

**Resolution Agreement  
Del Norte School District  
OCR Case Number 08-20-1287**

The U. S. Department of Education, Office for Civil Rights (OCR) and Del Norte School District (District) enter into this agreement to resolve allegations in the above-referenced complaint. 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 the allegations of this case pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to resolve the allegations of this investigation, the District agrees to take the following actions.

**I. Shortened School Day Procedural Guidance.** The District agrees to draft, adopt, publish, and disseminate among staff new procedural guidance regarding shortened school day schedules for students with a disability. The policy will include, at a minimum:

1. A definition of shortened schedule.
2. Under what circumstances a shortened schedule is permissible.<sup>1</sup>
3. Examples of impermissible reasons for a shortened schedule.<sup>2</sup>
4. Who must make the decision regarding a shortened schedule.
5. Notice that students may not be excluded from field trips, school functions, and extracurricular activities due to their shortened schedule.
6. How to document and maintain relevant records relating to a shortened schedule which must include:
  - i. The student's school's daily schedule.
  - ii. Whether the student's parent(s) or guardian(s) agree or disagree with the shortened schedule.
  - iii. The justification for a shortened schedule.
  - iv. How the delivery of a free appropriate public education (FAPE) will be achieved considering the shortened schedule if the student has a Section 504 Plan or IEP.<sup>3</sup>
  - v. Whether the shortened schedule will impact the Least Restrictive Environment.
  - vi. When the shortened schedule will be reviewed to determine if it continues to be appropriate and complies with applicable regulations.

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<sup>1</sup> All circumstances must comply with the requirements of applicable civil rights laws and regulations.

<sup>2</sup>Including, but not limited to, administrative convenience, cost savings, the unavailability of staff, transportation administration, and driving distance.

<sup>3</sup> This provision must comply with applicable regulations for IEP teams and Section 504 teams.

- vii. An IEP or Section 504 team must regularly review the decision for a shortened schedule to ensure that it is necessary for the student's needs if the student has a Section 504 Plan or IEP.<sup>4</sup>
- viii. A requirement that the procedural guidance be distributed to a student's parent(s) or guardian(s) prior to any meeting at which a shortened schedule will be discussed.
- ix. Who parents and guardians should contact if they believe the policy or regulation was violated.

**REPORTING REQUIREMENTS I(A):** By November 1, 2020, the District will submit the shortened schedule procedural guidance to OCR for review and approval. The District will promptly and fully address feedback from OCR until it receives OCR's final approval of the policy.

**REPORTING REQUIREMENTS I(B):** By January 1, 2021, the District will provide OCR with a copy of the final procedural guidance and documentation showing that the procedural guidance was adopted, published, and disseminated to staff.

Publication must include any relevant staff guidance or handbook, including but not necessarily limited to those pertaining to 504 Plans or IEPs. Dissemination must include:

- 1. All school administrators in the District.
- 2. All staff at the School.

**II. Staff Training.** The District agrees to provide training to staff and administrators identified in Reporting Requirements II(B) on the following topics:

- 1. The definition of physical restraint and the types of touching that qualify as physical restraint.
- 2. Under what circumstances physical restraint may be used.
- 3. The notice requirements to parents/guardians when physical restraint is used.
- 4. The documentation requirements when physical restraint is used.
- 5. The use of de-escalation techniques, per District policy JKA-R.
- 6. The new shortened school day schedule policy.

**REPORTING REQUIREMENTS II(A):** By November 1, 2020, the District will submit to OCR for review and approval:

- 1. Draft materials that will be used to train School staff.
- 2. The name(s), title(s) or position(s), and qualifications of one or more proposed individuals to provide the training to the School's staff and administrators.

**REPORTING REQUIREMENTS II(B):** Within thirty (30) calendar days of receiving OCR's final approval of the materials and trainer(s), the District will provide the training to District

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<sup>4</sup> This provision must comply with applicable regulations for IEP teams and Section 504 teams.

administrators and any District staff designated by the District to utilize restraints at the School, including but not necessarily limited to the School Principal, Assistant Principals, if any, and special education teachers and staff.

**REPORTING REQUIREMENTS II(C):** Within fifteen (15) calendar days of the training being provided; the District will provide to OCR:

1. The date, time, and location of the training.
2. Confirmation that the approved trainer(s) delivered the training.
3. The agenda and materials from the training.
4. A current staff roster for the School, including job title.
5. The names and titles of all staff who attended the training.
6. The name(s) and title(s) of all staff who were required to attend the training but who did not attend, an explanation for each person's absence, and make-up dates for the training.

**III. Physical Restraints used on XXXX** The District agrees to:

1. Provide the Complainant with a written report of the School's use of a Crisis Prevention Intervention (CPI) hold on XXXX on September 24, 2019, October 15, 2019, October 16, 2019, as well as any other restraints not previously documented, as required by District policy JKA-R.
2. Provide the Complainant with written notice of restraint procedures that might be used, under which circumstances restraints may be used, and the staff that may be involved in physically restraining the student, as required by District policy JKA-R.

