

Voluntary Resolution Agreement

Catalina Foothills Unified School District OCR Case Number 08-16-1003

In order to resolve the allegations and issues in Case Number 08-16-1003 filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the Catalina Foothills Unified School (District) pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II), and their respective implementing 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 Voluntary Resolution Agreement (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 allegations and issues, including that the District failed to adequately respond to the complainant's internal complaint of disability discrimination and retaliation. 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 and Title II's¹ regulatory requirements. The District's decision to enter into this Agreement is not an admission of liability or wrongdoing, nor shall it be construed as such.

REMEDIAL ACTION:

The District voluntarily agrees to take the following actions:

1. Within 30 days of the date of this Agreement, the District will convene a multidisciplinary evaluation team, including the student's parent(s), to conduct a meeting in accordance with Section 504's requirement at 34 C.F.R. § 104.35, which may be met by complying with the Individuals with Disabilities Education Act requirements.
 - a. The team will determine whether the student requires compensatory education services to address the period of time in which the District is alleged to have failed to or inadequately implemented his Section 504 Plan, *i.e.*, August 7, 2015 through October 30, 2015.

¹Because 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.

- b. For any compensatory education services determined necessary, the team will develop a plan for delivery of the services to be immediately implemented and completed by the end of the 2015-16 school year.
- c. The plan will be structured so as to minimize interference or impact upon the student's school day.
- d. The District will maintain documentation of delivery of services.

REPORTING REQUIREMENT: The District will provide OCR documentation demonstrating completion of term 1(a-d) by June 30, 2016. The District understands that OCR will review the documentation to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 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 education.

2. Prior to the beginning of the 2016-17 school year, the District will provide the student no less than twenty hours of academic tutoring.
 - a. The subject areas to be addressed in the tutoring will be identified by the parent with input from the student's currently assigned teachers.
 - b. The tutoring will be provided by a certified teacher.
 - c. The teacher may be a current staff member of the District chosen by the parent from a list of three qualified teachers identified by the District.
 - d. Scheduling of tutoring will be structured so as to not interfere with the student's regular school day.
 - e. The District will maintain documentation of delivery of tutoring services.

REPORTING REQUIREMENT: The District will provide OCR documentation demonstrating completion of term 2 (a-e) by August 30, 2016.

3. Prior to the beginning of the 2016-2017 school year, the District will provide the student no less than twenty hours of individual counseling.²
 - a. The counseling will be provided by a qualified school counselor.
 - b. The counselor may be a current staff member of the District chosen by the parent from a list of three qualified counselors identified by the District.
 - c. Scheduling of counseling sessions will be structured so as to not interfere with the student's regular school day
 - d. The District will maintain documentation of delivery of services.

REPORTING REQUIREMENT: The District will provide OCR documentation demonstrating completion of term 3(a-d) by August 30, 2016.

4. The District will provide training to all District instructional and administrative staff at Esperero Middle School regarding the District's Section 504 procedures.

²Counseling required by this Agreement term will be in addition to any counseling provided for the Student by his Individual Education Program.

- a. The training will instruct staff on the District's obligation to timely identify, evaluate, and provide necessary special education and related aids and services to students with disabilities pursuant to 34 C.F.R. §§ 104.33 through 104.36.
- b. The training will specifically emphasize that pursuant to 34 C.F.R. § 104.7 and 28 C.F.R. § 28.107 retaliation is prohibited, including in the form of intimidation or harassment, and that individuals determined to have engaged in prohibited behavior (intimidation, harassment, or retaliation) are subject to discipline in accord with applicable District policies and procedures.
- c. The training will provide relevant examples of protected activities and of prohibited retaliatory behaviors, including prohibited harassing behaviors by staff.
- d. By August 30, 2016 and prior to conducting the training, the District will provide OCR with the draft training materials and qualifications of the trainer for OCR's review and approval.
- e. The District will consider and respond to any feedback from OCR regarding the proposed training.
- f. Within 30 days of receiving OCR's approval of the training materials and qualifications of the trainer the District will conduct the training.
- g. The District will maintain documentation demonstrating that all relevant staff received the required training. Documentation shall include a copy of the training agenda, materials, and sign-in sheet or other similar record documenting staff attendance and participation.

REPORTING REQUIREMENT: By August 30, 2016, consistent with terms 4 (a-e) the District will provide the proposed training materials for our review and comment. By October 15, 2016, the District will provide documentation to OCR demonstrating full completion of term 4 (a-g), including documentation of delivery of the required training to all Espereo Middle School instructional staff and administrators.

MONITORING AND REPORTING

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 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/

3/21/2016

For the District

Effective Date