

RESOLUTION AGREEMENT
Truth or Consequences Municipal Schools
OCR Case Number 08-18-1375

Truth or Consequences Municipal Schools (“District”) enters into this Agreement to resolve the allegations in the above-referenced complaint. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures the Office for Civil Rights (OCR) that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended, 29 United States Code (U.S.C.) Section 794, and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, and Title II of the Americans with Disabilities Act of 1990 (“Title II”), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

I. Transportation Planning

- a. Within thirty (30) calendar days of this Agreement being signed, the District will submit to OCR for review a draft plan that ensures that students with disabilities who need special transportation are able to have special transportation:
 - i. without a shortened school day;¹
 - ii. during summer school; and
 - iii. for field trips.
- b. The District will promptly and fully address OCR’s feedback, if any, until the District receives OCR’s final approval of the plan.

II. Memo to Staff

- a. Within thirty (30) calendar days receiving OCR’s final approval of the plan pursuant to Term I, the District will submit to OCR for review a draft memo to all staff in the District’s elementary schools, Transportation Department, and Special Education Department. The draft memo will include, at a minimum:
 - i. a copy or summary of the plan approved pursuant to Term I;
 - ii. the District’s legal obligation to:
 1. provide qualified students with disabilities a free appropriate public education (FAPE);²
 2. fully implement students’ Section 504 plans and individualized education programs (IEPs), including behavioral intervention plans (BIPs);
 3. provide non-academic and extracurricular services and activities, such as transportation, in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities;³

¹ *e.g.*, having a second special transportation bus

² See 34 C.F.R. Section 104.33.

³ See 34 C.F.R. Section 104.37.

4. ensure that decisions about whether to provide special transportation for qualified students with disabilities are individualized;⁴
 5. ensure that decisions about whether to provide special transportation for qualified students with disabilities are made in conformity with the procedural requirements of Section 504;⁵
 6. not deny a qualified individual with a disability the opportunity to participate in or benefit from an aid, benefit, or service;⁶
 7. not afford a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others;⁷
 8. provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;⁸
- iii. the name(s), title(s) or position(s), phone number(s), and email address(es) for staff designated to respond to questions and concerns.⁹
- b. The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the memo.
 - c. Within fifteen (15) calendar days of receiving OCR's final approval of the memo, the District will disseminate the approved memo to the staff specific in Term II(a).
 - d. Within fifteen (15) calendar days of disseminating the memo pursuant to Term II(c), the District will submit to OCR documentation (*e.g.*, emails and screenshots) showing that it fulfilled Term II(c).

III. Staff Training

- a. Within thirty (30) calendar days receiving OCR's final approval of the plan pursuant to Term I, the District will submit to OCR for review:
 - i. draft materials to train all elementary school administrators and special education staff, as well as all necessary staff from the District's Transportation and Special Education Departments,¹⁰ regarding the plan approved pursuant to Term I and the topics specified in Term II(a); and
 - ii. the name(s), title(s) or position(s), and qualifications of one or more proposed individuals to provide the training.
- b. The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the training materials and trainer(s).
- c. Within sixty (60) calendar days of receiving OCR's final approval of the training materials and trainer(s), the District will provide the training to all staff specified in Term II(a)(i).

⁴ See 34 C.F.R. Section 104.33(b)(1) (*i.e.*, "designed to meet individual educational needs of handicapped persons as adequately as the needs of non handicapped persons are met").

⁵ See 34 C.F.R. Sections 104.34, 104.35, and 104.36. The memo will describe the specific requirements.

⁶ See 34 C.F.R. Section 104.4(b)(1)(i).

⁷ See 34 C.F.R. Section 104.4(b)(1)(ii).

⁸ See 34 C.F.R. Section 104.4(b)(2).

⁹ See 34 C.F.R. Section 104.7(a).

¹⁰ The District will determine which staff in the Departments will be trained; however, the Department will send at least one representative from each Department to the training.

- d. Within thirty (30) calendar days of the training being provided, the District will submit to OCR:
 - i. the date, time, and location of the training;
 - ii. confirmation that the approved trainer(s) delivered the training;
 - iii. the agenda and materials from the training;
 - iv. the names and titles of all individuals who attended the training; and
 - v. the name(s) and title(s) of all individuals who did not attend the training, an explanation for each person's absence, and a plan to train each person (if possible).