**REPORTING REQUIREMENTS III(A):** By November 1, 2020, the District will submit to OCR for review and approval:

1. A written report of the School's use of a CPI hold on XXXX on September 24, 2019, October 15, 2019, October 16, 2019, as well as any other restraints not previously documented.
2. Written notice of restraint procedures that might be used, under which circumstances restraints may be used, and the staff that may be involved in physically restraining the student.

**REPORTING REQUIREMENTS III(B):** Within fifteen (15) days of OCR's approval, the District will provide OCR with documentation which indicates that it provided the written reports and written notice to the Complainant.

**IV. Physical Restraints used on XXXX**. The District agrees to:

1. Provide the Complainant with a written report of the School's use of physical restraint on XXXX on January 13, 2020 and any other uses of physical restraints not previously documented, as required by District policy JKA-R.
2. Provide the Complainant with written notice of restraint procedures that might be used, under which circumstances they may be used, and the staff that may be involved in physically restraining the student, as required by district policy JKA-R.

**REPORTING REQUIREMENTS IV(A):** By November 1, 2020, the District will submit to OCR for review and approval:

1. A written report of the School's use of physical restraint on XXXX on January 13, 2020, and any other uses of physical restraints not documented.
2. Written notice of restraint procedures that might be used, under which circumstances they may be used, and the staff that may be involved in physically restraining the student.

**REPORTING REQUIREMENTS IV(B):** Within fifteen (15) days of OCR's approval, the District will provide OCR with documentation which indicates that it provided the written reports and written notice to the Complainant.

**V. IEP Meeting and Compensatory Education for XXXX.** If XXXX re-enrolls in the District in a subsequent school year, the District agrees to hold an IEP meeting for XXXX to review the District's previous use of physical restraints and consider the need for any adjustments to his IEP. If XXXX reenrolls in the District during the 2020-2021 school year the District also agrees to determine whether he requires any compensatory education services due to the District's previous use of physical restraints.

**REPORTING REQUIREMENTS V(A):** Within 30 calendar days of the IEP meeting referenced in this Section V, the District will provide OCR with:

1. A copy of the meeting invitation sent to the Complainant.
2. Notes or minutes from the meeting, including documentation of any input provided by the Complainant.
3. A copy of XXXX current IEP.
4. The team's decision regarding compensatory education services, the rationale for the decision, and whether the parent or guardian agreed with the decision.

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.<sup>5</sup>

**REPORTING REQUIREMENTS V(B):** Within 90 calendar days of the IEP meeting referenced in this Section V above, and if the IEP team determined that compensatory education services were needed, the District will provide documentation that it has provided or is in the process of providing the agreed upon compensatory services. For compensatory services that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for overseeing its full and timely implementation, and supporting documentation establishing that the compensatory

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<sup>5</sup> 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 education 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.

services 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.

**VI. IEP Meeting and Compensatory Education for XXXX.** If XXXX re-enrolls in the District in a subsequent school year, the District agrees to hold an IEP meeting for XXXX to review the District's previous use of physical restraints and the need for any adjustments to his plan. If XXXX reenrolls in the District during the 2020-2021 school year the District also agrees to determine whether he requires compensatory education services due to the District's previous use of physical restraint(s) and the use of a shortened schedule from October 28, 2019 through December 2019.

**REPORTING REQUIREMENTS VI(A):** Within 30 calendar days of the IEP meeting referenced in this Section VI, the District will provide OCR with:

1. A copy of the meeting invitation sent to the Complainant.
2. Notes or minutes from the meeting, including documentation of any input provided by the Complainant.
3. A copy of XXXX current IEP.

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.<sup>6</sup>

**REPORTING REQUIREMENTS VI(B):** Within 90 calendar days of the IEP meeting referenced in this Section VI, and if the IEP team determined that compensatory education services were needed, the District will provide documentation that it has provided or is in the process of providing the agreed upon compensatory services. For compensatory services that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for overseeing its full and timely implementation, and supporting documentation establishing that the compensatory services 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.

**VII. Field Trips and School Functions.** The District agrees to fund alternate opportunities as replacements for field trips XXXX were not allowed to or otherwise did not attend. The District agrees to pay the Complainant the amount of XXXX (\$X) dollars to fund replacement activities of the Complainant's choosing. The District's understanding is that the funds will be used to

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<sup>6</sup> 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.

fund opportunities that will provide XXXX with similar opportunities for social and academic growth as the field trips would have provided.<sup>7</sup>

**REPORTING REQUIREMENTS VII(A):** By November 1, 2020, the District will provide OCR with documentation that the District has paid the Complainant the amount of XXXX (\$XX) dollars to fund alternate opportunities as replacements for school activities that XXXX were not allowed to attend.

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. Upon completion of the obligations under this Agreement, OCR shall close and dismiss 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/\_\_\_\_\_  
Chris Burr, Superintendent

\_\_\_\_8/25/2020\_\_\_\_\_  
Date

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<sup>7</sup> Typically OCR would require the District to come up with educational alternatives for the missed field trips, but due to the health and safety limitations of the current pandemic, we understand that may not be feasible given the limitations on group activities in society. Those considerations are the basis for the District funding an account that immediately pays for make-up opportunities for the students and gives the family flexibility to find those events in the coming months.