

RESOLUTION AGREEMENT

Albuquerque Public Schools OCR Case Numbers 08-20-1001 and 08-20-1019

Albuquerque Public Schools (“District”) enters into this Agreement to resolve the allegations in the above-referenced complaints. 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.

Term I: Employee Counseling

Within 30 calendar days of this Agreement being signed, the District will convene a meeting with, at a minimum, the Principal, Assistant Principal, English Teacher, and a representative from the District’s Human Resources Department. During the meeting, attendees will discuss, at a minimum:

- the English Teacher’s interactions and relationship with the Student and Complainant;
- prohibitions on disability-based harassment pursuant to Section 504 and Title II in District policies and procedural directives;
- prohibitions on retaliation pursuant to Section 504 and Title II in District policies and procedural directives; and
- fully implementing students’ Section 504 plans with fidelity.

Reporting Requirement A: Within 15 calendar days of the meeting being held pursuant to Term I, the District will submit to OCR:

1. the date, time, and location of the meeting;
2. the names and titles/positions of the meeting attendees;
3. the agenda for the meeting;
4. a summary of the information and perspectives shared; and
5. a summary of any disciplinary or other actions that were or will be taken.

The District will respond to OCR’s concerns, if any, until OCR notifies the District that no further reporting is required for Term I.

Term II: Memorandum to Staff

The District will send a memorandum to all administrators, teachers, special education staff, and nurses at XXXX School, XXXX School, and XXXX School regarding, at a minimum:

- the definition of “handicapped persons” under Section 504 and Title II;¹

¹ See 34 C.F.R. § 104.3(j); U.S. Dept. of Educ., Office for Civil Rights, *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools* (Dec. 2016), pp. 3-9, available at www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf (hereinafter, “Resource Guide”).

- that students with attention-deficit/hyperactivity disorder (ADHD) may be eligible under Section 504 and Title II;²
- legal requirements for “Child Find” and evaluation of persons who, because of disability, need or are believed to need special education or related services;³
- examples of indicators that may trigger a staff member referring a student with ADHD or suspected of having ADHD for an evaluation (*e.g.*, a student has a pattern of disciplinary referrals, a student has a medical diagnosis, and a student is prescribed medication);⁴
- steps staff must take upon learning that a student may be eligible under Section 504 and Title II (*e.g.*, who to notify and how); and
- prohibitions on retaliation under Section 504 and Title II.

Reporting Requirement A: Within 30 calendar days of this Agreement being signed, the District will submit to OCR a draft of the memo required by Term II.

The District will respond to OCR’s concerns, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement A.

Reporting Requirement B: Within 20 calendar days of receiving OCR’s final approval of the memorandum, the District will disseminate the memorandum to all the staff specified in Term II, along with:

1. a directive to read the memorandum;
2. the name, title/position, email address, and phone number for a designated staff member who will be available to timely respond to any questions or concerns about the plan;
3. OCR’s “*Resource Guide on Students with ADHD and Section 504*,” and
4. OCR’s “*Know Your Rights: Students with ADHD*.”

Within 20 calendar days of receiving OCR’s final approval of the memorandum, the District will provide evidence to OCR that the memorandum and attachments were disseminated as specified above (*e.g.*, copies of emails showing the recipients and attachments).

The District will promptly and fully address OCR’s feedback, if any, until OCR notifies the District that no further reporting is required for Term II.

Term III: Compensatory Services

Within 30 calendar days of this Agreement being signed, the District will convene a group of knowledgeable people (“Team”) to discuss, at a minimum, whether the Student is entitled to compensatory services or remedial measures (at no cost to the Complainant) as a result of:

- the District’s failure to evaluate the Student in a timely manner; and
- the English Teacher’s failure to implement the Student’s Section 504 plan on October 31, 2019.

² See U.S. Dept. of Educ., Office for Civil Rights, *Know Your Rights: Students with ADHD*, available at www2.ed.gov/about/offices/list/ocr/docs/dcl-know-rights-201607-504.pdf (hereinafter, “*Know Your Rights*”).

³ See 34 C.F.R. §§ 104.32, 104.35; *Resource Guide*, pp. 12-23.

⁴ See *Know Your Rights*, p. 1; U.S. Dept. of Educ., Office for Civil Rights, *Dear Colleague Letter and Resource Guide on Students with ADHD* (Jul. 2016), available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf.

The Team meeting will be consistent with the procedural requirements of Section 504 (34 C.F.R. §§ 104.35-36).

