

RESOLUTION AGREEMENT
Higley Unified School District
Case Number 08-14-1218

In order to resolve allegations in case number 08-14-1218, filed against the Higley Unified School District and opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR), the District agrees to implement this Resolution Agreement. This case was initiated pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation at 34 C.F.R. part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation at 28 C.F.R. part 35.

During the investigation and before OCR made findings, the District indicated its willingness to ensure compliance with Section 504 and Title II. Pursuant to Section 302 of OCR's *Case Processing Manual*, complaint allegations may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving 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.

1. The District will provide annual training to staff at Higley High School and to District Administration including the District's Director of Special Education regarding the requirements for providing a "free and appropriate public education (FAPE)" to students identified with, or suspected of having a disability.

The training will specifically include information regarding the following provisions of the regulations implementing Section 504:

- 34 C.F.R. § 104.4, which prohibits discrimination on the basis of disability with regard to any aid, benefit, or service. The training will address the need to ensure that students with disabilities have access to the same programs as other students to the extent permitted by the terms of the student's individualized education program (IEP) (including, as relevant in this case, elective courses and special programs like EVIT or online courses).
- 34 C.F.R. § 104.33(b)(1)-(3), which addresses the requirement to provide *appropriate education*, and that implementing an IEP developed in accordance with IDEA is one way of meeting this requirement.
- 34 C.F.R. § 104.35, which address evaluation and placement of students with disabilities. The training will emphasize that placement decisions cannot be made or changed by any individual; but rather must be made by a team of people knowledgeable about the child, the meaning of the evaluation data, and the placement options; must draw information from a variety of sources, and must include documentation this information was carefully considered.

REPORTING REQUIREMENT: Within 30 days of the date of this Agreement, the District will submit to OCR for approval an outline for this training, including the name, title, and qualifications of the trainer. After OCR approves the training outline, the District will conduct the training within 30 days and annually thereafter until OCR completes the monitoring of this Agreement. Within 15 days after the training is conducted, the District

will provide documentation of the training to OCR, including any sign-in sheets, agendas, handouts, or other materials used in the training.

2. The District will include in the “Prior Written Notice” letters sent out for annual IEP reviews or for the next scheduled IEP meeting for each child, a specific notice to parents¹ that the team would like to discuss whether the parents have any concerns regarding the services provided to their child during either the 2013-14 and 2014-15 school years. The IEP teams will then specifically document and address the parents’ concerns, if any, including any need for compensatory services. These compensatory services may include but are not limited to tutoring, re-testing these students with their required accommodations, adjustment of individual class grades and overall grade point average (GPA), if deemed necessary.

The District will similarly send out letters for annual 504 Plan reviews or the next scheduled 504 Plan meeting to parents² informing them the team would like to discuss whether the parents have any concerns regarding the services provided to their child during either the 2013-14 and 2014-15 school years. Similarly, the 504 Plan teams will then specifically document and address the parents’ concerns, if any, including any need for compensatory services. These compensatory services may include but are not limited to tutoring, re-testing these students with their required accommodations, adjustment of individual class grades and overall grade point average (GPA), if deemed necessary.

For any IEP students placed in a co-taught classroom during the 2013-14 and 2014-15 school years, the District will determine whether 1) a state certified special education teacher was a member of the co-taught class, 2) this teacher was present the same amount of time in the classroom as the regular education teacher, and 3) this teacher delivered the amount of services designated in the student’s IEP plan. If the District determines that any of these students were not provided services from a certified special education teacher or that this teacher was not present the same amount of time in the classroom as the regular education teacher or that this teacher did not provide the amount of services designated in the student’s IEP, the District will convene an IEP meeting to determine how the failure to provide these services impacted the student and whether compensatory services are needed. These compensatory services may include but are not limited to tutoring, re-testing these students with their required accommodations, adjustment of individual class grades and overall grade point average (GPA), if deemed necessary.

Similarly for any 504 students placed in co-taught classrooms during the 2013-14 and 2014-15 school years, the District will determine whether 1) a state certified teacher with training in delivering services to students with disabilities was a member of the co-taught class, 2) this teacher was present the same amount of time in the classroom as the regular education teacher, and 3) this teacher delivered the amount of services designated in the student’s 504 Plan. If the District determines that any of these students were not provided services from a certified teacher with training in delivering services to students with disabilities or that the this teacher was not present the same amount of time in the classroom as the regular education teacher or that this teacher did not provide the amount of services designated in the student’s IEP, the District will convene an 504 Plan meeting to determine how the failure to provide these services impacted the student and whether compensatory services are needed.

¹ If the student has reached the age of majority, the District will contact the student directly.

² If the student has reached the age of majority, the District will contact the student directly.

These compensatory services may include but are not limited to tutoring, re-testing these students with their required accommodations, adjustment of individual class grades and overall grade point average (GPA), if deemed necessary.

For any students who have graduated or have withdrawn from the District who were served under an IEP or a 504 Plan, the District will send them and/or their parent a letter asking if they had any concerns about IEP or 504 Plan services for the 2013-14 and 2014-15 school years. If the student/parent replies that services were not provided or not provided in the amount specified in their IEP or 504 Plan, the District will then convene IEP or 504 Plan meetings to determine if the failure to provide services impacted the student and document the teams determinations including if no compensatory services or compensatory services³ are warranted and why.

REPORTING REQUIREMENT: Within 30 days of the date of this Agreement, the District will provide OCR with its proposed correspondence for parents. On a monthly basis thereafter for a one year period, the District will provide OCR with documentation, for each student, indicating whether the District or the parent identified any problems with the implementation of the students' IEP or Section 504 Plan, documentation for each student that an IEP or Section 504 team meeting was held, including the student's name, date, and names/titles of participants, the team's determination as to whether the student requires compensatory or other remedial services, and if so, what those services will be. Should the District determine that no compensatory education or other remedial services were necessary; the District will provide a written explanation of the reasons for that determination, along with any supporting documentation.

OCR will review the documentation submitted 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.

3. The District will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures for the students covered by the provisions of Agreement term #2. After OCR accepts the proposed compensatory services or remedial measures, the District will provide or begin providing the compensatory services or take the remedial measures.

REPORTING REQUIREMENT: Within 30 days from the date of OCR's acceptance of the proposed compensatory services or remedial measures, the District will provide documentation that it has provided or is in the process of providing the compensatory services or remedial measures. For compensatory services and remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services and remedial measures are being provided as specified. The case will remain in monitoring until all compensatory services and remedial measures have been provided in full.

4. For the students that OCR has previously identified as Students 1, 2, 3, 4, 5, 7, and 8, the District will hold an IEP team meeting for each to determine if compensatory services are needed as a result of any failure to implement the students' IEPs, and if so, what those

³ It is anticipated this will consist of revised transcripts and letters explaining the need for the revisions, rather than – necessarily – the provision of services.

services will be. These compensatory services may include but are not limited to tutoring, re-testing these students with their required accommodations, adjustment of individual class grades and overall grade point average (GPA), if deemed necessary. If a student has graduated or otherwise left the District, the District will attempt to contact the parents⁴ to participate in the meeting, and will determine whether any appropriate compensatory services can be provided without the student's presence in the District.

REPORTING REQUIREMENTS: Within 60 days of the date of this Agreement, the District will provide OCR with documentation for each student that an IEP team meeting was held, including the student's name, date, and names/titles of participants, the team's determination as to whether the student requires compensatory or other remedial services, and if so, what those services will be. Should the District determine that no compensatory education or other remedial services were necessary; the District will provide a written explanation of the reasons for that determination, along with any supporting documentation.

OCR will review the documentation submitted 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.

5. The District will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures for the students covered by the provisions of Agreement term #4. After OCR accepts the proposed compensatory services or remedial measures, the District will provide or begin providing the compensatory services or take the remedial measures.

REPORTING REQUIREMENT: Within 30 days from the date of OCR's acceptance of the proposed compensatory services or remedial measures, the District will provide documentation that it has provided or is in the process of providing the compensatory services or remedial measures. For compensatory services and remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services and remedial measures are being provided as specified. The case will remain in monitoring until all compensatory services and remedial measures have been provided in full.

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 of the Rehabilitation Act of 1973 at 34 C.F.R. §§ 104.4, 104.33, 104.34, and 104.35 and Title II of the Americans with Disabilities Act of 1990 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 a minimum of sixty (60) calendar days to cure the alleged breach.

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 students, and request such additional

⁴ If the student has reached the age of majority, the District will contact the student directly.

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 regulation implementing Section 504 of the Rehabilitation Act of 1973 at 34 C.F.R. §§ 104.4, 104.33, 104.34, and 104.35, and Title II of the Americans with Disabilities Act at 28 C.F.R. § 35.130, which were at issue in this case.

For Higley Unified School District:

_____/s/_____/_____/7/24/2015_____
Name Date
Title