

RESOLUTION AGREEMENT

Deer Valley Unified School District OCR Case 08-20-1360

Deer Valley Unified 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 issues in this case pursuant to Section 302 of the CPM. Accordingly, to resolve the issues, 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:

- the District's obligation to provide students with disabilities a free appropriate public education (FAPE);¹
- the definition of an appropriate education;²
- under what circumstances District staff must be familiar with a student's individualized education program (IEP) or Section 504 Plan;
- how District staff should access students' IEPs and Section 504 Plan when necessary;
- the District's and staff's obligation to fully implement students' IEPs and Section 504 Plans;³ and
- who (including name, title or position, and email address) staff may contact with questions or concerns about the Memo or the issues addressed in the memo.

The Memo will be:

- pre-approved by OCR;
- disseminated before the first day of the 2020-2021 school year (SY) for students; and
- disseminated to all administrators and staff at Greenbrier Elementary School ("School").

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.

¹ See 34 C.F.R. 104.33(a).

² See 34 C.F.R. 104.33(b)(1).

³ See 34 C.F.R. 104.33(b)(2).

Reporting Requirement B – Within 10 calendar days of the beginning of the 2020-2021 SY for students, the District will submit to OCR documentation showing that the Memo was disseminated as required by Term I.⁴ 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.

TERM II – Team Meeting: Within 30 calendar days of this Agreement being signed, the District will offer to the Complainant, in writing, to convene a meeting of a group of knowledgeable people (“Team”) to, at a minimum:

- discuss whether the Student’s IEP was implemented on January 24, 2020,⁵ from February 5, 2020 to February 19, 2020,⁶ and on March 2, 2020;⁷ and, if so,
- create a plan to provide compensatory services and/or other remedial measures to the Student.

In the written offer, the District will:

- explain the purposes of the meeting by including the agenda detailed above; and
- notify the Complainant that to accept the offer, she must respond, in writing, within 20 calendar days.

If the Complainant accepts the District’s offer to convene a meeting, the District will ensure that:

- the meeting occurs within 30 calendar days of the Complainant accepting the offer;
- the Team and meeting are consistent with the procedural requirements of Section 504;⁸
- the Complainant is invited to the meeting and 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
- any decisions made at the meeting reflect the judgment of the Team, not the judgment of a single individual.

If a plan for compensatory services and/or other remedial measures is created, the plan will include the:

- type(s) of compensatory services and/or other remedial measures to be provided;
- amount(s) of compensatory services and/or other remedial measures to be provided;
- name(s) and title(s) or position(s) of the person(s) who will be responsible for providing the compensatory service(s) and/or other remedial measure(s);
- the location where the compensatory service(s) and/or remedial measure(s) will be provided;
- the schedule for the provision of the compensatory service(s) and/or remedial measure(s); and

⁴ *e.g.*, a copy of an email that shows all recipients and attachments; or a list of all School staff with printed names, titles or positions, signatures, and dates attesting to receipt of the Memo.

⁵ The Complainant alleged that School staff failed to implement the student’s IEP on January 24, 2020 by not using the specified de-escalation strategies.

⁶ The Complainant alleged that School staff failed to implement the student’s IEP from February 5, 2020 to February 19, 2020 by not providing him with a one-on-one aide.

⁷ The Complainant alleged that School staff failed to implement the student’s IEP on March 2, 2020, including by not allowing him to go to the “special education room” when he was frustrated in class.

⁸ *i.e.*, 34 C.F.R. §§ 104.35-36.

- the name and title or position of the person who will ultimately be responsible for the provision of the compensatory service(s) and/or remedial measure(s) as planned.

Within 10 calendar days after the meeting, if the Complainant accepts the District's offer to convene a meeting, the District will:

- notify the Complainant, in writing, of the decisions made at the meeting;
- the plan for compensatory services and/or remedial measures (if applicable); and
- provide the Complainant with a copy of the applicable procedural safeguards.

The District will implement the plan, if any, with fidelity.

Reporting Requirement A – Within 30 calendar days of the District sending its offer to the Complainant, the District will submit to OCR a copy of the offer, the Complainant's response, if any, and all other related communications with the Complainant. 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.

Conditional Reporting Requirement B – If the Complainant accepts the District's offer, then, within 20 calendar days of the Team meeting, the District will submit to OCR:

- i. copies of all communications with the Complainant related to the meeting, including documentation showing that the Complainant:⁹
 - a. was invited to participate in the meeting and informed that she could invite others who are knowledgeable about the student;
 - b. was notified of the decisions made at the meeting; and
 - c. received a copy of the procedural safeguards;
- ii. a list of all individuals who attended the meeting, including each individual's name and title or position;
- 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; and
- iv. copies of the written notice(s) to the Complainant of:
 - a. the decisions made at the meeting;
 - b. the plan for compensatory services and/or remedial measures (if applicable); and
 - c. the District's applicable procedural safeguards.

If the Team determines that no compensatory services or remedial measures will be provided, the District will also submit to OCR a written explanation of the reasons for that determination, along with any supporting documentation. The District will promptly and fully address OCR's feedback, if any, until

⁹ For purposes of this Agreement, "communications" include, but are not limited to, all emails, letters, text messages, electronic messages, and forms.

the District receives notification from OCR that no further reporting is required for Reporting Requirement B.¹⁰

Conditional Reporting Requirement C – If a Team meeting occurs and a plan for compensatory services and/or remedial measures is created, the District will submit to OCR, within 90 calendar days of receiving notification from OCR that no further reporting is required for Reporting Requirement B, documentation showing that the District has provided or is in the process of providing the compensatory services and/or remedial measures as detailed in the plan.¹¹ The District will promptly and fully address OCR’s feedback, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement C or Term II.

Term III – Harassment Investigation

The District will conduct a thorough and impartial investigation into whether:

- a secretary at the School (“Secretary”) harassed the Student, on or about January 24, 2020, while the Student was in the main office; and
- an aide at the School (“Aide”) harassed the Student, on or about March 2, 2020.

If the investigation reveals that the Secretary and/or Aide 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 – Within 60 calendar days of this Agreement being signed, the District will submit to OCR:

- i. the name(s), title(s) or position(s), and qualifications of the individual(s) who conducted the investigations;
- ii. a description of the investigations;
- iii. copies of records from the investigations;¹²
- iv. the determinations regarding whether harassment occurred; and, if so,
- v. the determination(s) regarding whether the harassment was disability-based; and, if so,
- vi. 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.

¹⁰ 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.

¹¹ 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.

¹² e.g., records reviewed, witness statements, interview notes, recordings reviewed, etc.

(Conditional) Reporting Requirement B – If the District determines that the Secretary and/or Aide 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, a report on implementation of the plan created pursuant to Reporting Requirement A(vi), 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. Curtis French, Superintendent

7/29/20
Date