If the Team determines that the Student is entitled to compensatory services or remedial measures, the Team will then:

- determine the type(s) and amount(s) of compensatory services or remedial measures owed; and
- develop a written plan for providing those compensatory services or remedial measures to the Student.

The plan, if one is created, will include:

- who will provide the compensatory services or remedial measures, including name, title or position, and contact information;
- where the compensatory services or remedial measures will be provided (*e.g.*, school, home, etc.); and
- when the compensatory services or remedial measures will be provided, including a start date and schedule.

The District will promptly:

- notify the Complainant, in writing, of the decisions regarding compensatory services or remedial measures; and
- provide the Complainant with a copy of the plan, if one was created.

Finally, the District will ensure that:

- any decisions reflect the judgment of the Team and not the judgment of a single individual;
- the Complainant is invited to the meeting;
- the Complainant is permitted to invite persons knowledgeable about the Student to attend the meeting;
- the Team carefully considers all information provided by the Complainant and her invitees; and
- the Team includes school and District employees who have knowledge of the matters being considered.

Reporting Requirement A – Team Meeting: Within 20 calendar days of the Student’s Team meeting, the District will submit the following documentation to OCR:

1. documentation of the District’s invitation to the Complainant to attend the meeting and to provide her input;
2. a list of the individuals who attended the meeting, including each individual’s name, title or position, and role in the meeting;
3. a copy or summary of the information the Team considered in reaching its determination regarding whether and what compensatory services or remedial measures were appropriate for the Student;
4. notes from the meeting documenting that the Team carefully considered input from persons knowledgeable about the Student;
5. a copy of the written notice to the Complainant of the Team’s decision about compensatory services or remedial measures; and
6. documentation that the District provided the Complainant with notice of the Student’s rights and applicable procedural safeguards.

If the Team decided that compensatory services or remedial measures are owed, the District will also submit the following to OCR:

7. documentation of the Team's decisions regarding the type and number of hours of compensatory services or remedial measures that are appropriate for the Student and the bases for those decisions;
8. the plan for the prompt provision of compensatory services or remedial measures to the Student; and
9. documentation that the Complainant was notified, in writing, of the compensatory services or remedial measures offered by the District.

The District will respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement A.⁵

Reporting Requirement B – Service-Delivery: Within 60 calendar days of the District receiving OCR's acceptance of the determinations of the Team (unless a different timeline is specified or agreed to by OCR), the District will submit documentation to OCR demonstrating that all of the compensatory services or remedial measures, if any, as determined by the Team, have been provided to the Student in accordance with the plan created.⁶

The District will respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Term III.

Term IV: Audit

The District will determine if there are any other students at XXXX School ("XXXX") who take medication for ADHD during the school day; and (b) who have not been evaluated to determine eligibility for a Section 504 plan or individualized education program (IEP) within the previous calendar year.

If there are any such students, the District will determine whether to initiate the evaluation process for the students.⁷ If the District decides to initiate the evaluation process, it will seek informed parental consent for an evaluation.⁸ If informed parental consent is provided, the District will conduct an evaluation and determine eligibility consistent with the procedural requirements of Section 504 (34 C.F.R. §§ 104.35-36).

Reporting Requirement A: Within 30 calendar days of this Agreement being signed, the District will submit to OCR a list of all students, if any, who were identified pursuant to Term IV, including, for each student:

1. name;

⁵ 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.

⁶ This case will remain in monitoring until all compensatory services or remedial measures (if any) have been provided, or until the District provides an acceptable explanation for why the services or measures cannot be provided.

⁷ Under Section 504, school districts must conduct an evaluation in a timely manner of any student who needs or is believed to need special education or related services because of a disability.

⁸ Any parents contacted for consent will receive an explanation from the District regarding why the District is seeking consent.

2. grade;
3. an explanation of how the District knew the student had ADHD and all related records;
4. an explanation of why the District decided to pursue or not pursuant an evaluation of the student and all related records; and
5. if the District decided to pursue an evaluation, the communication with the student's parent or guardian.

The District will respond to OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Term IV.

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 100.9-10), or judicial proceedings to enforce this Agreement, OCR will give the District written notice of the alleged breach and 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. Part 104, and Title II, and its implementing regulation, at 28 C.F.R. Part 35. Upon completion of the obligations under this Agreement, OCR will close these cases.

For Albuquerque Public Schools:

/s/
Ms. Raquel Reedy, Superintendent

1/14/20
Date