

## RESOLUTION AGREEMENT

### Poudre School District OCR Case 08-20-1289

Poudre School District (“District”) enters into this Agreement to resolve allegations in the above-referenced case. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures the U.S. Department of Education, 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.

Prior to OCR issuing a final determination pursuant to Section 303 of OCR’s *Case Processing Manual* (CPM), the District agreed to resolve allegations in this case pursuant to Section 302 of the CPM. Accordingly, to resolve the allegations, the District agrees to implement the following terms and fulfill the following reporting requirements.

**TERM I – Training Memorandum:** The District will disseminate a training memorandum (“Memo”) regarding:

- A. prohibited different treatment based on disability under Section 504 and Title II;
- B. staff-on-student harassment based on disability under Section 504 and Title II;
- C. prohibited retaliation under Section 504 and Title II; and
- D. confidentiality under the Family Educational Rights and Privacy Act (FERPA).

The Memo will be:

- E. pre-approved by OCR;
- F. disseminated by the first day of the 2020-2021 school year (SY) for students (*i.e.*, August 17, 2020); and
- G. disseminated to all staff at XXXX (“School”), the District’s Director of Student Services, and the District’s Assistant Superintendent of Elementary Schools.

**Reporting Requirement A** – Within 30 calendar days of this Agreement being signed, the District will submit to OCR a draft of the Memo. The District will promptly and fully address OCR’s feedback, if any, until the District receives notification from OCR that the Memo is approved and no further reporting is required for Reporting Requirement A.

**Reporting Requirement B** – By August 28, 2020, the District will submit to OCR documentation showing that Memo was disseminated as required by Term I.<sup>1</sup> The District will promptly and fully address OCR’s concerns, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement B and Term I.

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<sup>1</sup> *e.g.*, a copy of an email that shows all recipients and attachments; or a list of all School staff with signatures (and dates) attesting to receipt of the Memo.

**TERM II – Team Meeting:** Within 60 calendar days of this Agreement being signed, the District will convene a group of knowledgeable people (“Team”) to discuss, at a minimum:

- A. the Student’s participation in school-sponsored activities,<sup>2</sup> including, but not limited to, any necessary limitations;
- B. the Student contacting his mother (“Mother”), including using a smart watch to call her, during school and school-sponsored activities;
- C. food for the Student at school and school-sponsored activities, and ensuring that the Mother is not required to purchase non-District food for the Student to consume at school or school-sponsored activities;
- D. ensuring that the Mother is not required to attend school-sponsored activities in order for the Student to participate in the activities;
- E. District staff using a trauma-informed approach in working with the student;<sup>3</sup>
- F. Identification (by name, email address and telephone number) of a District staff member who is designated to receive and promptly respond to concerns from the Student or Mother regarding implementation of the Student’s Section 504 plan and regarding alleged harassment by District staff; and
- G. the process for the Mother’s communications with school staff.

The Team will include, at a minimum:

- H. a qualified, neutral facilitator;
- I. an individual who is qualified to provide insights into the Student’s disability-related dietary needs and meeting those needs at school and school-sponsored activities;
- J. an individual who is qualified to provide insights into the Student’s disabilities and meeting his needs related to those disabilities at school and school-sponsored activities;
- K. an individual who is qualified to provide insights into trauma-informed approaches in working with the student at school and school-sponsored activities;
- L. an administrator and the Section 504 Coordinator at the Student’s assigned school for the 2020-2021 SY; and
- M. the Mother.

The District will ensure that:

- N. the Team meeting is consistent with the procedural requirements of Section 504;<sup>4</sup>
- O. any decisions made at the meeting reflect the judgment of the Team, not the judgment of a single individual;
- P. the Complainant is invited to the meeting and permitted to invite persons knowledgeable about the Student to attend the meeting; and

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<sup>2</sup> *e.g.*, co-curricular activities, extra-curricular activities, and fieldtrips

<sup>3</sup> Trauma-informed schools prepare teachers to understand and recognize the symptoms of trauma and to support students displaying behaviors associated with trauma. See American Institutes for Research, Supporting Trauma Recovery, <https://safesupportivelearning.ed.gov/trauma-recovery>; The National Child Traumatic Stress Network, Trauma-Informed Systems – Schools, <https://www.nctsn.org/trauma-informed-care/creating-trauma-informed-systems/schools>; American Psychological Association, Trauma, <https://www.apa.org/topics/trauma/index.html>; Colorado Department of Education, Trauma-Informed Approaches in Schools: Keys to Successful Implementation in Colorado, <https://www.cde.state.co.us/pbis/traumainformedapproachesarticle>.

<sup>4</sup> *i.e.*, 34 C.F.R. §§ 104.35-36

- Q. the Team carefully considers all information provided by the Complainant and her invitees.

Within 10 calendar days after the meeting, the District will:

- R. notify the Complainant, in writing, of the decisions made at the meeting;
- S. provide the Complainant with a copy of the Student's updated Section 504 plan and healthcare plan (if one is created or updated); and
- T. provide the Complainant with a copy of the applicable procedural safeguards.

