

Resolution Agreement

Vail Unified School District OCR Case Number 08-20-1225

The U.S. Department of Education, Office for Civil Rights (OCR) and Vail Unified School District (District) enter 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 OCR that it will take the following actions to comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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. Sections 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 the completion of OCR's investigation, the District agreed to resolve an allegation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to resolve an allegation of this investigation, the District agrees to take the following actions.

I. **Occupational Therapy Evaluation, Placement Meeting and Compensatory Services.**

The District sent parents a Prior Written Notice on April 14, 2020, stating that once school reopens, it will conduct an occupational therapy (OT) evaluation of the Student.

The District will: conduct the OT evaluation, hold a placement meeting, and determine and provide any needed compensatory services.

- A. Within 20 calendar days of the reopening of the District for in-person learning, the District will complete the Student's OT evaluation.
- B. Within 30 calendar days of the completion of the OT evaluation:
 1. The parties will addend Student's IEP, if necessary, related to the determination regarding the OT evaluation and services.
 2. If additional information about the Student, such as additional evaluations, is needed the parties will make arrangements for obtaining that information or conducting those evaluations and schedule a follow-up IEP meeting.
 3. At the IEP meeting, if the OT evaluation supports the provision of school-based occupational therapy, the parties will also discuss whether compensatory education is owed. In making this determination, the parties will consider, at a minimum, the impact on the provision of FAPE to the Student when the District did not conduct a full OT evaluation.
 4. If compensatory education is owed, the teams will:
 - i. Assess the type of compensatory education owed;
 - ii. Assess the amount of compensatory education owed; and
 - iii. Develop a plan for delivering the compensatory education owed, including specific timelines for implementation and the person(s) responsible for overseeing full and timely implementation.

- C. Within thirty (30) calendar days of meeting held pursuant to Paragraph B, the District will submit to OCR:
- a. Notes or minutes from the meeting, including documentation of any input provided by the Complainant;
 - b. A copy of the developed IEP or, if the IEP is not added, the Prior Written Notice indicating that the IEP has not been amended;
 - c. The team's decision regarding compensatory education, the rationale for the decision, and whether the parent or guardian agreed with the decision;
 - d. Documentation showing that procedural safeguards were provided to the students' parents; and
 - e. Any other documentation relevant to the determination reached in accordance with Term I of this Agreement.
- D. 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, and will notify the District when it has completed this review.
- E. The District will respond to OCR's concerns until OCR considers these resolved.
- F. After OCR has reviewed and accepted the determinations of the IEP team, the District will take steps to implement the compensatory services, if any, agreed upon by the IEP team.
- G. Within thirty (30) days from the date of OCR's acceptance of the proposed compensatory services (if any) or remedial measures, the District will provide documentation that it has provided or is in the process of providing the agreed upon compensatory services or remedial measures, if any. For compensatory services and remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, 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. If the Student is to receive compensatory services, the case will remain in monitoring until all compensatory services and remedial measures have been provided in full.

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 is in compliance with Section 504 and Title II.

¹ Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by an IEP team that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the IEP 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.

Upon completion of the obligations under this Agreement, OCR shall close 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 this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the District's representative below.

For the District:

/s/

Signature

Director of Special Education

7-15-2020

Date