

## **RESOLUTION AGREEMENT**

### **Tucson Unified School District 08-17-1092**

The U.S. Department of Education, Office for Civil Rights (OCR), reviewed the above-referenced complaint against the Tucson Unified School District (District) 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, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. The District agrees to implement the following terms of this Resolution Agreement.

- 1) By July 15, 2017, the District shall submit to OCR, for its review and approval, procedures (Procedures) to address the District's obligation to ensure it provides a Free Appropriate Public Education (FAPE) to each qualified individual with a disability in its jurisdiction on the basis of allergies, including food allergies. The District will ensure that the Procedures require the District to consider whether a student with food allergies is a student with a disability and has a physical or mental impairment that substantially limits a major life activity, when there is sufficient information to indicate that the student may have a disabling condition, as required under 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. The District will continue to make changes until it receives OCR's approval.

#### **REPORTING REQUIREMENT**

By July 15, 2017, the District will submit to OCR the Procedures for OCR's review.

- 2) Within 15 calendar days of the written notification from OCR that the Procedures in Term 1 are approved, the District will adopt and implement the Procedures.

#### **REPORTING REQUIREMENT**

Within 10 calendar days of the adoption of the Procedures, the District will provide OCR with a copy of the Procedures as published and implemented, a statement confirming its publication and implementation of the Procedures, and a description of the location/s of the Procedures as published, including the link to the online posting of the Procedures (if any).

- 3) Within 15 days of OCR's approval of the Procedure in Term 1, the District shall issue a memo (Memo), at a minimum, to the XXX of all schools in the District, the District's XXX and all school level XXX (if any), XXX Department, the XXX and all XXX, and the District's XXX and all school level XXX.

The Memo shall explain that 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 require the District to consider whether a student with allergies, including food allergies, is a student with a disability and has a physical or mental impairment that substantially limits a major life activity, when there is sufficient information to indicate that the student may have a disabling condition. The Memo shall explain that the District has an obligation to evaluate a student under Section 504 where there is sufficient information to indicate that the student may have a disabling condition that requires special education or related services. Additionally, the Memo shall explain that the District has modified a (or issued a new) procedure to ensure the District timely consider whether a student with allergies, including food allergies, may require a Section 504 Plan. The memo shall include a copy of the new Procedure.

### **REPORTING REQUIREMENT**

Within 15 days of the date the District issues the Memo, the District shall provide OCR with a statement confirming it has issued the Memo, a list of names along with job titles of all recipients of the Memo, and a copy of the final memo as issued. The District shall provide supporting evidence showing it has issued the Memo (e.g. copy of email showing list of recipients).

- 4) Within 30 days of days of OCR's approval of the Procedures in Term 1, the District shall offer to conduct a multidisciplinary team meeting to consider whether the Student needs compensatory services for instruction missed due to absences related to the District's failure to consider the Student for a Section 504 Plan during her enrollment at Magee Middle School. If the team determines the Student needs compensatory services, the District will provide such services. The meeting will be conducted procedurally consistent with the requirements of 34 C.F.R. §§ 104.35 and 104.36. The District will ensure that: (a) any decisions reflect the judgment of the team and not the judgment of a single individual; (b) the Student's parents are invited to the meeting; (c) the team carefully considers all information provided by the Student's parents and their invitees; and (d) the team includes District employees who have knowledge of the matters being considered by the team.

### **REPORTING REQUIREMENT**

Within 15 days of the date of the multidisciplinary team meeting, the District will notify OCR of the team's decision and provide OCR with a copy of the team's meeting notes. 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. §§ 104.35 and 104.36, in making these determinations, and notify the District when it has completed this review. Additionally, OCR will continue to monitor the District's implementation of the compensatory services, if any are determined to be necessary, and the District will provide OCR with a copy of documents demonstrating its fulfillment of such services.

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, 34 C.F.R. §§ 104.33, and 104.35, and Title II, at 28 C.F.R. §§ 35.130(a) and (b)(1)(iii), 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 regulations implementing Section 504, 34 C.F.R. §§ 104.33 and 104.35, and Title II, at 28 C.F.R. §§ 35.130(a) and (b)(1)(iii), 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 the 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/

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Tucson Unified School District

June 5, 2017  
Date