

Resolution Agreement

Canyons School District
OCR Case Number 08-15-1148

In order to resolve a compliance concern for an allegation in OCR Case Number 08-15-1148, filed against the Canyons School District (the District) and opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR) pursuant to Section 504 of the Rehabilitation Act of 1973, 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 (ADA), 42 U.S.C. §§ 12131–65, and its implementing regulation at 28 C.F.R. part 35, the District agrees to implement the following Resolution Agreement.

1. By October 1, 2015, the District will conduct an evaluation and convene a meeting consistent with the requirements of 34 C.F.R. § 104.35 to: (1) determine whether the Student has medical disabilities within the meaning of Section 504 or Title II; and (2) if so, what aids or accommodations, if any, the Student is entitled to in order to ensure he receives a free appropriate public education (FAPE) consistent with the requirements of 34 C.F.R. §§ 104.33 & 104.34.¹ Pursuant to the requirements of 34 C.F.R. § 104.35, the evaluation and meeting will meet the following requirements:
 - The District will gather information from a variety of sources, offer the Complainant the opportunity to provide information and records for consideration, and may administer formal assessments and/or use other evaluation tools consistent with 34 C.F.R. § 104.35(b), as necessary. Any formal assessments and/or evaluation tools sought by the District to which the Complainant consents will be provided at District expense. The District will seek Complainant’s written consent for the evaluation. If Complainant does not provide written consent for the evaluation, the District does not have to convene a Team meeting or proceed with the remaining steps outlined in this Paragraph.
 - The Team convened for the meeting will include District employees who have knowledge about the child, the meaning of the evaluation data considered, and the placement options available.
 - The District will ensure that the Student’s parents are invited to the meeting, and it will permit the Student’s parents to invite other persons to attend the meeting.
 - The District will ensure that any decisions made at the meeting reflect the judgment of the Team and not the judgment of a single individual.
 - If the Team determines that the Student has medical disabilities, the Team will next determine whether the Student is entitled to aids or accommodations in order to

¹ This meeting will be for the purposes of considering whether aids or accommodations are necessary for the Student in relation to his medical disabilities. It is not for the purposes of replacing or modifying the Student’s already existing IEP or BIP.

receive a FAPE designed to meet his educational needs as adequately as the needs of non-disabled students are met. If the Team determines the Student is entitled to aids or accommodations in order to receive a FAPE, the Team shall develop a Section 504 plan² specifying the aids or accommodations the Student will receive. If the Complainant provides consent for the Section 504 plan developed by the Team, the District shall promptly implement the Student's Section 504 plan following the meeting.

REPORTING REQUIREMENT 1: By October 15, 2015, the District will submit documentation to OCR demonstrating that it has fully complied with Paragraph 1. Such documentation will include:

- A list of the individuals who attended the Team meeting(s), including each individual's name, title, and role in the meeting.
 - Documentation of the District's invitation to the Student's parents or guardians to attend the Team meeting(s) and obtain their input.
 - Documentation reflecting the content of the evaluation conducted by the District and, if applicable, documentation reflecting that any formal assessments and/or other evaluation tools were arranged and paid for by the District. If the Complainant does not provide written consent for the evaluation, provide documentation of the District's request for the evaluation and either the Complainant's refusal to consent or documentation of the Complainant's failure to respond.
 - Notes from the meeting(s) documenting that the Team carefully considered input from persons knowledgeable about the Student.
 - Documentation of the Team's conclusions, a copy or summary of the information the Team considered in reaching those conclusions, and, if applicable, a copy of the Student's Section 504 plan.
 - Documentation that the District provided the Complainant with notice of the Student's and their rights and applicable procedural safeguards under Section 504 and Title II.
2. At the Team meeting described in Paragraph 1, if the Team determines that the Student is entitled to a Section 504 plan, the Team will also consider whether the Student is entitled to compensatory services and, if so entitled, developing a plan for providing those compensatory services to the Student.³ Specifically, the Team will consider and evaluate the impact of any failure to timely evaluate the Student for a Section 504 plan and provide such services, including whether the Student missed educational time due to his disabilities

² Please be aware that medical plans, and other similarly named plans, are typically considered a type of Section 504 plan, and the District can name the plan as it sees fit so long as it satisfies the requirements of Section 504.

³ If the Team determines that the Student does not require a Section 504 plan, it does not need to determine whether the Student is entitled to compensatory services or provide such services.

and whether he should have been provided services at home.⁴ The Team will then determine the type and number of hours of compensatory services that are necessary to make up for that impact, and the Team will develop a plan for providing those compensatory services to the Student within six months. The District shall promptly notify the parents in writing of the compensatory services being offered at no cost to the parents and the proposed, prompt initiation date of such services. The Team meeting will be procedurally consistent with the requirements of 34 C.F.R. §§ 104.35 and 36. The District will ensure that any decisions reflect the judgment of the Team and not the judgment of a single individual. The Team will carefully consider the information provided by the Student's parents and their invitees.

