

## **RESOLUTION AGREEMENT**

### **Pojoaque Valley School District Case Number 08-15-1210**

The U.S. Department of Education, Office for Civil Rights (OCR), initiated the above-referenced complaint against the Pojoaque Valley School District, (District), pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Prior to the completion of OCR's investigation, the District voluntarily agreed to resolve the allegations of this complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM). This resolution has been entered into voluntarily and does not constitute a finding or admission that the District is not in compliance with Section 504 and its implementing regulation or Title II and its implementing regulation. Accordingly, to ensure compliance with Section 504 and Title II and to resolve the allegations of this complaint, the District voluntarily agrees to take the following actions:

#### **MANIFESTATION DETERMINATION**

1. Within 30 days of the date of the Agreement, the District will review and revise its policies and procedures to ensure that, prior to suspending a student with a disability in a manner that causes a significant change in a student's placement, the District will hold a meeting to determine whether the misconduct is a manifestation of the student's disability and appropriately follow the procedures set forth in at 34 C.F.R. §104.35. The District will continue to revise its policies and procedures until it receives OCR's written approval.

#### **REPORTING REQUIREMENT:**

Within 15 calendar days after the District reviews and revises its policies and procedures, the District will submit to OCR, for review and approval, a copy of its policies and procedures.

2. Within 30 days of OCR's written approval of the revised policies and procedures in Term 1, the District will adopt and implement the policies and procedures, and will submit to OCR documentation demonstrating its adoption, implementation, and publication. The District will notify all District employees, students, and parents/guardians of its adoption and implementation of the policies and procedures, at a minimum, through the District's website, electronic mail messages to all employees, students, and parents/guardians, and any regularly issued newsletters.

#### **REPORTING REQUIREMENT:**

Within 45 days after adoption, implementation, and publication of the revised policies and procedures, the District will provide OCR with a confirmation letter stating that it has adopted the policies and procedures. Additionally, the District will describe all locations, including on the internet, where the District published the revised policies and procedures. The District will provide documentation that District staff received all revised policies and any related procedures.

3. Within 30 days of OCR's written approval of the revised policies and procedures in Term 1, the District will provide a memo (Memo) to all District Principals, Vice Principals, Special Education administrators, and other individuals involved in the administration of Special Education programs, and other individuals responsible for the discipline of students. This Memo shall remind the recipients of the District's policy and procedures regarding the discipline of a student with a disability

and the requirement to hold a manifestation determination conference prior to suspending the student for more than 10 days or a series of suspensions totaling more than 10 days.

**REPORTING REQUIREMENT:**

Within 15 calendar days after the District issues the Memo, the District shall provide OCR with documentation showing it has complied with the requirements of this term. At a minimum, the District shall provide OCR with a copy of the Memo and a list of the names and job titles of the recipients of the Memo.

4. Within 30 days of OCR's written approval of the revised policies and procedures in Term 1, the District will conduct an investigation of the alleged failure to hold a manifestation determination meeting. The purpose of the investigation is to determine whether the Student was suspended for more than 10 consecutive or cumulative days, what actions the District took including whether a meeting was held, and whether the District complied with its legal obligations and the District's own policy and procedures regarding the suspension of students with disabilities. Additionally, if the District determines that the Student was suspended for more than 10 days and the District failed to hold a manifestation determination meeting, the District shall:
  - a. take corrective actions in addition to the actions required in this Agreement, such as additional employee training, employee personnel actions, or other systemic improvements.
  - b. conduct a manifestation determination meeting in compliance with Section 504 and Title II using the policies and procedures described in Term 1 that are approved by OCR.

**REPORTING REQUIREMENT:**

Within 15 calendar days after the District completes the investigation, the District shall provide OCR with a summary of its investigative findings and a copy of any documents obtained or reviewed as part of the investigation.

Additionally, if the District found that the Student was suspended for more than 10 consecutive or cumulative days and the District did not hold a manifestation determination meeting, the District shall provide OCR with a summary of its actions and a copy of any relevant documents regarding its compliance with Terms 4a and 4b.

**X – Date redacted – X FIGHT**

5. Within 30 days from the date of this Agreement, the District will conduct a thorough investigation of the alleged fight between the Complainant's son and another male student that occurred on or around X – Date Redacted – X for which the Student was suspended in X – Date Redacted – X . This investigation shall be conducted by the District's own Title II/Section 504 coordinator or the person identified by the District as responsible for investigating complaints of discrimination on the basis of a disability. This investigator shall not be an employee of the school where the Student attends. The investigator shall, at a minimum, conduct thorough interviews with all witnesses to the incident. The investigator shall make findings and recommendations for corrective actions, if necessary. The District shall provide OCR with documentation as OCR requests and the District will continue its investigation until OCR determines that the District's investigation is thorough, that the District applied the appropriate legal standards, that that the District's findings are reasonable, and any corrective actions taken are appropriate.

## REPORTING REQUIREMENT:

Within 15 calendar days after the District completes its investigation, the District will provide OCR with all documentation related to its investigation. Documentation shall include, at a minimum, a copy of the investigator's notes containing the questions asked and answers provided for every interview, all documents or other evidence obtained during the course of the investigation, all documents or other evidence obtained by the principal of the school during the original investigation (if any), the investigator's findings and conclusions, and any recommendations the investigator makes for corrective actions. Additionally, the District will provide OCR with an explanation of any corrective actions the District plans to take or has taken.

## INDIVIDUAL REMEDIES

6. Within 30 days from the date of this Agreement, the District will convene a Section 504<sup>1</sup> meeting and invite the Complainant to the meeting. The purpose of the meeting is to determine whether the Student requires compensatory services for the alleged failure to properly implement the Student's Section 504 plan, for the alleged change in placement for failing to hold a manifestation determination meeting, and for the alleged dismissal by the Principal of the Student from school.

### REPORTING REQUIREMENT:

Within 15 days after the meeting, the District will provide OCR with a statement that it has complied with this term of the Agreement. Additionally, the District will provide OCR with a copy any documents related to the meeting, including at least the meeting notes, revised Section 504 plan, and any document showing the decision regarding compensatory services for the Student. If the Complainant declines the invitation to the meeting, the District shall provide a copy of the invitation to the meeting and any notes and records of communications with the Complainant showing the Complainant's declination.

Should the Section 504 team determine that no compensatory education or other remedial services are necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation.

With regard to the Section 504 team meeting, 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.<sup>2</sup>

## DIFFERENT TREATMENT

7. Within 30 days of the date of this agreement, the District will provide a memo (Memo) to all District Principals, Vice Principals, Special Education administrators, and other individuals involved in the administration of services in the Special Education programs. This Memo shall remind the recipients

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<sup>1</sup> Or IEP meeting if appropriate

<sup>2</sup> 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 Term #6 makes decisions regarding compensatory services for the Student that 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.

of the District's policy prohibiting the treatment of students with disabilities differently than non-disabled students. Specifically, the Memo shall explain that law and District policy require the District to provide disabled students with the same opportunities to participate in school related activities, including field trips, as non-disabled students and that the District cannot require a disabled student to be accompanied by a parent or companion in order to participate in school related activities.

**REPORTING REQUIREMENT:**

Within 15 calendar days after the District issues the Memo, the District shall provide OCR with documentation showing it has complied with the requirements of this term. At a minimum, the District shall provide OCR with a copy of the Memo and a list of the names and job titles of the recipients of the Memo.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that during the monitoring of this Agreement, 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 Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 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 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 its implementing regulation at 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 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.

/s/

10/28/2015

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For Pojoaque Valley School District

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Date