

**RESOLUTION AGREEMENT**  
**Boulder Valley School District**  
**OCR Case 08-21-1121**

Boulder Valley School District (“District”) enters into this Resolution Agreement (“Agreement”) to resolve the above-referenced case. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures the Office for Civil Rights (OCR) of the U.S. Department of Education (“Department”) that the District 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 recipients of federal funding from the Department from discriminating based on disability;
- 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 public school districts from discriminating based on disability; and
- Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. 2000d, and its implementing regulation, at 34 C.F.R. Part 100, which prohibit recipients of federal funding from the Department from discriminating based on race, color, or national origin.

Prior to the completion of OCR’s investigation, the District agreed to resolve the issues in this case pursuant to Section 302 of OCR’s *Case Processing Manual*. Accordingly, the District agrees to take the following actions.

**TERM 1: SELF-AUDIT**

- A. The District will conduct a self-audit to determine whether, since August 1, 2020, any Hispanic (or Latino), African American (or Black), American Indian (or Native American), or Alaska Native students:
- did not have timely, appropriate disability-related evaluations, eligibility determinations, or placement decisions; or
  - were improperly exited from special education (*i.e.*, taken off an individualized education program (IEP)).<sup>1</sup>

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<sup>1</sup> Under Section 504, school districts must conduct an individualized, timely evaluation of any student who needs or is believed to need special education or related services because of a disability. School districts violate Section 504 when they deny or delay conducting an evaluation of a student when it would have been reasonable for a staff member to have suspected that a student has a disability and needs special education or related services because of that disability. In interpreting evaluation data and in making placement decisions, school districts are required to use a group of knowledgeable people that considers information from a variety of sources. English Learner (EL) students who may have a disability, like all other students who may have a disability and may require special education or related aids and services under Section 504, must be located, identified, and evaluated in a timely manner. See Office for Civil Rights, U.S. Dept. of Educ., “Parent and Educator Resource Guide to Section 504,” Dec. 2016, available at <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>. See also Office for Civil Rights, U.S. Dept. of Educ., “Resource Guide on Students with ADHD and Section 504,” pp. 15-17, Jul. 26, 2016, available at <https://sites.ed.gov/idea/files/OCR-letter-07-26-2016.pdf>; and Office of Special Education and Rehabilitative Services, U.S. Dept. of Educ., “A Response to Intervention (RTI) Process Cannot Be

- B. The audit will include all Hispanic (or Latino), African American (or Black), American Indian (or Native American), or Alaska Native students who, since August 1, 2020, were:
- in the multi-tiered system of supports (MTSS) process;
  - in the student support team (SST) process;
  - referred for a special education evaluation by a parent, guardian, teacher, or any other individual;
  - evaluated to determine eligibility under the Individuals with Disabilities Education Act (IDEA); or
  - exited from special education/an individualized education program (IEP).
- C. In making the determinations for each student required by Term 1(A) above, the District will consider, at a minimum, information from:
- the student's education records;<sup>2</sup> and
  - staff members involved in the interventions, evaluations, eligibility determinations, or placement decisions.
- D. The audit will involve, at a minimum:
- school-based MTSS staff, English learner teachers or coordinators, and special education staff;
  - Language Support central office staff; and
  - central office and regional MTSS staff and special education staff.
- E. The audit will be managed, supervised, and reviewed by, at a minimum, the District's:
- MTSS Director;
  - Special Education Director; and/or
  - Section 504 Coordinator.

**Reporting Requirement 1:** Within 60 calendar days of this Agreement being signed, the District will submit to OCR a draft plan ("Plan") for the self-audit. The Plan will include, at a minimum:

- A. A list of students who will be reviewed, including for each student:
- first and last name;
  - race;
  - ethnicity;
  - grade;
  - school; and

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Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)," Jan. 21, 2011, OSEP 11-07, available at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>.

<sup>2</sup> e.g., MTSS records, SST records, meeting minutes or notes, prior written notices (PWNs), etc.