REPORTING REQUIREMENT 2.1: By November 1, 2015,, the District will submit documentation to OCR that includes the following:

- A copy or summary of the information the Team considered in reaching its determination regarding whether and what compensatory services are appropriate for the Student.
- Documentation of the Team's conclusions regarding the type and number of hours of compensatory services that are appropriate for the Student and the bases for those conclusions.
- If applicable, a plan for the prompt provision of compensatory services to the Student at no cost to the parents.
- If applicable, documentation that the parents were notified in writing of the compensatory services offered by the District.

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.⁵

REPORTING REQUIREMENT 2.2: Within six (6) months from the date of OCR's acceptance of the proposed compensatory services (if any), the District will submit documentation to OCR demonstrating that all of the compensatory services selected by the Team have been provided to the Student.

⁴ To the extent the Complainant voluntarily kept the Student at home following the School's search of the Student for marijuana on DATE, however, the District is not required to provide compensatory services for any missed educational services during that time.

⁵ Except in extraordinary circumstances, OCR does not typically 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 paragraphs 1 and 2 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.

3. By October 15, 2015, the District will revise, if necessary, and provide OCR with its draft policies and procedures for the timely identification, referral, evaluation, and placement of students with medical disabilities who need or are believed to need aids, accommodations, or related services due to a disability and the subsequent implementation of those services. OCR will review the draft policies and procedures to ensure that these are consistent with 34 C.F.R. §§ 104.32-36.

REPORTING REQUIREMENT 3: By October 15, 2015, the District will provide for OCR's review and approval a copy of the draft policies and procedures.

4. Within 30 days of OCR's approval of the draft policies and procedures in Paragraph 3, the District will: 1) adopt and implement the OCR-approved policies and procedures, including giving notice of procedural safeguards to parents pursuant to 34 C.F.R. § 104.36; and 2) provide written notice to all pertinent District staff of the content, requirements, and application of the newly established policies and procedures.

REPORTING REQUIREMENT 4: Within 45 days of OCR's approval of the draft policies and procedures in Paragraph 3, the District will document to OCR that it has adopted and implemented the OCR-approved policies and provided written notice to all pertinent District staff.

5. By November 1, 2015, the District will draft for OCR's approval in-service training materials and identify one or more persons knowledgeable about Section 504 and Title II who will provide the training. The training will include, at minimum:
 - A review of the District's responsibility to comply with Section 504 and Title II, which state that educational institutions under OCR's jurisdiction may not discriminate against any person on the basis of disability;
 - A review of the policies and procedures in Paragraph 3 that were approved by OCR;
 - The District's responsibility to provide students with disabilities a free appropriate public education (FAPE), based on Section 504's FAPE requirements at 34 C.F.R. §§ 104.33–36, including the requirement at 34 C.F.R. § 104.33(a) and (b) that the District provide FAPE to all of its students with disabilities, regardless of the nature or severity of the disability. An appropriate education is defined as the provision of regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34–104.36. Further, the training should explain that failing to properly implement all of the provisions in a student's Section 504 plan constitutes a denial of FAPE; and
 - The District's responsibility to provide a FAPE to students with medical impairments, including how to identify students with medical impairments who may qualify for

accommodations or related services, how to determine the accommodations or related services that are appropriate for those students, and the District's obligation to fully implement Section 504 plans.

REPORTING REQUIREMENT 5: By November 1, 2015, the District will submit documentation to OCR demonstrating that it has fully complied with this paragraph. Such documentation will include:

- The draft training materials for OCR's review and approval.
 - Identification of the intended trainer(s) and information about the trainer's qualifications.
6. Within sixty (60) days of OCR's approval of the training materials, the District will schedule and conduct in-service training. Attendees at this training will include the Eastmont Middle School's Section 504 Coordinator, administrators, nurses, and classroom teachers. The District shall annually conduct the in-service training for each successive school year for the next two years or until OCR closes the monitoring of this Agreement, whichever occurs first.

REPORTING REQUIREMENT 6: Within ten (10) days after the conclusion of the training, the District will submit to OCR proof that the training was provided. Such documentation will include:

- The agenda and handouts for the training;
- The date and time the training was held; and
- A copy of the attendance sheet from the training, including the name and title of each participant, along with a written assurance that all required attendees were present during the training.

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 Section 504 and Title II, which were at issue in this case. The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II, 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.

For Canyons School District:

/s/

9/9/15

Dr. James Briscoe
Superintendent, Canyons School District

Date