

Resolution Agreement
Pine Forest Charter School
OCR Case Number: 08-15-1293

The Pine Forest Charter School (School) voluntarily agrees to implement this Resolution Agreement (Agreement) to resolve compliance issues identified during the investigation of the above referenced complaint, which was opened for investigation by the U.S. Department of Education (Department), Office for Civil Rights (OCR). The School will take the following actions to ensure that the School is in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104; and Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106.

I. Individual Relief

- A. **FAPE.** After providing proper written notice to the Student's parent(s), the School will convene a group of knowledgeable persons to determine whether the Student was denied a free appropriate public education (FAPE) during the 2014-2015 school year as the result of a failure to evaluate him for a suspected disability. If the group determines that the Student was denied a FAPE during the 2014-2015 school year, it shall determine whether the Student is in need of compensatory and/or remedial services. Within one week of the group's determination, the School will send, via certified mail, a letter to the Student's parent(s), offering to directly pay a private provider, subject to OCR approval, for any compensatory and/or remedial services recommended by the group for the Student within the next 180 days. In addition, the School will provide the Student's parent(s) with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

REPORTING REQUIREMENT: By April 29, 2016, the School will report the results of the group's determination regarding the provision of any compensatory and/or remedial services for the Student. The School shall provide OCR with a copy of the notice provided to the Student's parent(s), documentation showing the participants in the meeting, a narrative statement providing an explanation for the group's decisions, a description of information the group considered, a description of and, if applicable, a schedule for providing any compensatory and/or remedial services to the Student, including who will provide the services and the anticipated completion date for the provision of such services, and documentation that the School provided the procedural safeguards to the Student's parent(s). The completion date for the provision of such services may not extend beyond ninety (90) days from the date the services begin. If the School determines that no compensatory services are needed, the School will provide documentation supporting that denial of compensatory services for OCR's review.

OCR will review the documentation submitted to ensure that the School 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 School when it has completed this review.¹

- B. **Letter.** By June 1, 2016, the School will send a letter to the Complainant advising her of the steps the School has taken as a result of her complaint.

REPORTING REQUIREMENT: By June 8, 2016, the School will submit to OCR a copy of the letter to the Complainant notifying her of the steps the School has taken as a result of her complaint.

- C. **Financial Compensation.** The School will provide financial compensation to the Complainant in the amount of [X – portions of this provision have been redacted to protect the privacy of involved parties –X].

D. **Future Hiring.**

- i. By April 15, 2016, the School will propose to OCR a specific person at the School who will respond to reference checks from the Complainant’s potential future employers.

REPORTING REQUIREMENT 1: Within 45 calendar days of written notification from OCR that the School’s proposed person has been approved, the School will provide written assurance to the Complainant and to OCR that this person understands his/her role and will serve as the sole contact for the Complainant’s potential future employers.

- ii. By April 15, 2016, the School will provide written assurance to the Complainant that the Complainant will receive preference in hiring if a vacancy XXXX becomes available between April 2016 and August 2018. The School will notify the Complainant of any such vacancies via email and telephone call to an email address and phone number provided by the Complainant. If the Complainant applies for a vacant position, the School will consider the Complainant and offer the Complainant the position if the Complainant is well qualified for the position.

REPORTING REQUIREMENT 2: By April 22, 2016, the School will submit to OCR a copy of the written assurance sent to the Complainant regarding her preferential treatment in future hiring.

II. Systemic Relief

¹ 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 this agreement term proposes actions that are clearly insufficient to meet the needs of the Student, OCR will notify the School of its concerns, and the School will consider and respond to any feedback from OCR.

- A. **Consultant.** The School agrees to retain the services of a consultant², subject to OCR approval, with whom the School agrees to collaborate in a review of the School's Section 504 and Title IX policies, practices, and procedures (hereafter Section 504 and Title IX Policies). The School will provide the consultant with all appropriate information the consultant believes to be necessary to evaluate the School's Section 504 and Title IX Policies, including but not limited to its written policies, practices, and procedures related to the School's compliance with the Section 504 regulations at 34 C.F.R. § 104 and the Title IX regulations at 34 C.F.R. § 106. In addition, the School agrees to collaborate with the consultant in a review of its policies, practices, and grievance procedures for filing complaints of discrimination.

REPORTING REQUIREMENT 1: By April 29, 2016, the School will submit documentation demonstrating the implementation of Item 2(A), including the name and credentials of the consultant, for OCR's review and approval.

