

RESOLUTION AGREEMENT

Brush School District RE-2J OCR Case Number 08-19-1109

Brush School District RE-2J ("District") enters into this Agreement to resolve an allegation in the above-referenced case. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures the U.S. Department of Education, 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.

Prior to OCR issuing a final determination pursuant to Section 303 of OCR's *Case Processing Manual* (CPM), the District agreed to resolve an issue in this case pursuant to Section 302 of the CPM. Accordingly, to resolve the issue, the District agrees to implement the following terms and reporting requirements.

Term

Within sixty (60) calendar days of this Agreement being signed, the District will convene meetings for each of its students who attended Converge Day Treatment Center ("Converge") during the 2018-2019 school year (SY).

Each meeting will include a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.¹ The District will invite, in writing, the parent(s) or guardian(s) of each student to attend the meeting, and carefully consider his/her/their input at the meeting. The invitation will include an explanation for the meeting. The District will provide the parent(s) or guardian(s) with a copy of its procedural safeguards.

At each meeting, the team will discuss whether the student was denied a free appropriate public education (FAPE), at any point during the 2018-2019 SY, while: (a) placed at Converge Day Treatment Center ("Converge"); and (b) transitioning to a new setting after Converge closed. Specifically, the team will consider and review all relevant information, including, but not limited to: (a) the results of the Colorado Department of Education's Office of Facility Schools site visits to Converge on February 5, 2019 and February 20, 2019; and (b) data regarding the Student's performance and progress toward his/her goals. After a consideration of the data, and the students' progress on his/her IEP goals, the team shall determine whether any compensatory services are owed.

If the team decides that compensatory services are owed, the team will then: (a) assess the type and amount of compensatory services or remedial measures owed; and (b) develop a plan for delivering the compensatory services or remedial measures owed. The plan will include, at a minimum: (a) the type(s) of compensatory services or remedial measures to be provided; (b) a specific timeline for

¹ This group may be a properly constituted IEP team.

implementation of the plan; and (c) the person(s) responsible for overseeing full and timely implementation of the plan.

Within ten (10) calendar days of each meeting, the District will send to the parent(s) or guardian(s): (a) written notice of the determinations made at the meeting; and (b) a copy of the plan to deliver compensatory services or remedial measures, if one is created.

The District will implement with fidelity the plan(s).

Reporting Requirements

- I. Within seventy-five (75) calendar days of this Agreement being signed, the District will provide to OCR for each student:
 - a. copies of all communications with the parent(s) or guardian(s) regarding the meeting, including the invitation to the meeting;
 - b. a copy of the written notice of the determinations made at the meeting that was sent to the parent(s) or guardian(s);
 - c. copies of the records from the meeting showing the perspectives shared, information considered, and decisions made, including regarding compensatory services or remedial measures; and
 - d. the plan for the delivery of compensatory services or remedial measures created at the meeting, if one was created, or if the group determines that no compensatory services or remedial measures will be provided, 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. The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement I.²

- II. For any students for whom a plan for compensatory services or remedial measures is created, the District will submit to OCR, within sixty (60) calendar days of receiving notification from OCR that no further reporting is required for Reporting Requirement I, documentation showing that the District has provided or is in the process of providing the compensatory services or remedial measures.³ The District will promptly and fully address OCR's feedback, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement II.

² Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by a group that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the group 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.

³ This case will remain in monitoring until all compensatory services (if any) have been provided, or until the District provides an explanation acceptable to OCR for why the services cannot be provided.

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, and Title II, and its implementing regulation. Upon completion of the obligations under this Agreement, OCR will close this case.

For the District:

/s/
Bill Wilson, Superintendent

4/19/19
Date