

RESOLUTION AGREEMENT

Montezuma-Cortez School District (OCR Case 08-20-1163) San Juan Board of Cooperative Educational Services (OCR Case 08-20-1358)

Montezuma-Cortez School District (“District”) and San Juan Board of Cooperative Educational Services (“BOCES”), collectively the “Recipients,” enter into this Agreement to resolve allegations in the above-referenced cases. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the Recipients. The Recipients assure the U.S. Department of Education, Office for Civil Rights (OCR) that they 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, which prohibit discrimination on the basis of disability by recipients of federal financial assistance; 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 public entities; and Title VI of the Civil Rights Act of 1964 (“Title VI”), and its implementing regulation, at C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance.

Prior to OCR issuing final determinations pursuant to Section 303 of OCR’s *Case Processing Manual* (CPM), the Recipients agreed to resolve issues in these cases pursuant to Section 302 of the CPM. Accordingly, to resolve the issues, the Recipients agree to implement the following terms and reporting requirements.

Term I: Compensatory Services and Remedial Measures

Within 75 calendar days of this Agreement being signed, the Recipients will convene team meetings for each student who attended the New Wings program (“New Wings”) during the 2019-2020 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 Recipients will invite, in writing, the parent(s) or guardian(s) of the student to attend the meeting, and carefully consider his/her/their input at the meeting. The invitation will include an explanation for the meeting.

At each meeting, the team will discuss, at a minimum, whether the student was denied a free appropriate public education (FAPE), at any point during the 2019-2020 SY, while placed at New Wings. The team will consider all relevant information, including whether the student’s individualized education program (IEP) was fully implemented throughout the student’s time at New Wings.

If the team determines that the student was denied a FAPE, the team will then create a plan to provide compensatory services or remedial measures to the student. Each plan will include:

- the type(s) of compensatory services or remedial measures to be provided;
- the amount(s) of compensatory services or remedial measures to be provided;

¹ This group may be a properly constituted IEP team.

- the name, title or position, and employer² of the person who will provide each type of compensatory service or remedial measure;
- the location³ where the compensatory service(s) or remedial measure(s) will be provided;
- the schedule⁴ for the provision of the compensatory service(s);
- the name, title or position, and employer of the person who will ultimately be responsible for the provision of compensatory services or remedial services as planned; and
- the financially responsible entity⁵ for each service or measure.

Within 10 calendar days of each meeting, the Recipients will send to the student's parent(s) or guardian(s):

- written notice of the determinations made at the meeting;
- a copy of the plan to deliver compensatory services or remedial measures, if any;
- a copy of the District's procedural safeguards.

The Recipients will implement plans, if any, with fidelity.

Reporting Requirement A: Within 90 calendar days of this Agreement being signed, the Recipients will submit 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; 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 Recipients 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 Recipients will promptly and fully address OCR's concerns, if any, until the Recipients receive notification from OCR that no further reporting is required for Reporting Requirement A.⁶

² *e.g.*, the District, BOCES, independent contractor, etc.

³ *e.g.*, a specific school, the New Wings building, a District central office, a student's home, etc.

⁴ *i.e.*, dates and times

⁵ *i.e.*, the District or BOCES

⁶ 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 Recipients of its concerns, and the Recipients will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures.

Reporting Requirement B: For any students for whom a plan for compensatory services or remedial measures is created, the Recipients will submit to OCR, within 90 calendar days of receiving notification from OCR that no further reporting is required for Reporting Requirement A, documentation showing that the Recipients have provided or is in the process of providing the compensatory services or remedial measures.⁷ The Recipients will promptly and fully address OCR's feedback, if any, until OCR notifies the Recipients that no further reporting is required for Reporting Requirement B.

(Conditional) Term II: Planning

If the Recipients plan to utilize, during the 2020-2021 SY, a separate program primarily for students with disabilities who struggle behaviorally ("Program"),⁸ the Recipients will submit to OCR a plan to ensure that all participating students will be provided with a FAPE. The plan will include:

- the name of the Program;
- the location of the Program;
- the district(s) that will be able to refer students to the Program;
- the objective criteria for students to attend the Program;⁹
- the maximum number of students the Program will serve;
- staffing for the Program, including the title or position, employer, work schedule, and job duties for each individual who will work with students in the program;
- the Program's typical/general daily schedule for each weekday, including start and end times, meals, recess, academic subjects, specials or electives, and other activities;
- how special education will be delivered by appropriately certified providers;
- how related services will be delivered by appropriately certified providers; and
- the name(s), title(s) or position(s), and employer(s) of the individual(s) who will be responsible for monitoring and ensuring the provision of FAPE to students in the program.

Reporting Requirement A: Within 75 calendar days of this Agreement being signed, the Recipients will submit to OCR a copy of the plan required by Term II. The Recipients will promptly and fully address OCR's feedback, if any, until OCR notifies the Recipients that no further reporting is required for Reporting Requirement A.

Reporting Requirement B: By January 29, 2021, the Recipients will notify OCR, in writing, about whether they diverged from the Program plan. If the Recipients diverge from the plan, the Recipients will also submit to OCR a description of how they diverge and how the provision of FAPE to students was impacted, if at all. The Recipients will promptly and fully address OCR's feedback, if any, until OCR notifies the Recipients that no further reporting is required for Reporting Requirement B.

Term III: Staff Training

The Recipients will train all: (a) District principals, assistant principals, and special education coordinators/chairs/department heads; (b) District central office staff who work with IEP teams for

⁷ 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.

⁸ *e.g.*, a center-based program within a traditional school, a program at a separate location, etc.

⁹ *e.g.*, grade level, disciplinary history, disability, etc.

students with behavioral concerns; and (c) all BOCES staff involved in IEP team placement decisions for students with behavioral concerns. The training will include, at a minimum:

- placement of students with disabilities;
- prohibited different treatment and disparate impact under Title VI;
- racial disparities in special education, including for American Indian students; and
- implicit bias.

Reporting Requirement A: Within 75 calendar days of this Agreement being signed, the Recipients will submit to OCR for review and approval:

- draft training materials;
- the name(s), title(s) or position(s), and qualifications of one or more qualified individuals to provide the training; and
- a list of proposed individuals to be trained, including each person's name, work location (i.e., District office, a specific school, or BOCES), and title or position.

The Recipients will promptly and fully address OCR's feedback, if any, until the Recipients receive OCR's final approval of the training materials, trainer(s), and list of trainees.

Reporting Requirement B: Prior to October 15, 2020, the Recipients will provide the training to all staff specified on the approved list of trainees. Within fifteen (15) calendar days of the training being provided, the Recipients will provide to OCR:

- the date, time, and location of the training;
- confirmation that the approved trainer(s) delivered the training;
- confirmation that the approved materials were used at the training;
- the names and titles/positions of all staff who attended the training; and
- if applicable, the name(s) and title(s)/position(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).

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

The Recipients understand and acknowledge 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 Recipients written notice of the alleged breach and 60 calendar days to cure the alleged breach.

The Recipients understand that by signing this Agreement, they agree to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the Recipients understand that, during the monitoring of this Agreement, if necessary, OCR may visit the Recipients, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the Recipients have fulfilled the terms of this Agreement and are in compliance with Section 504, Title II, and their implementing regulations. Upon completion of the obligations under this Agreement, OCR will close this case.

For the District:

/s/
Lori Haukeness, Superintendent

5/29/20
Date

For BOCES:

/s/
Adrea Bogle, ESS Executive Director

5/27/20
Date