

Resolution Agreement

St. Vrain Valley School District RE 1J OCR Case Number 08-19-1323

In order to resolve the allegations in OCR Case Number 08-19-1323 filed against St. Vrain Valley School District RE 1J (District) and opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR), pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, and its implementing regulation at 34 C.F.R. § 100; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. § 104; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131- 65, and its implementing regulation at 28 C.F.R. § 35d, the District will implement the following terms of this Resolution Agreement.

The District voluntarily agrees to take the steps outlined in this Agreement to ensure that all national origin minority English Learner (EL) students at Timberline PK-8 School (School) receive the services they need to participate meaningfully in the District's educational program; and that all students with disabilities at the School receive a free appropriate public education.¹ The District's desire to enter into this Agreement is not an admission of legal liability or wrong-doing, but a reflection of the District's ongoing commitment to improving the services provided to District students.

I. EL students at the School. The District will ensure that the School:

- i. Implements an educationally sound language assistance program, and provides daily English language development instruction to all its EL students;
- ii. Provides qualified teachers (have or are working on CLDE, ESL, or Bilingual education endorsements) and sufficient resources to instruct ELs;
- iii. Monitors the progress of ELs in learning English and accessing the academic curriculum;
- iv. Remedies any academic deficits ELs incur while in a language assistance program;
- v. Exits or reclassifies ELs out of EL programs and services only when they are objectively determined proficient in speaking, understanding, reading and writing English; and
- vi. Monitors reclassified EL students to ensure they were not prematurely exited.

To satisfy its obligations under Title VI and the terms of this Agreement, the District will review: the School's existing language assistance program(s); the School's existing staffing levels; how the School makes and documents placement decisions; the objective criteria the School relies on to measure EL students' language proficiency; and the objective criteria the School relies on to monitor whether reclassified students are meaningfully accessing the regular curriculum without EL services.

REPORTING REQUIREMENT I(A): By October 28, 2019, the District will provide OCR with:

¹OCR limited its investigation to the School. Unless otherwise noted in the Agreement, the Agreement requirements are limited to the School

- i. A description of the educationally sound language assistance program(s) provided at the School, and the District’s assessment (with supporting documentation) of whether the School’s existing language assistance program(s) are appropriate and effective (including review and analysis of data, identification of recommendations for the program, and implementation of recommendations designed to improve EL services at the School);
- ii. The District’s documentation supporting that the School has sufficient EL qualified teachers to instruct ELs, including the names, titles, and qualifications for all EL instructors at the School, as well as a list of the EL students for whom they provide direct English language development instruction. If the School does not have sufficient qualified teachers to provide all EL students with daily ELD services, supporting documentation that the District is taking sufficient measures to attain appropriate staff for the EL program;²
- iii. Documentation that the School is monitoring the progress of ELs in learning English and accessing the content area of curriculum, using twenty (20) randomly selected EL students from across grade levels, and with no more than three students from the same grade, to demonstrate the School’s monitoring activities;
- iv. A description of how the School is identifying and subsequently remedying academic deficits ELs incur while participating in a language assistance program, using twenty (20) randomly selected current EL students from across grade levels, and with no more than three students from the same grade, to demonstrate the School’s intervention and support efforts if required; and
- v. Documentation supporting that the School is monitoring the academic progress of reclassified EL students to ensure that they are not exited from EL services prematurely (before they are proficient in English, as determined by the English proficiency level on the 4 skill areas measured by the WIDA ACCESS test) and that they are making academic progress in content areas without EL services as monitored by state and local measures; OCR will review the District’s assessment of the provision of EL programming at the School. The District agrees to consider and respond to any feedback from OCR regarding the School’s programming until OCR indicates that the School is meeting its obligations under Title VI and specified in Agreement Term I.

When OCR determines that the District has satisfied Reporting Requirement I(A), and thus the School is meeting its obligations under Title VI, OCR will close the monitoring of Term I of this Agreement.

II. Free Appropriate Public Education for the School’s students with disabilities. The District will send the parents/guardians of all students at the School with a Section 504 Plan or IEP during the 2018-2019 or 2019-2020 school years a letter explaining that without admitting wrong-doing, the District entered into an agreement to voluntarily resolve a complaint filed with OCR and, as a result, is writing to invite parents of students with disabilities to raise any concerns they may have with respect to implementation of their child(ren)’s Section 504 Plan or IEP during the 2018-2019 or 2019-2020 school year. This letter shall be translated, as necessary, to ensure meaningful communication with limited

²“Instruction” refers to both push-in and pull-out ELD instruction and support.

English proficient parents.

The letter will clearly explain that if a parent has a concern regarding implementation of a Section 504 Plan or IEP, the School will investigate whether the Section 504 or IEP was not implemented, and the District will then convene a Section 504 or IEP team meeting to discuss whether compensatory services are owed.

