

RESOLUTION AGREEMENT

Thompson School District (Colorado) Case Number 08-16-1230

The U.S. Department of Education, Office for Civil Rights (“OCR”) received a complaint against the Thompson School District (“District”) alleging that the District discriminated against the Complainant’s son (Student) by (1) failing to properly implement Student’s IEP as it relates to speech-related services; and (2) treating disabled students, including the Student, differently by withholding notice of acceptance of disabled students’ applications through the Schools of Choice/Open Enrollment program until 2 to 3 months after non-disabled students are notified of the decisions on their applications. OCR investigated the allegation and found that the District violated Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) in that it (1) failed to properly implement Student’s IEP as it related to speech-related services, and (2) treated disabled students, including the Student, differently by withholding notice of acceptance of disabled students’ applications through the Schools of Choice/Open Enrollment program until 2 to 3 months after non-disabled students are notified of the decisions on their applications.

The District’s decision to enter into this Agreement is not an admission of liability or wrongdoing, nor shall it be construed as such. By entering into this Agreement, the District does not admit any of the allegations made in the Complaint, nor does it admit that it has violated Section 504 or Title II of the ADA in any way. The District is committed to complying fully with Section 504 and Title II of the ADA, and, accordingly, it has voluntarily agreed to take the steps outlined in this Agreement.

1. By November 18, 2016, pending parent availability, the District will convene an IEP meeting and invite the Complainant to the meeting. The purpose of the meeting is to determine the amount and nature of compensatory services (both direct and indirect) the District will provide, or other remedial measures the District will take, with respect to the Student, given the District’s failure to properly implement Student’s IEP as it relates to speech-related services.

REPORTING REQUIREMENT: Within 15 days after the meeting, the District will provide OCR with a statement that it has complied with Term 1 of this Agreement. Additionally, the District will provide OCR with a copy of the meeting notes. 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 District determine that no more than 180 minutes of speech-related services are necessary, the District will provide to OCR a written explanation of the reasons for that determination, along with any supporting documentation. 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.¹

2. After OCR has reviewed and accepted the District's determination, the District will take steps to implement the compensatory services and remedial measures, if any, agreed upon by the IEP team.

REPORTING REQUIREMENT: Within 90 days from the date of OCR's acceptance of the proposed compensatory services and remedial measures, if any, the District will provide documentation that it has provided or is in the process of providing the compensatory services and remedial measures. For compensatory services and remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for providing services, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services and remedial measures are being provided as specified, and the District will provide an additional letter to OCR confirming all compensatory services and remedial measures have been provided in full.

3. By May 26, 2017, the District will identify, and then convene an IEP and/or Section 504 meeting for, each Early Childhood Education student who did not receive speech-related services because of the gap in coverage during the maternity leave of Student's Speech Language Pathologist. The District will invite each student's parents/guardians to the meeting. The purpose of each meeting will be to determine the amount and nature of compensatory services (both direct and indirect) the District will provide, or other remedial measures the District will take, with respect to each student, given the gap in coverage during the maternity leave of Student's Speech Language Pathologist. The District will then take steps to implement the compensatory services and remedial measures, if any, agreed upon by the IEP team.

REPORTING REQUIREMENT: By December 15, 2016, the District will provide to OCR a list of all Early Childhood Education students who did not receive speech-related services because of the gap in coverage during the maternity leave of Student's Speech Language Pathologist.

By June 2, 2017, the District will provide OCR with a statement that it has complied with Term 3 of this Agreement. Additionally, the District will provide OCR with a copy of the meeting notes from each meeting. If any parents/guardians decline 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 parents/guardians showing such declination.

¹ Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by an IEP or Section 504 team that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the IEP team 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.

Should the District determine in the case of any student that no compensatory or other remedial services are necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation. 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.²

By June 2, 2017, the District will provide documentation that it has provided the compensatory services and remedial measures, if any, to each student, unless the Parent(s) of a student agrees to an alternative compensatory services delivery schedule. The District's documentation shall include the specific timelines for implementation, the person(s) responsible for providing services, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services and remedial measures were provided in full or the date of anticipated completion. For any parent(s) that agree to an alternative compensatory services delivery schedule, the District will provide documentation of its communications with those parent(s) regarding the alternative compensatory delivery schedule and, upon completion of the services, documentation establishing that the compensatory services and remedial measures were provided in full.

