

Resolution Agreement

Belén Consolidated School District Case Number 08-14-1105

In order to resolve the allegations in Case Number 08-14-1105, filed against Belén Consolidated School District (the District) and opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR), the District agrees to implement the following Resolution Agreement. The complaint was opened for investigation pursuant to allegations of the District's noncompliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12131-65, and its implementing regulation at 28 C.F.R. Part 35 (Title II), which prohibit discrimination on the basis of disability by public entities.

During the course of OCR's investigation, before OCR had made any findings, the District indicated its willingness to take steps necessary to ensure compliance with Section 504 and Title II and resolve the allegations of this complaint. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations. The District's decision to enter into this Agreement is not an admission of liability or wrong-doing, nor shall it be construed as such.

RESOLUTION ACTION

1. The District will revise its Policies and Procedures for the Provision of Special Education Services for Students with Disabilities and Gifted Students (Policies and Procedures) to ensure that the District provides services to qualified students with disabilities consistent with the Section 504 regulation at 34 C.F.R. Part 104, Subpart D. Implementation of a Section 504 Plan, based on procedures that satisfy Subpart D, or Individualized Education Program (IEP), developed in accordance with the Individuals with Disabilities Education Act (IDEA), is one way to meet the requirements of the regulation. The revised Policies and Procedures will include the following:
 - a. An express statement that although the Section 504 Team or IEP Team will consider the input of all members of the team, including parents or guardians, the Section 504 Team or IEP Team, not any individual member, makes the ultimate determination regarding a student's placement.
 - b. An express statement that if a Section 504 Plan or IEP requires that a student receive services, then the Section 504 Plan or IEP will clearly identify the services to be provided. For example, if a student requires speech language therapy, then the IEP will specifically state this and will also specifically state the frequency and duration of the services, meaning number of minutes or hours per week the student will receive these services, and the location of the services.

- c. An express statement that, as required by 34 C.F.R. Section 104.34(a), the District shall educate, or shall provide for the education of, a student with a disability with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. The District shall place a student with a disability in the regular educational environment unless the District demonstrates that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 34 C.F.R. Section 104.37(a)(2), the District shall ensure that a student with a disability participates with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability. A student with a disability must not be subjected to prohibited segregation.
- d. A new section regarding the implementation of Section 504 Plans and IEPs. The section regarding the implementation of Section 504 Plans and IEPs must include the following:
 - i. Notice to appropriate staff members that all provisions of a student’s Section 504 Plan or IEP must be promptly implemented by staff after a Section 504 Plan or IEP is developed and at the beginning of the school year, or as soon as the student begins attending the District, for a student who begins attending the District mid-academic term.
 - ii. A process for ensuring that all staff members responsible for implementing a Section 504 Plan or IEP will document that prescribed services or accommodations were implemented.
 - iii. A process for documenting when a student refuses the prescribed services or accommodations.
 - iv. Notice to all appropriate staff members that they must continue to offer and attempt to implement the prescribed services or accommodations, even when a student refuses the services or accommodations.

Procedures to ensure that no change in the continuation or duration of any prescribed service or accommodation, or ongoing change in educational setting, is initiated without adherence to the procedural requirements of Subpart D of Section 504 or the IDEA.

REPORTING REQUIREMENT: Within 60 days¹ from the date of this Agreement, the District will submit its draft revised Policies and Procedures to OCR for review and approval.

2. The District will consider and respond to any feedback from OCR with respect to the draft revised Policies and Procedures. After obtaining OCR’s approval of the revised Policies and Procedures, the District will adopt and implement the revised Policies and Procedures.

¹ All timeframes are expressed as calendar days.

REPORTING REQUIREMENT: Within 30 days of OCR’s approval of its revised Policies and Procedures, the District will provide documentation that it has adopted and implemented the revised Policies and Procedures, including documentation that it notified appropriate administrators and staff members of the revised Policies and Procedures.

- 3.a. Within 120 days of OCR’s approval of the revised Policies and Procedures, the District will develop training materials for all appropriate administrators and staff members regarding the District’s revised Policies and Procedures. In addition to segments regarding the topics outlined in Term 1, the training will include a segment regarding XXX. The segment regarding XXX will address XXX.

REPORTING REQUIREMENT: Within 60 days from the date of OCR’s approval of the revised Policies and Procedures, the District will submit to OCR for review and approval (1) the qualifications of the person who will provide the training; and (2) the proposed training agenda and training materials.

- 3.b. The District will consider and respond to any feedback from OCR with respect to the qualifications of the person who will provide the training and the proposed training agenda and training materials. After obtaining OCR’s approval of the trainer and training materials, the District will provide training to all appropriate administrators and staff members.

REPORTING REQUIREMENT: Within 60 days from the date of OCR’s approval of the trainer and training materials, the District will provide documentation that it has provided training to all appropriate administrators and staff members. The documentation will include sign-in sheets documenting that the District’s administrators and staff members attended the training.

- 3.c. Establish an annual training schedule regarding the revised Policies and Procedures.

REPORTING REQUIREMENT: The District will submit the proposed annual training schedule to OCR within 30 days after completing the first training on the revised Policies and Procedures.

