complaint. All information identified by previous investigatory actions taken by the AISD 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 AISD will provide the Student and the Complainant with offers to be interviewed as part of the investigation, provide written or verbal statements, and identify witnesses and other information. The AISD will interview any available witnesses identified by the Student and Complainant. The AISD will interview other available, appropriate witnesses in order to sufficiently investigate the aforementioned allegations. If the AISD determines any witnesses would be appropriate for interview but are not available, the AISD will indicate that and indicate the basis for unavailability. If the AISD determines that the allegations are substantiated, in whole or in part, the AISD will take actions necessary to appropriately address the harassment. In addition, the AISD will take steps to prevent any recurrence of the harassment and remedy the effects of the harassment toward the Student.

Reporting Requirement

By **November 10, 2017**, the AISD will provide documentation to OCR indicating findings of the investigation required by Action Item 7.

Action Item 8

By **November 10, 2017**, the AISD will provide written notice to the Complainant of the outcome of its investigation and, if the AISD substantiates the harassment as a result of the investigation, the AISD will issue, by certified mail, a written offer to the Student to take appropriate corrective action and provide services appropriate to adequately redress the hostile environment, remedy the effects of harassment, and prevent the recurrence of harassment. Appropriate services can include, but are not limited to, providing counseling/academic/therapy services for the assessment and/or treatment of any psychological harm or any of the lingering effects from the harassment. The AISD'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 **November 20, 2017**, the AISD will provide OCR a copy of the letter to the Complainant required by Action Item 8.

Action Item 9

By **October 10, 2017**, the AISD will provide the Complainant notice of procedural safeguards, including information concerning the opportunity for the Student's parent(s) and guardian(s) to examine relevant records, the availability of an impartial hearing with opportunity for participation by the Student's parent(s) and guardian(s) and representation by counsel, and AISD review procedures.

Reporting Requirement

By **October 20, 2017**, the AISD will provide OCR a copy of any written information provided to the Complainant and a narrative of any verbal information provided to the Complainant concerning Action Item 9. The AISD will also provide OCR with documentation demonstrating that the information was provided to the Complainant. (e.g. a signed receipt from the Complainant and/or the individual who provided the information).

Action Item 10

By **October 10, 2017**, the AISD will convene a group of knowledgeable persons, including the Complainant, 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 AISD's failure to reevaluate him starting from approximately August 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 **December 31, 2017**. The AISD will provide the Complainant notice of the procedural safeguards including the right to challenge the group's determinations through an impartial due process hearing.

If the Student no longer attends school within the AISD, the AISD will send a letter to the Complainant, indicating that if the Student ever returns or reenrolls for school within the AISD, within thirty (30) calendar days of reenrollment, the AISD will:

- (a) Convene a group of knowledgeable persons, including the Complainant, to determine whether as a result of the effects of bullying and/or harassment, the Student's needs have changed and determine all additional or different services, accommodations, and/or related aids which are needed by the Student;
- (b) 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; and
- (c) Convene a group of knowledgeable persons, including the Complainant, to determine whether the Student needs compensatory and/or remedial services as a result of the AISD not reevaluating the Student starting from approximately August 2015 through the time in which the Student stopped attending school within the AISD.

Reporting Requirement

Within 10 days (by **October 20, 2017**) of making its decisions with respect to the Student as indicated in Action Item 10, the AISD 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, 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 Complainant. If the Student no longer attends school within the AISD, the AISD will provide OCR with a copy of the letter indicated within Action Item 10, documentation demonstrating that the letter was sent, and documentation demonstrating that the Student no longer attends school within the AISD.

Action Item 11

By **August 31, 2017**, the AISD will review the AISD's determination and basis for the determination concerning the Student's receipt of three days of out-of-school suspension on

XXXX XXXX XXXX. As part of this review, the AISD will review the various information contained within the Student's discipline record, assess the discipline record for inconsistencies and/or inaccuracies, and correct inconsistencies and inaccuracies. If the AISD determines that the Student's discipline record does not contain inconsistencies or inaccuracies, the AISD will provide OCR with a narrative explaining the basis of this determination and clarifying apparent inconsistencies with respect to the time and place of alleged actions giving rise to the assigned suspension. Additionally, as part of the AISD's review, the AISD will determine whether the assignment of three days of out-of-school suspension was warranted pursuant to the AISD Student Code of Conduct. If the AISD determines that the suspension was warranted, the AISD will provide OCR with a narrative, explaining the basis of this determination. If the AISD determines that the suspension was not warranted, the AISD will expunge the discipline from the Student's AISD discipline record and provide OCR with evidence demonstrating that this has been done.

Reporting Requirement

Within 10 days (by **September 10, 2017**) of making its decisions with respect to the Student as indicated in Action Item 11, the AISD will submit to OCR identified documents and/or narratives concerning the determination(s) made and support for the determination(s).

The District understands that OCR will not close the monitoring of this agreement until OCR determines that the AISD has fulfilled the terms of this agreement and is in compliance with the regulations implementing Title VI, at 34 C.F.R. § 100.3; Title IX, at 34 C.F.R. § 106.31; Section 504, at 34 C.F.R. §§ 104.4, 104.35, and 104.36, 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; Title IX, at 34 C.F.R. § 106.31; Section 504, at 34 C.F.R. §§ 104.4, 104.35, and 104.36, 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 AISD and does not constitute an admission by the AISD that it is not in compliance with Title VI, Title IX, Section 504 or Title II, or their implementing regulations.

Date

Joel Rogers, Superintendent
Amherst ISD