- the reason the student will be part of the audit.<sup>3</sup>
- B. A list of the types of school-based staff members who will be involved in the audit, including for each type:
- position; and
  - the role(s) the position will play in the audit.
- C. A list of district-level, central office, or regional staff members who will be involved in the audit, including for each individual:
- first and last name;
  - position;
  - school or department; and
  - the role(s) the individual will play in the audit.
- D. A memorandum the District will provide to staff who are involved in the audit. The memorandum will include, at a minimum:
- the purposes of the audit (see Term 1(A) above);
  - the students who must be reviewed (see Term 1(B) above);
  - a description of the files and information that must be considered for the students (see Term 1(C) above); and
  - the guidelines and criteria for making the determinations specified in Term 1(A) above.

OCR will review the draft Plan and communicate any concerns to the District. The District will promptly and fully respond to OCR's concerns, if any, until OCR notifies the District that the concerns are resolved, the Plan is approved, and no further reporting is required for Reporting Requirement 1.

**Reporting Requirement 2:** Within 90 calendar days of the District receiving notice from OCR that the Plan is approved and no further reporting is required for Term 1 – Reporting Requirement 1, the District will submit to OCR a report about the self-audit ("Report"). The Report will include, at a minimum:

- A. written confirmation that the OCR-approved Plan was used;
- B. the individualized determination for each student regarding whether the student was improperly not evaluated, evaluated, placed, or exited;
- C. an explanation of the determination made for each student; and
- D. any recommendations, in moving forward, for avoiding related issues and for ensuring compliance with Section 504, Title II, and Title VI.

OCR will review the Report and communicate any concerns to the District. The District will promptly and fully respond to OCR's concerns, if any, until OCR notifies the District that the concerns are resolved and no further reporting is required for Reporting Requirement 2 or Term 1.

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<sup>3</sup> *i.e.*, whether the student was part of the MTSS or SST process, referred for a special education evaluation, evaluated, or exited.

**TERM 2: COMPENSATORY SERVICES AND OTHER REMEDIAL MEASURES**

- A. For each student who is identified, via the self-audit required by Term 1, to have been improperly not evaluated, evaluated, placed, or exited, the District will convene a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options<sup>4</sup> ("Team"), to discuss, at a minimum, whether the student is entitled to compensatory services or other remedial measures (at the District's expense) as a result of the improper failure to evaluate or improper evaluation, placement, or exit.
- B. For each Team meeting held, the District will ensure that:
- the meeting is held in a manner that is consistent with the procedural requirements of Section 504;<sup>5</sup>
  - the Team includes staff members from the student's school who have knowledge of the matters being considered;<sup>6</sup>
  - the student's parent or guardian is invited to attend the meeting and can invite other persons knowledgeable about the Student to attend the meeting;
  - the Team carefully considers all relevant information, including input from the student's parent or guardian and his or her invitee(s) (if any); and
  - any decisions reflect the judgment of the Team, not the judgment of a single individual.
- C. If, at a meeting required by Term 2(A), the Team determines that a student is entitled to compensatory services or other remedial measures, the Team will develop a written plan that includes, at a minimum:
- the type(s) and amount(s) of compensatory services or other remedial measures owed; and
  - how the compensatory services or other remedial measures will be provided.
- D. The District will ensure that, within 10 calendar days of each meeting, the student's parent or guardian is notified, in writing, of:
- the decisions made at the meeting, including all decisions regarding compensatory services or other remedial measures; and
  - applicable procedural safeguards.
- E. The District will ensure that, within 10 calendar days of any meeting that results in the creation of a plan for compensatory services or other remedial measures, the student's parent or guardian is notified, in writing, of the plan.
- F. The District will ensure that the plans for compensatory services or other remedial measures are implemented with fidelity.

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<sup>4</sup> This group may be a properly constituted IEP team.

<sup>5</sup> See 34 C.F.R. Sections 104.35-36.

