

RESOLUTION AGREEMENT
Jefferson County Public Schools
OCR Case 08-21-1231

Jefferson County Public Schools (“District”) enters into this Agreement to resolve the allegations in the above-referenced case. 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. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District.

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

TERM I – TEAM MEETING

Within 40 calendar days of this Agreement being signed, the District will convene a meeting of a group of knowledgeable people (“Team”) to, at a minimum: (a) discuss whether the Student is owed compensatory services or other remedial measures (at no cost to the Student or Complainant) as a result of delays in homebound services being provided to the Student and/or as a result of placement decisions during the 2020-2021 school year (SY);¹ and, if so, (b) create a written plan (“Plan”) to provide compensatory services or other remedial measures (collectively, “Remedies”) to the Student.

The group of knowledgeable people will include, at a minimum, individuals who are knowledgeable about: (a) the Student’s placement(s) and services during the 2020-2021 SY; (b) the District’s program and services for homebound students; and (c) the Student’s disability or disabilities, disability-related needs, and academic and functional performance.

At least 20 calendar days prior to the meeting, the District will invite the Complainant, in writing and by phone, to: (a) attend the meeting; (b) invite other individuals who are knowledgeable about the Student to attend the meeting; and (c) share information and her perspective during the meeting. In the invitation, the District will, at a minimum, explain the purpose of the meeting, include an agenda, and notify the Complainant that an impartial facilitator will conduct the meeting. The District will document its invitations to the Complainant and any responses from the Complainant.

If the Complainant accepts the District’s offer to attend the meeting, the District will: (a) ensure that the meeting occurs at a date, time, and location that are mutually agreed upon by the District and Complainant; and (b) arrange for a qualified, impartial facilitator to conduct the meeting (at no cost to the Student or Complainant).

¹ The Complainant alleged that the District’s Chief Student Success Officer unilaterally determined the Student’s placement details and delayed services for the Student.

The District will ensure that:

- the Team and meeting are consistent with the procedural requirements of Section 504;²
- the Team carefully considers all relevant information, including information provided by the Complainant, if she attends, and her invitees, if any;
- any decisions made at the meeting reflect the judgment of the Team, not the judgment of a single individual; and
- an audio recording of the meeting is made for purposes of OCR’s review.

The Plan, if one is created, will specify the:

- type(s) of Remedies to be provided;
- amount(s) of Remedies to be provided;
- name(s) and title(s)/position(s) of the individuals(s) who will be responsible for providing the Remedies;
- the location where the Remedies will be provided;
- the schedule for the provision of the Remedies; and
- the name and title/position of the person who will ultimately be responsible for the provision of the Remedies, as planned.

Within 10 calendar days after the meeting, the District will notify the Complainant, in writing, of the decisions made at the meeting and provide the Complainant with a copy of the Plan (if applicable) and applicable procedural safeguards.

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

Reporting Requirement A: Within 60 calendar days of this Agreement being signed, the District will submit to OCR:

- i. a copy of all communications³ between District staff and the Complainant related to the meeting, including documentation demonstrating that the Complainant:
 - a. was invited to participate in the meeting and had the opportunity to invite others to attend the meeting and share information and her perspective during the meeting;
 - b. received a copy of the District’s applicable procedural safeguards;
 - c. was notified of the Team’s decisions made at the meeting; and
 - d. was notified of the Plan (if applicable);
- ii. a list of all individuals who attended the meeting, including each individual’s name and title/position;
- iii. the name, title/position, employer, and qualifications of the facilitator, if one is used; and
- iv. a copy of minutes or notes from the meeting reflecting:
 - a. the information that the Team considered in reaching its decision; and
 - b. that the Team carefully considered input from persons knowledgeable about the topics specified in Term I.

² *i.e.*, 34 C.F.R. §§ 104.35-36.

³ For purposes of this Agreement, “communications” include, but are not limited to, all emails, letters, text messages, electronic messages, and forms.

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 and any 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 A.⁴

Reporting Requirement B (Conditional): If a Plan is created, the District will submit to OCR, within 90 calendar days of receiving notification from OCR that no further reporting is required for Term I – Reporting Requirement A, documentation demonstrating that the District has provided or is in the process of providing the compensatory services or remedial measures as detailed in the Plan. The District will promptly and fully address OCR’s feedback, if any, until OCR notifies the District that no further reporting is required for Term I – Reporting Requirement B or Term II.⁵

TERM II – RETALIATION INVESTIGATION

The District will conduct a prompt and equitable (*i.e.*, impartial, thorough, reliable, etc.) investigation into whether District staff retaliated against the Complainant and Student because the Complainant advocated for the Student’s rights and privileges secured by Section 504 and Title II.⁶ If the investigation reveals that District staff retaliated against the Complainant or Student, the District will take prompt and effective steps that are reasonably calculated to end the retaliation, eliminate any effects of the retaliation, and prevent the retaliation from recurring.⁷

Reporting Requirement A: Within 60 calendar days of this Agreement being signed, the District will conduct the investigation required by Term II and 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, including dates, the names and titles or positions of witnesses, and the records and communications reviewed;
- iii. copies of records from the investigation;⁸
- iv. a description of the determination regarding whether retaliation occurred and the rationale for the conclusion; and
- v. if retaliation is found, the remedial measure(s) the District took or will take.

⁴ 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.

⁵ This case will remain in monitoring until all compensatory services or remedial measures (if any) have been provided.

⁶ The Complainant alleged that the retaliatory adverse actions included: (a) filing a truancy report in August 2020; (b) insisting on two District staff members (or contracted individuals) be present during the Student’s homebound services; (c) insisting that homebound services be recorded; (d) repeatedly pausing or cancelling homebound services; (e) requiring the Student to attend [XXXX] Elementary School; and (f) the District’s Chief Student Success Officer, in April 2021, encouraging the Student’s Jefferson County case worker to investigate the Complainant and Student.

⁷ *e.g.*, taking disciplinary action against staff members who engaged in retaliation.

⁸ *e.g.*, records reviewed, witness statements, interview notes, recordings reviewed, policies and procedures referenced, etc.

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

TERM III – TRAINING

The District will ensure that the District's Chief Student Success Officer and all relevant Special Education Department and [XXXX] Elementary School staff, at a minimum, are trained about:

- free appropriate public education (FAPE), including, but not necessarily limited to, the definition of the term and District's duty to provide FAPE to students with disabilities;
- requirements for placement procedures under Section 504 and Title II, including, but not necessarily limited to, ensuring that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- retaliation, including a description of protected activities and adverse actions, as well as Section 504's and Title II's prohibitions on retaliation.

Relevant Special Education Department staff include the Directors and Assistant Directors. Relevant staff at [XXXX] Elementary School include the principal, assistant principals, special education case managers, and special education teachers.

Reporting Requirement A: Within 30 calendar days of this Agreement being signed, the District will arrange for OCR staff to conduct (no later than October 31, 2021) the training required by Term III.⁹

Reporting Requirement B: Within 20 calendar days of OCR staff conducting the training required by Term III, the District will submit to OCR:

- i. the names and titles/positions of all individuals who attended the training; and
- ii. if applicable, the name(s) and title(s)/position(s) of all individuals who did not attend the training, an explanation for each person's absence, and a plan to train each person (if possible).

The District will promptly and fully address OCR's concerns, if any, until OCR notifies the District that no further reporting is required for Term III.

The District understands and acknowledges the following:

- 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 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

⁹ On July 7, 2021, the District invited OCR staff to conduct the training.

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. Susan Leach, Chief Student Success Officer

July 15, 2021
Date