

Voluntary Resolution Agreement

Cherry Creek School District
OCR Case Numbers: 08-14-1257 and 08-15-1125

In order to resolve the allegations and issues in Case Numbers 08-14-1257 and 08-15-1125 filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the Cherry Creek School District (District) pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and Title IX of the Education Amendments of 1972 (Title IX), and their respective implementing regulations at 34 Code of Federal Regulations Part 104, 28 C.F.R. Part 35, and 34 C.F.R. Part 106, 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 issues and allegations, including that the District failed to provide the student a free appropriate public education; discriminated against the student on the basis of disability and sex; and retaliated by subjecting the complainant and the student to different treatment. Pursuant to Section 302 of OCR's *Case Processing Manual*, complaint allegations and issues 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 and issues. The Agreement requirements are aligned with the complaint allegations and issues and consistent with Section 504, Title II¹ and Title IX regulatory requirements. 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.

REMEDIAL ACTION

The District voluntarily agrees to take the following actions:

1. By December 11, 2015, the District will issue a letter to the complainant notifying her that as a resident of the District the student is entitled to reenroll in the District's Cherokee Trail High School for the 2015-16 school year.
2. The letter will notify the complainant of the opportunity to inspect and review the student's records, consistent with the District established policies and procedures including those relating to reproduction costs of records. The letter will specifically advise the complainant that regarding the student's discipline record(s) she believes to be inaccurate, misleading, or otherwise in violation of the student's rights, she has the right to seek to amend the record(s), and will provide information to the complainant for seeking correction of the student's record(s) in accord with the District's policies and procedures (Policy JRC and JRC-R).
3. The letter will include the name and contact information of the identified District administrator the complainant is to contact regarding reenrollment for the student, and regarding requests for review, inspection, or copies of the student's records maintained by the District.

¹ Because Section 504 has specific requirements regarding 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 at 34 C.F.R. §§ 104.33, 104.34, and 104.36.

4. The letter will state that the student will not be assigned XXXX or XXXX² classrooms for the duration of his enrollment with the District, unless there is no other qualified teacher available at Cherokee Trail High School to instruct the class for which the student registered.
5. By December 11, 2015, the District will provide to the complainant copies of documentation it has issued to or received from the Colorado High School Activities Association (CHSAA) regarding the student, his request for a waiver of eligibility requirements, and appeal of CHSAA's determination(s).

Reporting Requirement Agreement Terms 1-5: The District will provide to OCR documentation of completion of Terms 1-5 in its monitoring report due to OCR December 18, 2015.

If, and only if the student reenrolls with the District:

6. The District will within ten school days of the student's reenrollment take steps to schedule a Section 504 team meeting to review the student's Section 504 plan, including consideration of:
 - a. The student's need for compensatory educational services.
 - b. Transportation services.
 - c. Disability related aids and services necessary for the student's participation in extracurricular activities consistent with OCR's January 24, 2013 Dear Colleague Letter.
 - d. Whether the student requires further evaluation for suspected disabilities, including but not limited to asthma and tree nut allergy.
 - i. If the Section 504 team determines further evaluation is necessary or if the parent requests further evaluation, the District will timely solicit consent for the evaluation and complete the evaluation according to the District's Section 504 or the Individuals with Disabilities Education Act (IDEA)³ policies and procedures, as appropriate.
 - ii. Upon completion of further evaluation and if the Section 504 team or IDEA multidisciplinary team, as applicable, determines that the student has one or more disabilities in addition to the student's currently identified disability of diabetes, the District will immediately take steps to develop and implement a special education and related aids and services plan pursuant to Section 504 or the IDEA and based upon all identified disabilities and including any requirements for compensatory services identified.
7. Within ten school days of the student's reenrollment, the District will provide the complainant notice of her Section 504 procedural safeguards or IDEA due process rights as applicable.
8. Within five school days of completion of the Section 504 Plan, the District will identify to the complainant an individual who will act as a communication liaison between the District and the complainant.
 - a. The identified individual will be the single point of contact responsible for

² The District advised OCR that XXXX is no longer employed by the District.

³ Compliance with the IDEA requirements is one means of meeting Section 504's FAPE requirements, 34 C.F.R. §§104.33 and 104.35.

