

Voluntary Resolution Agreement

Grand County School District OCR Case Number 08-15-1036

In order to resolve the allegations in Case Number 08-15-1036 filed with the U.S. Department of Education, Office for Civil Rights (OCR) against Grand County School District (District) pursuant to Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, and their implementing respective regulations at 34 Code of Federal Regulations Part 104 and 28 C.F.R. Part 35, the District agrees to take the actions outlined in this Resolution Agreement.

Prior to OCR's completion of its investigation and before OCR had made any findings, the District indicated its desire to voluntarily enter into an agreement to resolve the complaint allegation regarding the District's failure to evaluate the Student and to ensure compliance with Section 504 and Title II.¹ Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint allegation 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 agreement's remedies align with the allegations.

REMEDIAL ACTION

The District voluntarily agrees to take the following actions²:

1. The District will issue a letter to the complainant at the Complainant's address provided by OCR, inviting the Student to return to the District and assuring the complainant that:
 - a. Within five calendar days of the Student's reenrollment date (i.e., the date Student begins attending school in the District), the District will take steps to initiate an evaluation of the Student that complies with 34 C.F.R. §104.35 for his suspected hearing disability. Assuming the Student's parent consents to the evaluation, the evaluation will be completed in accordance with all timelines set forth by the Utah State Office of Education in the current version of the Utah Special Education Rules (USER). As part of the evaluation, the District will consider the private hearing evaluations, copies of which to be provided by the Complainant to the District.
 - b. Within ten calendar days of the completion of the evaluation, the District will convene a meeting of persons knowledgeable about the Student, the evaluation data, and the placement options, and determine whether the student qualifies as a student with a disability. This group will include complainant.
 - c. If Student is determined to be eligible for special education and related services under the IDEA, the District will promptly develop and Individualized Education Plan for Student.

¹Because Section 504 has specific requirements regarding free and appropriate public education (FAPE) and Title II provides for no lesser protection than that provided by Section 504, this Agreement refers to Section 504 in addressing FAPE requirements.

²In OCR Case number 08-1168, which involved the same Complainant, the District revised its policies procedures regarding the identification, evaluation and placement of students with disabilities. The policies and procedures were approved by OCR, the Complainant was notified of the changes in procedure, and District staff members were trained. Thus, revising and reviewing these policies and procedures, and staff training on these, is not needed in this Agreement.

- d. If the District completes a special education evaluation pursuant to its Individual with Disabilities Education Act (IDEA) procedures and the Student is not identified as a student with a disability pursuant to the IDEA, the District will promptly consider and determine whether the Student qualifies as a student with a disability pursuant to Section 504 and if so, will develop a Section 504 Plan for the student.
 - e. If the group of knowledgeable persons determines that the Student is a student with a disability (either pursuant to the District's Section 504 procedures of the District's IDEA procedures) the group will consider the Student's need for compensatory services relating to the identified disability, including any appropriate to remediate any academic deficits resulting from an earlier failure to identify and serve student under IDEA/Section 504.
 - f. The District will promptly implement the Student's Section 504 Plan or IEP, including any requirements for compensatory services.
 2. The District will request that the complainant notify the District of her intent to return the student to the District and anticipated date of reenrollment within ten calendar days of receipt of the letter. The letter will include the name and contact information of the identified District administrator the complainant is to contact regarding reenrollment for the Student.
 3. If the complainant advises the District that she declines to reenroll the Student at the District *or* fails to respond to the District's letter within the allotted ten days, the District will pay for 80 hours of academic tutoring for the Student at an amount not to exceed \$50.00 per hour, to be used solely for the purpose of obtaining tutoring or other similar instructional services for Student. The reasonable cost of such tutoring is calculated based upon the per hour rate of pay for certified teacher tutors within the District's geographic region.
 - a. The District will upon receipt of documentation from the complainant (e.g., provider invoices or receipts for payment to the service provider) establishing that Student has received tutoring or similar instructional services valued at no more than \$4,000.00, make direct payment to the service provider, or reimburse the complainant for the documented expenses paid by the complainant for such services.
 - b. In the event said payment is made, the District shall have no further obligation to provide compensatory services to Student in the event he is subsequently re-enrolled in the District.
 4. The District will maintain documentation demonstrating payment of the required funds to and receipt by the service provider or complainant as applicable.

Reporting Requirement Agreement Terms 1 through 4: The District will provide to OCR documentation of completion of Terms 1-4 in its monitoring report due to OCR June 30, 2015.

5. If the complainant reenrolls the student in the District, the District will complete the steps outlined in Term 1 (a-d). The District will maintain documentation of efforts to obtain consent, communicate with the complainant, schedule activities required in Term 1 (a-d) of this Agreement, and confer with OCR if the complainant, the Student, or the Student's guardians fail to cooperate with the District.

Reporting Requirement Agreement Term 5: The District will provide to OCR documentation of completion of Term 5 for OCR's review and approval in its monitoring report due to OCR September 30, 2015.

The District understands that OCR will, in its review of the District's decision and plan for providing the proposed compensatory 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. The District will consider and respond to any feedback from OCR with respect to the compensatory service plan. Within **five school days** of OCR's determination that Term 5 is satisfied, the District will initiate implementation of the Student's compensatory service plan and provide OCR with documentation demonstrating implementation of the compensatory service plan until all services are provided to the student. OCR, except, in extraordinary circumstances, does not typically substitute its judgment for the decisions made by a group of persons knowledgeable about a student, the evaluation data, and the placement options if the procedural requirements of the Section 504 implementing regulation are met.

6. By May 30, 2015, the District, upon notice and receipt of documentation regarding complainant's documented and previously incurred out of pocket expenses associated with private hearing evaluations by two service providers, will mail a certified check payable to the complainant in an amount not to exceed \$4,000.00³ for the reimbursement of expenses previously incurred in securing a hearing evaluation for the student. The District may consider and rely upon the evaluation obtained by the complainant in determinations relating to the student's eligibility for special education and related aids and services as provided by Term 1 of this Agreement.

The District will maintain documentation demonstrating payment of the required funds to and receipt by the complainant. The check shall be mailed to the address provided by OCR.

Reporting Requirement Agreement Terms 12 through 13: The District will provide to OCR documentation of completion of Terms 12-13 in its monitoring report due to OCR June 30, 2015.

MONITORING AND REPORTING

7. By June 30, 2015, the District shall provide to OCR an initial monitoring report addressing Agreement terms 1 through 6 above, including supporting documentation and describing the steps the District has taken to ensure implementation of this Agreement.
8. The District shall comply with any additional OCR requests for monitoring reports related to the terms of this Agreement as necessary until the District demonstrates full compliance with all terms of this Agreement.

ADDITIONAL ACKNOWLEDGEMENTS

³ Once the Complainant provides OCR with documentation supporting these previously incurred expenses, OCR will provide the District with the supporting documentation and notice of the final reimbursement amount due the Complainant (an amount not to exceed \$4,000.00).

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 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 and Title II of the Americans with Disabilities Act of 1990 their implementing regulations at 34 C.F.R. Part 104, and 28 C.F.R. Part 35 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 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 regulation implementing Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and their implementing regulations at 34 C.F.R. Part 104, and 28 C.F.R. Part 35, which were at issue in this case.

/S/

05/01/2015

For the District

Effective Date