<sup>6</sup> *i.e.*, knowledge of the student and whether the student was improperly not evaluated, evaluated, placed, or exited.

**Reporting Requirement 1:** Within 45 calendar days of receiving notice from OCR that no further reporting is required for Term 1, the District will submit to OCR, for each student:

- A. a copy of the meeting invitation sent to the student's parent or guardian;
- B. a list of the individuals who attended the meeting, including each individual's name and title or position;
- C. a copy of minutes or notes and records from the meeting showing the perspectives shared, information considered, and decisions made, or a written summary of the Team's discussion;
- D. a copy of the written notice of the determinations made at the meeting that was sent to the student's parent or guardian;
- E. 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;
- F. documentation demonstrating that the District provided the student's parent or guardian with notice of applicable procedural safeguards; and
- G. all other related communications with the student's parent or guardian (if any).

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 1.<sup>7</sup>

**Reporting Requirement 2:** Within 90 calendar days of receiving OCR's notice that no further reporting was required for Term 2 – Reporting Requirement 1, the District will submit to OCR documentation demonstrating that the plans for compensatory services or other remedial measures, as determined by students' Teams, were implemented or are being implemented. The District will promptly and fully address OCR's concerns, if any, until the OCR notifies the District that no further reporting is required for Reporting Requirement 2 or Term 2.<sup>8</sup>

### **TERM 3: STAFF TRAINING**

- A. The District will train relevant staff (specified in Part B below) about:<sup>9</sup>
  - identification and eligibility under Section 504 and Title II;
  - evaluation and placement under Section 504 and Title II;
  - free appropriate public education under Section 504 and Title II;
  - English learners with disabilities under Section 504 and Title II and Title VI; and
  - discriminatory different treatment under Title VI.
- B. The District will train, at a minimum:

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<sup>7</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.

<sup>8</sup> This case will remain in monitoring until all compensatory services or remedial measures (if any) have been provided.

<sup>9</sup> The training will include information about how the training topics relate to the District's efforts to reduce racial and ethnic disproportionality in special education.

- districtwide, regional, and school-based Section 504 coordinators;
- relevant staff in the District's Special Education Department;
- relevant staff in the District's Language Support Office;<sup>10</sup>
- districtwide or regional MTSS and Positive Behavioral Interventions and Supports (PBIS) staff;
- school-based coordinators or chairs of MTSS, SSTs, or special education;
- special education teachers;
- English learner teachers;
- school psychologists; and
- school administrators.<sup>11</sup>

**Reporting Requirement 1:** Within 60 calendar days of the District signing this Agreement, the District will submit to OCR:

- A. draft training materials;
- B. the name(s), title(s) or position(s), and qualifications of one or more qualified individuals to provide the training;<sup>12</sup> and
- C. a list of proposed individuals to be trained, including each person's name, location,<sup>13</sup> and title or position.

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

**Reporting Requirement 2:** Within 60 calendar days of the District receiving notice from OCR that the training materials, trainer(s), and trainee list are approved, and that no further reporting is required for Term 3 – Reporting Requirement 1, the District will ensure that all required staff are trained and will submit to OCR, in writing:

- A. the date(s), time(s), and location(s) of the training session(s);
- B. confirmation that the approved training materials were used;
- C. confirmation that the approved trainer(s) was used;
- D. the names and titles or positions of staff who attended the training; and
- E. if applicable, the names and titles or positions of staff who did not attend the training, an explanation for each person's absence, and a plan to train each person.

The District will promptly and fully address OCR's feedback, if any, until the District receives notice from OCR that no further reporting is required for Reporting Requirement 2 or Term 3.

#### **TERM 4: MEMORANDUM TO STAFF, DISTRICT OVERSIGHT, AND ONGOING MONITORING BY OCR**

- A. The District will send a memorandum ("Memo") to all staff specified in Term 3(B) regarding the topics specified in Term 3(A). The Memo will also:

<sup>10</sup> *e.g.*, coordinators of culturally and linguistically diverse education.

<sup>11</sup> *e.g.*, principals, assistant principals, deans, etc.

<sup>12</sup> If requested by the District, OCR staff are available to conduct the training.

<sup>13</sup> *i.e.*, central office department or school name.

- notify staff that they may report, without facing any retaliation, questions and concerns regarding the topics in the memo; and
  - include the names, titles or positions, phone numbers, and email addresses of at least two designated central office administrators who possess the knowledge and authority to address questions and concerns.
- B. The District will address all concerns reported, if any, in a timely, thorough, and impartial manner. The District will not retaliate against any staff member because he or she reported questions or concerns.
- C. The District will maintain all documentation – throughout at least the end of the 2021-2022 school year (SY) related to questions or concerns reported and the handling of the reports, including, but not necessarily limited to, records of:
- communications with the staff member;
  - investigations conducted or answers provided; and
  - remedial measures taken.

**Reporting Requirement 1:** Within 60 calendar days of this Agreement being signed by the District, the District will submit to OCR a draft of the Memo. The District will promptly and fully address OCR's feedback, if any, until OCR notifies the District that the Memo is approved and no further reporting is required for Reporting Requirement 1.

**Reporting Requirement 2:** Within 20 calendar days of the District receiving notice from OCR that the Memo is approved and no further reporting is required for Term 4 – Reporting Requirement 1, the District will disseminate the approved Memo to required staff and submit to OCR documentation showing that the Memo was disseminated as required.<sup>14</sup> 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 2.

**Reporting Requirement 3:** By October 29, 2021 (two weeks after the end of the first quarter of the 2021-2022 school year (SY)), the District will submit to OCR copies of the documentation required by Term 4(C). 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 3.

**Reporting Requirement 4:** By December 31, 2021 (two weeks after the end of the second quarter of the 2021-2022 SY), the District will submit to OCR copies of the documentation required by Term 4(C). 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 4.

**Reporting Requirement 5:** By April 1, 2022 (two weeks after the end of the third quarter of the 2021-2022 SY), the District will submit to OCR copies of the documentation required by Term 4(C). 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 5.

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<sup>14</sup> e.g., emails and screenshots.

**Reporting Requirement 6:** By June 9, 2022 (two weeks after the end of the four quarter of the 2021-2022 SY), the District will submit to OCR copies of the documentation required by Term 4(C). 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 6 or Term 4.

#### **TERM 5: NOTIFICATION TO OCR OF PARENT OR GUARDIAN GRIEVANCES AND COMPLAINTS**

A. The District will maintain all documentation related to complaints or grievances filed – orally or in writing – by parents or guardians regarding improperly not evaluating, evaluating, placing, or exiting any Hispanic (or Latino), African American (or Black), American Indian (or Native American), or Alaska Native students, including, but not necessarily limited to, records of:

- the complaint or grievance;<sup>15</sup>
- investigations conducted;
- outcomes of any investigations; and
- remedial measures taken.

**Reporting Requirement 1:** By December 31, 2021 (two weeks after the end of the second quarter of the 2021-2022 SY), the District will submit to OCR copies of the documentation required by Term 5(A). 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 1.

**Reporting Requirement 2:** By June 9, 2022 (two weeks after the end of the fourth quarter of the 2021-2022 SY), the District will submit to OCR copies of the documentation required by Term 5(A). 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 2 or Term 5.

#### **UNDERSTANDINGS AND ACKNOWLEDGMENTS**

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, 100.10), 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.
- By signing this Agreement, the District agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement.
- 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, Title II, Title VI, and their implementing regulations.
- Upon completion of the obligations under this Agreement, OCR will close this case.

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

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<sup>15</sup> Oral complaints will be reduced to writing for purposes of reporting to OCR.



**FOR BOULDER VALLEY SCHOOL DISTRICT:**

/s/  
Dr. Rob Anderson, Superintendent

July 27, 2021  
Date