4. Within 30 days from the date of this Agreement the District will convene one or more IEP Team meetings, after providing proper written notice to the Student’s parents. The Team will consist of a group of knowledgeable persons including one or both parents if they choose to participate and District employees who have knowledge of the matters being considered by the Team. The District will ensure that the parents are informed that if one or both attend, they may invite one or more persons knowledgeable about the Student to attend the meeting(s). The Team will carefully consider all information provided by the Student’s parents and their invitees. The District will ensure that any decisions reflect the judgment of the Team and not the judgment of a single individual and are based on the needs of the Student. The District will provide the Student’s parents notice of the procedural safeguards

including the right to challenge any of the group’s determinations through an impartial due process hearing. The Team will determine:

- a. Whether the Student needs compensatory or remedial services as a result of a failure by the District to provide appropriate regular or special education or related services, including XXX, from XXX, to XXX.² If so, within seven days of its determination, the group will draft an action plan regarding the compensatory services or other remedial measures that will be offered or taken, the specific timelines for implementation, and the person(s) responsible for overseeing full and timely implementation.
- b. Whether the Student needs XXX in order to ensure XXX individual educational needs are met as adequately as the needs of other students in the District. If so, within seven days of its determination, the group will modify the Student’s IEP to address the location, frequency, and duration of such services, how the services will be provided at no cost to the parents (including transportation), and how XXX will otherwise be educated with children who are not disabled to the maximum extent appropriate.

REPORTING REQUIREMENT: Within 14 days of the decision whether compensatory or remedial services are needed, the District will submit to OCR documents supporting the group’s decision. The documentation must be sufficient to demonstrate 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. The documentation submitted will include the following:

- A list of the individuals who attended the meeting (by name, title, and role in the meeting).
- Documentation of the District’s invitation to the parents to attend the meeting and to obtain their input.
- A copy or summary of the information that the IEP Team considered in reaching its determination regarding whether and what compensatory services or other remedial measures are appropriate for the Student.
- A copy or summary of the information that the IEP Team considered in reaching its determination regarding whether the Student needs XXX and XXX.
- Notes from the meeting documenting that the IEP Team carefully considered input from persons knowledgeable about the Student.
- If the Team determines that the Student needs compensatory or remedial services:
 - Documentation of the IEP Team’s decisions regarding the type and number of hours of compensatory services or other remedial measures that are appropriate for the Student and the bases for those decisions.
 - A plan for the prompt provision of compensatory services or the provision of other remedial measures to the Student at no cost to the parents.

² The Team will presume that a failure to provide any quantifiable service or accommodation necessitates compensatory or remedial services. Examples that are not quantifiable are daily logs and XXX.

- Documentation that the Complainant was notified in writing of the compensatory services or other remedial measures offered or taken by the District.
 - If the Team determines that the Student does not need compensatory or remedial services, a written explanation of the reasons for that determination, along with any supporting documentation.
 - If the Team determines that the Student needs XXX and XXX, a copy of the revised IEP.
 - If the Team determines that the Student does not need XXX, a written explanation of the reasons for that determination, along with any supporting documentation
 - Documentation that the District provided the Complainant notice of the Student’s rights, XXX rights, and the applicable procedural safeguards under Section 504 and Title II.
5. The District understands that OCR will, prior to approving the District’s decisions regarding the Student’s (a) need and plan (if applicable) for compensatory or remedial services and (b) need and revised IEP (if applicable) for XXX, 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. The District will consider and respond to any feedback from OCR with respect to these decisions. If applicable:
- a. Within five school days of OCR’s acknowledgement that Item 4.a is satisfied, the District will initiate implementation of the Student’ s compensatory education plan.
 - b. As soon as practicable following OCR’s acknowledgement that Item 4.b is satisfied, the District will initiate implementation of the Student’ s revised IEP.

REPORTING REQUIREMENT: If the IEP Team determines that the Student requires compensatory services or other remedial measures and the Complainant makes the Student available to receive such services, by a date yet to be determined (based on the time frames in the compensatory education plan and feedback from OCR), the District will provide documentation to OCR of the dates, times and locations that compensatory services were provided, a description of what was provided, and the name(s) of the service provider(s). If the IEP Team revises the IEP to XXX, by December 31, 2014, the District will provide documentation to OCR of the dates, times and locations that XXX services were provided, a description of what was provided, and the name of the entity providing the service.

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, 34 C.F.R. Sections 104.4(a) and (b)(iv), 104.33, 104.34, 104.35, and 104.36, and Title II, at 28 C.F.R. Sections 35.130(a) and (b)(1)(iii), which were at issue in this case.

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 the Agreement, if necessary, OCR may visit the District, interview District employees, 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, 34 C.F.R. Sections 104.4(a) and (b)(iv), 104.33, 104.34, 104.35, and 104.36, and Title II, at 28 C.F.R. Sections 35.130(a) and (b)(1)(iii), which were at issue in this case.

When OCR determines that the District has fulfilled all of the terms of this Agreement, OCR will close Case Number 08-14-1105 and will send a letter to the District stating that Case Number 08-14-1105 is closed.

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. Sections 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of 60 calendar days to cure the alleged breach.

The person signing for the District represents that he is authorized to bind the District to this Agreement. This Agreement becomes effective the date of the signature below.

For Belén Consolidated School District:

_____/s/_____
Ron Marquez
Superintendent

____08/28/2014_____
Date