REPORTING REQUIREMENT 2: Within 60 calendar days of written notification from OCR that the consultant has been approved, the School will provide OCR with documentation demonstrating that the consultant has reviewed the District's Section 504 and Title IX Policies and has collaborated with the School to make necessary amendments. By that same date, the School will provide OCR with documentation demonstrating that all Section 504 and Title IX Policies have been distributed to all School students' families and published on the School's webpage.

B. Notices of Nondiscrimination and Non-Retaliation.

- i. By April 29, 2016, the School will submit to OCR for its review and approval a draft notice of nondiscrimination pursuant to 34 C.F.R. §§ 104.8 and 106.9, which will notify students, parents/guardians, employees, and other relevant persons that it does not discriminate on the basis of disability or sex in the education programs or activities that it operates and that is required by law not to discriminate in such a manner.³ The notice will state that inquiries concerning the application of Title IX should be referred to the Title IX Coordinator (including the name or title and contact information for the School's Title IX Coordinator) and that inquiries concerning the application of Section 504 should be referred to the Section 504 Coordinator (including the name or title and contact information for the School's Section 504 Coordinator). The School will publish this notice in its Parent/Student Handbook, Employee Handbook, and on its webpage.

² The School understands that the consultant may be an independent contractor for the School or a School employee(s) with expertise in the area of Section 504 and Title IX compliance.

³ Consistent with 34 C.F.R. §§ 100.6(d), 105.11, and 110.25(b), the School's notice of non-discrimination must also include information regarding the prohibition of discrimination on the basis of race (Title VI), national origin (Title VI), and age (the Age Discrimination Act of 1975).

Also by April 29, 2016, the School will submit to OCR for its review and approval a draft notice of non-retaliation pursuant to 34 C.F.R. §§ 104.61 and 106.71 (both of which incorporate 34 C.F.R. § 100.7(e)), which will notify students, parents/guardians, employees, and other relevant persons that it does not retaliate against individuals who engage in protected activities.

REPORTING REQUIREMENT 1: By April 29, 2016, the School will submit to OCR a copy of the School's notices of nondiscrimination and non-retaliation for OCR's review and approval.

- ii. Within 45 calendar days of written notification from OCR that the notices of nondiscrimination and non-retaliation are consistent with applicable laws and regulations, the School will adopt and implement the notices of nondiscrimination and non-retaliation and will provide all students, parents/guardians, and employees with written notice regarding the new notices. The School will, at a minimum, make this notification through the School's website, electronic mail messages to employees and students, in any regularly issued newsletters (in print or online), as well as by any other additional means of notification the School deems effective to ensure that the information is widely disseminated.

REPORTING REQUIREMENT 2: Within 60 calendar days of written approval from OCR that the notices of nondiscrimination and non-retaliation are consistent with Title II, Title VI, Title IX, Section 504, and the Age Discrimination Act, the School will provide OCR with documentation that it has implemented Item 2(B)(ii), including copies of the written notices issued to students and employees regarding the new notices of nondiscrimination and non-retaliation and a description of how the notices were distributed; copies of its revised student and employee handbooks; and a link to its webpage where the revised notices of nondiscrimination and non-retaliation are located.

- C. **Coordinators.** By April 29, 2016, the School will ensure that it has designated two or more employees to coordinate the School's efforts to comply with Section 504 and Title IX. The School will publish these employees' names or titles, office addresses, and telephone numbers consistent with the requirements of Section 504 at 34 C.F.R. § 104.7(a) and Title IX at 34 C.F.R. § 106.8(a). If the School opts to designate more than one 504 Coordinator and one Title IX Coordinator, its publications will make clear the scope of each coordinator's responsibilities (e.g., who will handle complaints by students, employees, and faculty), and will designate two coordinators, who will be titled "Section 504 Coordinator" and "Title IX Coordinator," respectively, who will have ultimate oversight responsibility over the other coordinators, whose titles will clearly indicate that they are in a deputy or supporting role.

REPORTING REQUIREMENT: By April 29, 2016, the School will provide OCR with the names/titles of the persons designated as the Section 504 and Title IX Coordinators, including their addresses and contact information, and the training they have received or will receive regarding the relevant laws and regulations. In addition, the School will provide OCR with documentation substantiating that it published these names or titles, office addresses, and telephone numbers.