REPORTING REQUIREMENT II(A): By October 28, 2019 the District will provide to OCR a draft letter from the School, to be addressed to the parents and guardians of each student at the School with a Section 504 Plan or IEP. The letter will include:

- i. Assurance that the District and School are committed to providing students with disabilities a free appropriate public education (FAPE);
- ii. The name, title or position, phone number, mailing address, and email address for the person(s) that parents/guardians should contact to request a Section 504 or IEP team meeting;
- iii. A notice that parents and guardians may request a Section 504 or IEP meeting at any time, including when they believe supports, accommodations, or services in a Section 504 Plan or IEP are not being delivered;
- iv. Assurance that limited English proficient parents and guardians will be provided with language assistance to ensure they can participate in their child(ren)'s Section 504 or IEP team meetings;
- v. An invitation for parents/guardians to request a Section 504 plan or IEP meeting if they have concerns about the School's implementation of their child(ren)'s Section 504 plan or IEP during the 2018-2019 or 2019-2020 school years, which includes a form that will be returned to School Principal Karolyn Borski, in person, by mail, or by email within forty-five (45) calendar days, indicating that the parent requests such a meeting. The School will specify that even if the parent does not return the form, the School is committed to responding to any concerns regarding implementation as parents/guardians raise such concerns;
- vi. A notice that the School will investigate concerns regarding implementation prior to holding a Section 504 or IEP meeting and will share its investigative findings during the meeting; and
- vii. A notice that the District's procedural safeguards will be provided, in the language of the parent or guardian.

The District will provide OCR with a list of every student at the School during the 2018-2019 and 2019-2020 school years who has a Section 504 plan or IEP, along with their contact information.

The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the letter.

³ The letter will be provided in the language of the parent or guardian.

⁴ The District will promptly respond to parent/guardian concerns regarding Section 504 Plan and/or IEP implementation during the 2018-2019 and 2019-2020 school years as those concerns are raised, even if a parent does not return the form identified by this agreement term. However, OCR's monitoring activities identified by Reporting Requirements II(C), II(D), and III(E) will be limited to those parents who request a meeting by returning the form or otherwise communicating with the School's Principal within forty-five (45) days of the School sending the letter described by Agreement Term 2.

REPORTING REQUIREMENT II(B): Within ten (10) calendar days of receiving OCR’s final approval of the letter, the District will send the approved letter to each parent/guardian of a student at the School with a Section 504 Plan or IEP during the 2018-2019 and 2019-2020 school years. The letter may be sent via email, read receipt requested, or certified mail. The District will provide OCR with evidence that the letters were sent.

REPORTING REQUIREMENT II(C): Within sixty (60) calendar days of sending the letters, the District will provide OCR with a list of those students for whom parents/guardians requested a meeting and those students for whom parents/guardians did not respond. The District will also provide OCR with a copy of each parent/guardians response that it receives.

REPORTING REQUIREMENT II(D): Within forty five (45) calendar days of receiving a response that requests a Section 504 or IEP meeting, the District will convene a group of people knowledgeable about the student with a disability, plan implementation data, and placement options, to consider whether compensatory services are owed.⁵ By that same date, the District will submit documentation to OCR that includes, for each student:

- i. A list of the individuals who attended each meeting by name, title, and role in the meeting;
- ii. Documentation of the District’s invitation to the student’s parents/guardians to attend the meeting(s) and obtain their input and, if the parents/guardians decline to attend the meeting, any notes and records of communications with the parents/guardians showing their declination;
- iii. A copy of the summary of the School’s investigative findings, which include but not necessarily be limited to, interview statements and/or notes, service logs, progress monitoring data, and internal and external correspondence;
- iv. A copy of the summary of information the team considered in reaching its determination regarding whether and what compensatory services are appropriate;
- v. Documentation of the team’s decisions regarding the type and number of hours of compensatory services that are appropriate for the student and the basis for those decisions. If the team determines that no compensatory services will be provided, 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 the District met the procedural requirements of the regulations implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36 And Title II, in making these determinations, and notify the District when it has completed this review.⁶
- vi. A plan for the prompt provision of compensatory services, if services are warranted, to the student at no cost to the parents/guardians;

⁵ The District understands that if a student with a Section 504 plan or IEP during the 2018-2019 or 2019-2020 school year is no longer enrolled in the School but attends a different school in the District, the School will conduct the investigation and the District will subsequently hold a Section 504 or IEP meeting with the student’s team at his/her current school of attendance.

⁶ 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 or Section 504 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.

- vii. Documentation through a Prior Written Notice that the student's parents/guardians were notified in writing of the compensatory education and related services offered by the District, if warranted; and
- viii. Documentation that the District provided the parents/guardians with notice of their and the student's rights per the District's Procedural Safeguards, in the language of the parent or guardian.

REPORTING REQUIREMENT II(E): After OCR has determined that the Section 504 procedural requirements were met, the District will take steps to implement the compensatory services and remedial measures, if any, agreed upon by each student's IEP or Section 504 team.

Within one hundred twenty (120) 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 will 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.

When OCR determines that the District has fully provided all compensatory services agreed upon by each student's IEP or Section 504 team, OCR will close the monitoring of Term II of the Agreement.

III. Training – EL Students. The District will draft, for OCR's review and approval, training materials and identify one or more persons knowledgeable about Title VI who will provide the training to all School staff.⁷ The training will include, at a minimum:

- i. The School's obligation under Title VI of the Civil Rights Act of 1964 (Title VI) to ensure that EL students can participate meaningfully and equally in educational programs;
- ii. The School's obligation to take affirmative steps to rectify language deficiencies in order to open its instructional program to national origin minority group students, where inability to speak and understand English excludes the students from effective participation in the district's educational program;
- iii. An explanation of how the School measures whether EL students are performing as well as their non-EL peers, successfully participating in all aspects of the School's curriculum without the use of simplified English materials, and dropping out or being retained-in-grade at rates comparable to those of their non-EL peers; and
- iv. Assurance that the District will provide all EL students services until they are proficient enough in English to participate meaningfully in the regular education program.

⁷ OCR offers technical assistance to its recipients at no cost to the recipient. Therefore, the District may choose to request that OCR provide technical assistance on Title VI.

REPORTING REQUIREMENT III(A): By October 28, 2019 the District will either submit to OCR for its review and approval a draft of all training materials that will be used to conduct the EL training, as specified above, a list of who will be required to attend the training, and the trainer's name and qualifications, or invite OCR to conduct the training at a mutually convenient time.

REPORTING REQUIREMENT III(B): Within forty-five (45) days of OCR's approval of the list of training attendees, trainer, and training materials, the District will provide OCR with documentation describing the training it provided to School personnel, including sign-in sheets, agendas, and all materials distributed.⁹

When OCR determines that Reporting Requirements III(A) and III(B) have been satisfied, OCR will conclude monitoring Agreement Term III.

IV. Training – Students with Disabilities. The District will draft, for OCR's review and approval, training materials and identify one or more persons knowledgeable about Title II and Section 504 who will provide the training to all School staff.¹⁰ The training will include, at a minimum:

- i. The definition of disability under Section 504. This portion of the training will focus on the definition and scope of the term "major life activity;" and
- ii. The provision of a free appropriate public education (FAPE) to all qualified students, based on Section 504's FAPE requirements at 34 C.F.R. §§ 104.33–36, focusing on:
 - a. The requirement at 34 C.F.R. § 104.33(a) and (b) that the District provide a FAPE to all students with disabilities, regardless of the nature or severity of the disability;
 - b. The requirement at 34 C.F.R. § 104.35(a) to conduct an evaluation in accordance with appropriate procedures, consistent with 34 C.F.R. § 104.35(b), of any child who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement; and
 - c. How to identify students with mental or physical impairments who may qualify for special education or related services under Section 504 and how to determine the special education or related services that are appropriate for those students.

REPORTING REQUIREMENT IV(A): By October 28, 2019 the District will either submit to OCR for its review and approval a draft of all training materials that will be used to conduct the Section 504 training, as specified above, with a list of who will be required to attend the training and the trainer's name and qualifications, or invite OCR to conduct the

⁸The District understands that it may ask OCR to conduct the training required by Term 4(i) and (ii), but OCR will not be able to provide the training required by Term 4(iii) or (iv).

⁹If OCR provides technical assistance, documentation of training attendance may be submitted on November 29, 2019, or by seven calendar days after the technical assistance is presented, whichever is later.

¹⁰OCR offers technical assistance to its recipients at no cost to the recipient. Therefore, the District may request that OCR provide technical assistance on Title II and Section 504, as required by this Agreement

training at a mutually convenient time.

REPORTING REQUIREMENT IV(B): Within forty-five (45) days of OCR’s approval of the list of training attendees, the trainer, and training materials, the District will provide OCR with documentation describing the training it provided to School personnel, including sign-in sheets, agendas, and all materials distributed.¹¹

When OCR determines that Reporting Requirements IV(A) and IV(B) have been satisfied, OCR will conclude monitoring Agreement Term IV.

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 Title VI, Section 504, and Title II, which were at issue in this case.

The District understands that OCR will close the monitoring of this Agreement as described herein.

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/

10/10/19

Dr. Don Haddad, Superintendent
For St. Vrain Valley School District RE1J

Date

¹¹If OCR provides technical assistance, documentation of training attendance may be submitted on November 29, 2019, or by seven calendar days after the technical assistance is presented, whichever is later.