- facilitating communication with the complainant regarding the student's academic and disability-related needs.
- b. The identified individual will provide timely responses, typically within two school work days, to communications received from the complainant, except where expedited communication is necessary to ensure the student's medical health or safety. The identified individual will seek the complainant's input in developing the Communication Plan.
 - c. The Communication Plan will not interfere with the substance or the communication requirements of (if any) the Section 504 Plan and will specifically address:
 - i. Communications regarding the student's academic, medical (daily information, new information and urgent communications), and school communications.
 - ii. An expectation that all parties maintain professional and courteous communication exchanges, whether in person, via telephone, or in writing, including electronic medium.
 - iii. The time, manner, and frequency of communications by all parties.
 - iv. School visitation for the parents, including extracurricular activities, consistent with applicable school or District policy.
 - d. This plan will also provide linkages to already-existing communications resources available at the student's school or District and expectations for the parents' access to and use such resources consistent with expectations for all parents of District students.
 - e. The District and the complainant will also establish a review date for the Communication Plan.
 - f. The draft Communication Plan will be provided to OCR for review. The District will respond to OCR's feedback regarding the Communication Plan, which will be implemented upon OCR's approval.
9. The District will report to OCR the student's enrollment status with the District one time per semester through the end of the 2015-16 school year.

Reporting Requirement Agreement Terms 6-9: The District will provide to OCR documentation of completion of Terms 6-9, relative to the student's enrollment status, in its monitoring reports due to OCR December 18, 2015, and June 30, 2016. With regard to the Section 504 team meeting, if required due to the student's reenrollment, 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, and notify the District when it has completed this review.⁴

10. By December 11, 2015, the District in consultation with OCR will develop a Memorandum advising Cherokee Trail High School staff, faculty, administrators, and athletic coaches of their obligation to respond promptly and equitably to *all* complaints of alleged disability and sex discrimination.

⁴ Except in extraordinary circumstances, OCR does not substitute its judgment for the decisions made by a team that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the team described in provision 6 proposes compensatory services or remedial actions *and* those actions are clearly insufficient to provide equitable relief to the Student, OCR will notify the District of its concerns, and the District will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures.

11. The Memorandum shall specifically emphasize:
 - a. Appropriate implementation of the District's non-discrimination grievance procedures.
 - b. How to recognize an allegation of disability and sex discrimination, including allegations of disability and sexual harassment.
 - c. Retaliation is strictly prohibited and if substantiated by the District to have happened, will result in consequences in accordance applicable District policy and practices.
 - d. That retaliation may be found where individuals, who have engaged in a protected activity by asserting a right protected by or filing a complaint pursuant to Section 504, Title II, and Title IX, are subjected to different treatment, including the inconsistent or stricter application of the District's established policies, procedures, and practices absent a legitimate non-retaliatory reason that is not a pre-text for prohibited discrimination.
 - e. The contact information for the District's Section 504, Title II, and Title IX Coordinators.

12. Prior to issuing the Memorandum the District will provide OCR with a draft for OCR's review and approval. The District agrees to respond to OCR's feedback regarding the Memorandum, which will be issued upon OCR's approval.

13. Within ten days of receiving OCR's approval of the Memorandum, the District will issue the document to teachers, administrators, and athletic coaches at Cherokee Trail High School. The District will maintain and provide to OCR documentation that Cherokee Trail High School teachers, administrators, and athletic coaches received the Memorandum.

14. The District will provide OCR documentation demonstrating that for school year 2015- 16, each Cherokee Trail High School student received the District's notice of non-discrimination, including discrimination based on disability and sex, and that the notice complies with the respective requirements of Section 504, Title II, and Title IX at 34 C.F.R. § 104.8, 28 C.F.R. § 35.106, and 34 C.F.R. § 106.9.

Reporting Requirement Agreement Terms 10-14: By December 18, 2015, the District will provide documentation demonstrating completion of Terms 10-14, to include documentation of delivery and receipt of the staff directive or training document to all Cherokee Trail High School teachers, administrators, and athletic coaches, and a copy of the final document issued.

15. At the first scheduled XXXX practice for the 2015-16 XXXX season, the District XXXX will provide instruction on the proper technique and use XXXX and that any XXXX misuse of the maneuver is to be immediately reported to a XXXX coach, and the deliberate misuse of the maneuver may result in discipline in accordance with District student discipline policy.

Reporting Requirement Agreement Term 15: By December 18, 2015, the District will provide documentation demonstrating the instruction of the XXXX maneuver at the scheduled XXXX practice.

MONITORING AND REPORTING - GENERAL:

16. The District shall comply with any additional OCR requests for monitoring reports as necessary until the District demonstrates full compliance with all terms of this Agreement.

ADDITIONAL ACKNOWLEDGEMENTS:

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, Title II, and Title IX at 34 C.F.R. Part 104, 28 C.F.R. Part 35, and 34 C.F.R. Part 106, 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 regulations implementing Section 504, Title II and Title IX at issue in this case.

/s/
Cherry Creek School District

11/4/2015
Effective Date: