

Resolution Agreement

Aspen School District OCR Case Number 08-19-1396

In order to resolve the allegations in OCR Case Number 08-19-1396 filed against Aspen School District (District) and opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR), pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (Title II), 42 U.S.C. §§ 12131– 65, and its implementing regulation at 28 C.F.R. part 35, the District will implement the following terms of this Resolution Agreement.

During the course of OCR's investigation, the District indicated its willingness to take steps necessary to ensure compliance with Section 504 and Title II. The Agreement requirements are aligned with the identified issue and consistent with Section 504's and Title II's regulatory requirements. 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 OCR Case No. 08-19-1396, nor does it admit that it has violated Section 504 or Title II of the ADA. 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. The District will review and revise its Section 504 handbook to ensure that it communicates that:
 - a. Students may be eligible for special education and related services even if they attain average or above average grades;
 - b. A Response to Intervention (RTI) process may not be used to delay or deny an evaluation of a student suspected of having a disability; and
 - c. The District must not consider the ameliorating effects of any mitigating measures that a student is using when determining a student's eligibility for special education and related aids and services.

REPORTING REQUIREMENT 1(A): By October 4, 2019, the District will provide a copy of its revised Section 504 handbook for OCR's review and approval. The District will consider and respond to any feedback from OCR with respect to the revised Section 504 handbook until OCR approves the content for publication and dissemination.

REPORTING REQUIREMENT 1(B): Within 30 days of OCR's approval of the Section 504 handbook, the District will adopt and implement the handbook, and it will disseminate a notice to students, parents, and staff that the updated handbook is available on the District's website. Within 45 days of OCR's approval of the Section 504 handbook, the District will provide OCR documentation of its efforts to disseminate the updated handbook, which will include, at a minimum: notification through the District's website and electronic mail messages to employees.

2. By September 30, 2019, the District will evaluate the Student and hold a meeting to determine if he is a student with a disability who needs special education or related services pursuant to the Individuals with Disabilities Education Act or Section 504. In conducting this evaluation, the District will evaluate and make a placement determination for the Student in accordance with the Section 504 requirements of 34 C.F.R. §§ 104.31 through 104.35 regarding the identification, evaluation, and educational placement of students who, because of a disability, need or are believed to need special education or related services. The District also will provide the complainant with notice of the District's system of applicable procedural safeguards.¹

If the Student's team determines that the Student is a student with a disability pursuant to the Individuals with Disabilities in Education Act or Section 504, the team will develop an appropriate plan for the Student.² If the team identifies the Student as a student with a disability and develops an IEP or Section 504 plan for the Student, the team shall also consider whether:

- a. The Student was denied a free appropriate public education (FAPE) in a timely manner; and
- b. As a result, compensatory education or related services are necessary.

If the Student's team determines that compensatory education or related services are necessary, the team will develop a plan for providing those compensatory services to the Student within six months. The District shall promptly notify the Complainant, in writing, of the compensatory services being offered at no cost and the proposed initiation date of such services.

REPORTING REQUIREMENT 2(A): By September 30, 2019, the District will complete the Student's evaluation and the meeting to consider compensatory education. By October 14, 2019, the District will submit documentation to OCR that includes:

- i. A list of the individuals who attended the eligibility and planning meeting(s) described in Paragraph 2 by name, title, and role in the meeting;
- ii. Documentation of the District's invitation to the Complainant to attend the meeting(s) and obtain her input;
- iii. A copy of the summary of information the team considered in reaching its determination regarding whether and, if so, what compensatory services are appropriate for the Student;
- iv. Notes from the meeting documenting that the team carefully considered input from persons knowledgeable about the Student, the meaning of evaluation data, and placement options;

¹The District may choose to satisfy the requirements of Section 504 through compliance with the Individuals with a Disabilities Education Act (IDEA). In specific instances detailed in the Section 504 regulation, meeting the requirements of IDEA is one means of meeting the requirements of the Section 504 implementing regulation.

² The Student's team will include a group of individuals who are knowledgeable about: the Student; the meaning of relevant evaluation data, including medical evidence; and placement options.

- v. Documentation of the team's decision as to whether and, if so, what compensatory services are necessary for the Student and the basis for those decisions;
- vi. If applicable, a plan for the prompt provision of compensatory services to the Student at no cost to the Complainant;
- vii. If applicable, documentation that the Complainant was notified in writing of the compensatory education and related services offered by the District; and
- viii. Documentation that the District provided the Complainant with notice of her and the Student's rights and applicable procedural safeguards under Section 504.

If the Complainant declines the invitation to the meeting, the District shall provide a copy of the invitation to the meeting and any communications with the Complainant showing the Complainant's declination.

If the District determines that no compensatory services will be provided, 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 regulations 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.³

REPORTING REQUIREMENT 2(B): After OCR has determined that the Section 504 procedural requirements were met in making the determination under Agreement Item 2, the District will take steps to implement the compensatory services and remedial measures, if any, agreed upon by the IEP team.

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 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. For such services, if any, the District also will provide an additional letter to OCR confirming all compensatory services and remedial measures have been provided in full.

3. The District will arrange for OCR to conduct training for XXXX School teachers, related service providers, and administrators that covers the following topics:

³ 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.

- a. 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;”
- b. 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:
 - i. 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;
 - ii. 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
 - iii. How to identify students with emotional and behavioral 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.
- c. The requirement at 34 C.F.R. § 104.35(c) to ensure that, in interpreting evaluation data and in making placement decisions, to include Multidisciplinary Evaluation Team (MET)), Individualized Education Program (IEP), and manifestation determination meetings, the District (1) draws upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establishes procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensures that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensures that the placement decision is made in conformity with § 104.34;
- d. The requirement at 34 C.F.R. § 104.36 to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure;
- e. The importance of holding annual meetings, re-evaluating students, and otherwise meeting as a team to determine whether a change in placement is necessary or appropriate; and
- f. The types of conduct that constitute different treatment and the negative impact that such discrimination could have.

This training will be completed by October 31, 2019, and the District may invite staff other than XXXX School staff to participate.

REPORTING REQUIREMENT 3: Within seven calendar days after the OCR conducts the training described herein, the District will provide OCR with documentation reflecting that all XXXX School teachers, related service providers, and administrators participated.

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 Section 504 and its implementing regulation at 34 C.F.R. part 104 and Title II and its implementing regulation at 28 C.F.R. part 35, which were at issue in this case.

The District understands that OCR will close the monitoring of this Agreement once 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 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/

September 9, 2019

Dr. Tom Heald, Interim Superintendent
For Aspen School District

Date