- D. **Record Keeping.** By April 29, 2016, the School will develop a centralized record-keeping process for documenting and tracking complaints made against School employees. This process will include reports of bullying, harassing conduct, teasing, and other potentially inappropriate behavior, and will require the School to maintain information that includes the name of the individual who made the report, the identification of any alleged victims and perpetrators, notes from witness interviews, documentation of investigative steps completed, and the determination, including disciplinary actions, if any, of all parties involved. The School will also indicate the individual(s) responsible for maintaining and reviewing this information and the location where the records will be maintained.

REPORTING REQUIREMENT 1: By April 29, 2016, the School will provide OCR with a description of the process.

REPORTING REQUIREMENT 2: By December 1, 2016, the School will provide OCR with information collected concerning all reported incidents from the 2015-2016 and 2016-2017 school years, to date. The School will provide the same information to OCR for the 2016-2017 and 2017-2018 school years on October 1, 2017 and October 1, 2018, respectively.

- E. **Training.** The School will retain the consultant, or another qualified person subject to OCR approval, to provide training to all School teachers (including substitute teachers), administrators, school aides, and any other School personnel charged with supervising students, on Section 504 and Title IX regulations at the start of each of the following academic years: 2016-2017, 2017-2018, and 2018-2019. The training will include the following topics, at a minimum:
- i. A review of the School's new Section 504 and Title IX Policies and grievance procedures;
 - ii. The definition of disability under Section 504. This portion of the training will focus on the definition and the scope of the term "major life activity."
 - iii. The provision of a free appropriate public education (FAPE) to all qualified students, based on Section 504's FAPE requirements at 34 C.F.R. §§ 104.33–36, focusing on the following:
 1. The requirement at 34 C.F.R. § 104.33(a) and (b) that the District provide a FAPE to all students with disabilities, regardless of the nature or severity of the disability;

2. The requirement at 34 C.F.R. § 104.35(a) to conduct an evaluation in accordance with appropriate procedures, consistent with 34 C.F.R. § 104.35(b), of any child who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement; and
 3. How to identify students with emotional and behavioral impairments who may qualify for special education or related services under Section 504 and how to determine the special education or related services that are appropriate for those students.
- iv. The requirement at 34 C.F.R. § 104.35(c) to ensure that, in interpreting evaluation data and in making placement decisions, to include Multidisciplinary Evaluation Team (MET)), Individual Education Program (IEP), and manifestation determination meetings, the District (1) draws upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establishes procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensures that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensures that the placement decision is made in conformity with § 104.34;
 - v. The requirement at 34 C.F.R. § 104.36 to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure;
 - vi. The importance of holding annual meetings, re-evaluating students, and otherwise meeting as a team to determine whether a change in placement is necessary or appropriate;
 - vii. How to document and keep adequate records of the implementation of students' accommodations;
 - viii. The types of conduct that constitute different treatment(or prohibited sex discrimination) and the negative impact that such discrimination has on the educational environment;
 - ix. The regulations at 34 C.F.R. §§ 104.61 and 106.71 (both of which incorporate 34 C.F.R. § 100.7(e)) which prohibit retaliating against an individual who has engaged in a protected activity. This portion of the training will include the definition of a protected activity and will clearly state that retaliation is strictly prohibited and will result in discipline for individuals who engage in retaliatory conduct. The presenter will also explain that retaliation may be found where individuals who have engaged

in a protected 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.

REPORTING REQUIREMENT 1: By May 8, 2016, the School will submit to OCR for its review and approval a draft of all training materials that will be used during annual Section 504 and Title IX trainings, as specified above. The School will work with OCR to ensure that all materials are approved prior to the School's Fall 2016 training.

REPORTING REQUIREMENT 2: By October 1, 2016, October 1, 2017, and October 1, 2018 the School will provide to OCR documentation describing the trainings it has provided to School teachers, administrators, aids, and other School personnel, including sign-in sheets, agendas, and all materials distributed.

The School intends for the implementation of this Agreement to fully resolve the allegations raised by the Complainant in the referenced complaint. The School 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 IX, which were at issue in this case.

The School 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 School understands that during the monitoring of this agreement, if necessary, OCR may visit the School, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the School has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 and Title IX, which were at issue in this case.

The School 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 School written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/ Michael Heffernan, Principal/Director

3/10/2016
Date