IV. Compensatory Services

- a. Within thirty (30) calendar days of this Agreement being signed, the District will submit to OCR a list of all elementary students with disabilities who, at any point during the 2017-2018 school year, had special transportation and a shortened school day. The list will include for each student:
 - i. the student's first and last name;
 - ii. the student's school and the school's start and end times;
 - iii. the start and end dates that the student had special transportation and a shortened school day; and
 - iv. the student's shortened school day schedule.
- b. Within thirty (30) calendar days of this Agreement being signed, the District will submit to OCR a draft meeting invitation to be sent to the parents and guardians of all students with disabilities who, during the 2017-2018 school year, received special transportation and had a shortened school day. The invitation will include an explanation of why the parents and guardians are receiving the invitation (*i.e.*, because their student had an IEP or Section 504 plan, special transportation, and a shortened school day, and may be owed compensatory services).¹¹
- c. The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the invitation.
- d. Within fifteen (15) calendar days of receiving OCR's final approval of the invitation, the District will send the invitation to the parents and guardians of all of the students on the list pursuant to Term IV(a).
- e. Within sixty (60) calendar days of receiving OCR's final approval of the invitation, the District will convene the meetings.¹² At each meeting:¹³
 - i. District staff will invite input from the student's parent(s) or guardian(s);
 - ii. the team will discuss whether compensatory services are owed, based, at least in part, on whether the shortened school day resulted in a reduction of special education and/or related services called for by the student's then-current IEP(s);
 - iii. document the perspectives shared, information considered, and decisions made;
 - iv. provide to each student's parent(s) or guardian(s) a copy of applicable procedural safeguards, including their right to challenge the compensatory

¹¹ The invitations will meet all relevant regulatory requirements.

¹² The team compositions will meet all relevant regulatory requirements.

¹³ The teams are not limit to discussing the specific topics. For example, the meetings could also serve as annual reviews.

services decision through an impartial due process hearing should they disagree; and

- v. if team decides that compensatory services are owed, the team will:
 - 1. assess the type of compensatory services owed;
 - 2. assess the amount of compensatory education owed; and
 - 3. develop a plan for delivering the compensatory services owed, including specific timelines for implementation and the person(s) responsible for overseeing full and timely implementation.
- f. Within five (5) calendar days of each meeting, the District will provide to each student's parent(s) or guardian(s) prior written notice of the determinations made at the meeting.
- g. Within ninety (90) calendar days of receiving OCR's final approval of the invitation, the District will submit to OCR:
 - i. documentation (*e.g.*, emails or signatures to acknowledge receipt) showing that it sent the approved invitation (pursuant to Term IV(d));
 - ii. copies of the documentation from the meetings (pursuant to Term IV(e)(iii));
 - iii. documentation showing that procedural safeguards were disseminated (pursuant to Term IV(e)(iv));
 - iv. copies of the compensatory services plan (pursuant to Term IV(e)(v)), if applicable; and
 - v. copies of the prior written notices issued (pursuant to Term IV(f)).
- h. The District will respond to OCR's concerns, if any, until OCR considers them resolved.¹⁴
- i. After OCR has reviewed and accepted the determinations of the teams, the District will take steps to implement the compensatory services plan(s) (if any)
- j. Within sixty (60) calendar days of OCR's final acceptance of the compensatory services plan(s) (if any), the District will submit to OCR documentation showing that that the District has provided or is in the process of providing the services.¹⁵

V. Ongoing Monitoring

- a. By January 31, 2019 and May 31, 2019, the District will submit to OCR reports about all students with disabilities who, for the 2018-2019 school year, had special transportation and a shortened school day schedule. For each student, the report will include:
 - i. the student's first and last name;
 - ii. the student's school and the school's start and end times;
 - iii. the start and end dates that the student had special transportation and a shortened school day;
 - iv. the student's shortened school day schedule; and
 - v. the rationale for the student's shortened school day, along with copies of all relevant documentation.

¹⁴ Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by a Section 504 team or an IEP team that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the IEP teams propose 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.

¹⁵ This case will remain in monitoring until all compensatory services (if any) have been provided, or until the District provides an acceptable explanation for why the services cannot be provided.

- b. The District will promptly and fully respond to OCR's concerns, if any, until OCR considers them resolved.

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. Sections 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The District understands that by signing this Agreement, it agrees to provide the foregoing 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 are in compliance with Section 504, and its implementing regulation, at 34 C.F.R. Section 104.4, and Title II, and its implementing regulation, at 28 C.F.R. Section 35.149. Upon completion of the obligations under this Agreement, OCR will close this case.

For Truth or Consequences Municipal Schools:

/s/ _____
Randall Piper, Superintendent

August 24, 2018 _____
Date