**Reporting Requirement A** – Within 20 calendar days of the Team meeting, the District will submit to OCR:

- i. copies of all communications with the Mother related to the meeting, including documentation showing that the Mother:<sup>5</sup>
  - a. was invited to participate in the meeting and informed that she could invite others knowledgeable about the student;
  - b. was notified of the decisions made at the meeting and provided with a copy of the Student's updated Section 504 plan and health plan (if one was updated or created); and
  - c. received a copy of the procedural safeguards;
- ii. a list of the individuals who attended the meeting, including:
  - a. each individual's name and title or position; and
  - b. indications of who fulfilled the roles specified in Term I(H)-(L);
- iii. notes or minutes from the meeting reflecting:
  - a. the information that the Team considered in reaching its decisions; and
  - b. that the Team carefully considered input from persons knowledgeable about the Student;
- iv. copies of:
  - a. the Student's updated Section 504 plan; and
  - b. any other plans created or updated for the Student.

The District will promptly and fully address OCR's feedback, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement A and Term II.

### **TERM III – Student Participation in Co-Curricular and Extra-Curricular Activities**

The District will send the Mother a letter stating that – consistent with the terms of his Section 504 plan and, if applicable, his health plan – the Student will have an equal opportunity to participate in all co-curricular and extra-curricular activities. If the Student's school for the 2020-2021 SY has Honors Choir, Safety Patrol, school plays, or the XXXX, the letter will specify that the Student will have an equal opportunity to participate in that activity or those activities. The letter will be pre-approved by OCR and sent by the first day of the 2020-2021 SY for students.

**Reporting Requirement A** – Within 30 calendar days of this Agreement being signed, the District will submit to OCR a draft of the letter. The District will promptly and fully address OCR's feedback, if any,

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<sup>5</sup> For purposes of this Agreement, "communications" include, but are not limited to, all emails, letters, text messages, electronic messages, and forms.

until the District receives notification from OCR that no further reporting is required for Reporting Requirement A

**Reporting Requirement B** – By August 28, 2020, the District will submit to OCR documentation showing that the approved letter was sent to the Mother by the deadline specified in Term III. The District will promptly and fully address OCR’s feedback, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement B and Term III.

#### **Term IV – Harassment Investigation**

The District will investigate whether, during the 2019-2020 SY, the Student was harassed based on disability by his homeroom teacher (“Teacher”). The investigation will be thorough and impartial.<sup>6</sup>

If the investigation reveals that the Teacher harassed the Student based on disability, the District will take prompt and effective steps that are reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring (including taking any warranted disciplinary action).

**Reporting Requirement A** – By August 28, 2020, the District will submit to OCR:

- i. the name(s), title(s) or position(s), and qualifications of the individual(s) who conducted the investigation;
- ii. a description of the investigation;
- iii. copies of records from the investigation;<sup>7</sup>
- iv. the determination regarding whether harassment occurred, and if so, the determination regarding whether the harassment was disability-based; and
- v. if the District determined that the Teacher harassed the Student based disability, a plan that is reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

The District will promptly and fully address OCR’s feedback, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement A.

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<sup>6</sup> The investigation will include, at a minimum, interviews of the Student, Mother, Teacher, and any other potential staff eyewitnesses. The investigation will consider, but will not necessarily be limited to, whether the Teacher:

- a. announced the removal of the Student’s “XXXX (reward system);”
- b. “forced [the Student] to sit to the side of the class and watch his class rather than participate directly in XXXX preparation activities;”
- c. denied the Student an opportunity “to contact his mother at school through use of a Smartwatch while others possessed cell phones and were [a]l]owed to do so in the hallway;”
- d. accused the Student “in front of peers of having caused property damage after he re-set a floor plate to be flat on the ground so a third student would not trip and fall;”
- e. consistently made negative and embarrassing comments about the Student around classmates;
- f. “identified [the Student] openly with disabilities in a way which highlighted them as an inconvenience for her;” and
- g. gave the Student an award which highlighted him at an assembly for peers and parents and peers for his disability accommodation.

<sup>7</sup> e.g., records reviewed, witness statements, interview notes, recordings reviewed, etc.

**(Conditional) Reporting Requirement B** – If the District determines that the Teacher harassed the Student based on disability, the District will, within 30 calendar days of receiving OCR’s notification that no further reporting is required for Reporting Requirement A, submit a report on implementation of the plan created pursuant to Reporting Requirement A(v), including supporting documentation. The District will promptly and fully address OCR’s feedback, if any, until the District receives notification from OCR that no further reporting is required for Reporting Requirement B or 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, and Title II, and its implementing regulation. Upon completion of the obligations under this Agreement, OCR will close this case.

**For the District:**

/s/  
Dr. Sandra Smyser, Superintendent

6/11/20  
Date