4. By November 18, 2016, the District will revise its open enrollment procedures to ensure that when a student with a disability applies, the student (1) does not experience an undue delay in receiving notice of an admission decision as compared to non-disabled students, and (2) maintains his or her priority in the lottery system.

REPORTING REQUIREMENT: By November 18, 2016, the District will submit, for OCR review and approval, the District's revised open enrollment procedures.

5. Within 30 days of OCR's approval of the District's revised procedures in Term 4, the District will adopt, implement, and publish the revised procedures on the District's website and school websites, through Parent Portal, and in the informational material pushed out by the District regarding the upcoming open enrollment/school choice program application period. All above-described publication methods shall include a statement notifying families the District has made changes to its open enrollment procedures, an invitation for qualified students with disabilities to apply for open enrollment, and the email address and phone number for a District administrator families may contact to share questions or concerns regarding a past application for open enrollment or for more information on the changes to the open enrollment program.

² Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by an IEP or Section 504 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.

REPORTING REQUIREMENT: Within 60 days of OCR's approval of the District's revised procedures in Term 4, the District will provide OCR documentation that it has (1) adopted and implemented the revised procedures, and (2) a list of websites where the District has published the revised procedures and notice, and (3) a copy of the Parent Portal message and informational material provided as described above.

6. Within 90 days of this Agreement, the District shall complete a review of **all** applicants to the open enrollment program who were denied enrollment in their school(s) of choice (*i.e.*, first choice) for the 2016-2017 school year. The purpose of this review shall be to identify any student(s) who lost priority under the open enrollment program due to a delayed IEP review. For every student the District identifies as having lost priority, the District shall notify the parent(s)/guardian(s) as provided in Term 5 of this Agreement, and shall propose remedial measures appropriate for each identified student's individualized needs.

REPORTING REQUIREMENT: Within 15 school days after the District has completed its review, the District shall provide to OCR with a letter stating that it has completed its review of **all** applicants to the open enrollment program who were denied enrollment in their school(s) of choice (*i.e.*, first choice) for the 2016-17 school year to identify any student(s) who lost priority under the open enrollment program due to a delayed IEP review. The letter shall state (1) the names of all schools the District reviewed (as the review shall include **all** schools in the District); (2) a numbered list of applicants denied admission to their school of choice (*i.e.*, first choice); (3) the date of each application; (4) the date of each conditional acceptance and/or final acceptance or denial; (5) an explanation of the reason for the denial; (6) whether the applicant denied has a disability; and (7) an explanation of where the applicant enrolled for the 2016-2017 school year, if known. The letter shall further list by name any student(s) whom the District identifies as having lost priority under the open enrollment program due to a delayed IEP review, along with an explanation of any remedial measures the District has taken in response.

7. Unless excused in writing by OCR, by October 1, 2017 (for the school year 2017-2018) and October 1, 2018 (for the school year 2018-2019), the District will provide OCR documentation demonstrating compliance with its revised and approved open enrollment procedures.

REPORTING REQUIREMENT: By October 1, 2017 (for the school year 2017-2018) and October 1, 2018 (for the school year 2018-2019) the District will provide OCR a list of all students by name who applied through the District's open enrollment program for the respective school year. For each student, the District will indicate (1) the school applied to; (2) the grade applied for; (3) whether the student has a disability; (4) the date the application was submitted; (5) the date the application was conditionally accepted and/or finally accepted or denied; (7) the date the District notified the applicant of the acceptance or denial; and (8) for any denials, an explanation of the reason for the denial. The District's data shall include **all** schools within the District, including but not limited to **all** charter schools.

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 District 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 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 Section 504 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 the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/

Dr. Stan Scheer, Superintendent
For Thompson School District

November 9, 2016

Date