

Resolution Agreement

Jefferson County Public Schools OCR Case Number 08-22-1120

In order to resolve the allegations in OCR Case Number 08-22-1120 filed against Jefferson County Public Schools (District) and opened for investigation by the U.S. Department of Education (Department), Office for Civil Rights (OCR), pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 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. §§ 12131– 65, and its implementing regulation at 28 C.F.R. Part 35, the District will implement the following terms of this Resolution Agreement (Agreement).

During the course of OCR’s investigation, the District indicated its willingness to take steps necessary to ensure compliance with Section 504 and Title II. The Agreement requirements are aligned with the identified issue and consistent with Section 504’s and Title II’s regulatory requirements. The District’s decision to enter into this agreement is not an admission of liability or wrongdoing, nor shall it be construed as such.

Term 1: Individual Relief

1. By August 26, 2022, the District will convene a meeting of a group of people knowledgeable about the Student, the meaning of evaluation data, and placement options (the Student’s team) to discuss: (a) whether the Student’s Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) were fully implemented during the 2021-2022 school year (SY)¹; (b) if the Student’s IEP and/or BIP were not fully implemented, whether the District’s failure to implement the Plan(s) resulted in the Student being denied a free appropriate public education (FAPE); and (c) whether the Student was denied FAPE when the District did not provide any educational services from XXX until XXX.

If the Student’s team determines that the Student’s IEP and/or BIP were not fully implemented, and/or that the Student was denied FAPE, the Student’s team will then determine the amount and nature of compensatory education or related services, if any, the District will provide.

If the Student’s team determines that compensatory education or related services are necessary, the team will develop a plan for providing those services to the Student. The District shall promptly notify the Complainant, in writing, of the compensatory services being offered at no cost to the Student and Complainant and the proposed initiation date of such services.

REPORTING REQUIREMENT A: By August 26, 2022, the District will hold the

¹ Specifically, the group will consider whether the Student: was allowed to take breaks when he asked for them; was called on in class in front of other children; received assignment accommodations in gym class; received his weekly document with “can and must dos”; and received shortened assignments.

meeting to determine: (a) whether the Student's Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) were fully implemented during the 2021-2022 school year (SY); (b) if the Student's IEP and/or BIP were not fully implemented, whether the District's failure to implement the Plan(s) resulted in the Student being denied a free appropriate public education (FAPE); and (c) whether the Student was denied FAPE when the District did not provide any educational services from XXX until XXX.

By September 9, 2022, the District will submit documentation to OCR that includes:

- i. a list of the individuals who attended the meeting described in Agreement Term 1 by name, title, and role in the meeting;
- ii. documentation of the District's invitation to the Complainant to attend the meeting and obtain her input;
- iii. a summary of information the team considered in reaching its determination regarding whether, and if so, what compensatory services are appropriate for the Student;
- iv. notes from the meeting demonstrating that the team carefully considered input from persons knowledgeable about the Student, the meaning of evaluation data, and placement options;
- v. if applicable, a plan for the prompt provision of compensatory services to the Student at no cost to the Complainant;
- vi. if applicable, written notice to the Complainant of the compensatory education or other remedial measures offered by the District; and
- vii. evidence that the District provided the Complainant with notice of her and the Student's rights and applicable procedural safeguards under Section 504.

If the Complainant declines the invitation to the meeting, the District shall provide a copy of the invitation to the meeting and any communications with the Complainant showing the Complainant's declination.

If the District determines that no compensatory services will be provided, the District will provide to OCR a written explanation of the reasons for that determination, along with any supporting documentation. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulations implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations, and notify the District when it has completed this review.²

The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that the District has fulfilled Reporting Requirement 1(A).

² Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by a Section 504 team that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the Section 504 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 other remedial measures.

REPORTING REQUIREMENT B: After OCR has determined that the Section 504 procedural requirements were met in making the determination under Agreement Term 1, the District will take steps to implement the compensatory services and remedial measures, if any, agreed upon by the team convened in accordance with the requirements of Term 1.

Within 60 calendar days from the date of OCR's acceptance of the proposed compensatory services or other remedial measures, if any, the District will provide documentation to OCR that it has provided, or is in the process of providing, the compensatory services or other remedial measures. If the Complainant declines the District's offer of compensatory services or other remedial measures, the District shall provide to OCR a copy of its offer of compensatory services to the Complainant and any notes and records of communications with the Complainant showing the Complainant's declination. For compensatory services or other remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for providing services, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services or other remedial measures are being provided as specified. The District will provide OCR with periodic updates on the implementation of compensatory services until all compensatory services have been provided.

The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that the District has fulfilled Reporting Requirement 1(B).

Term 2: Policy Review

2. The District will review its policies and procedures to ensure that the District adequately addresses the Section 504 requirement to conduct a reevaluation of a student with a disability prior to making a significant change in the student's placement. Specifically, the District will ensure that its policies and procedures reflect that a reevaluation or manifestation determination review may be necessary when a student with a disability is subject to a non-disciplinary removal from school, such as through a Title IX-related process, if the non-disciplinary removal results in the student being excluded from their educational program.

The District will identify the relevant policies and procedures currently in effect; convene a group of District staff to review the identified policies and procedures; revise the policies and procedures as necessary; and adopt the revised policies and procedures within the timeframe noted below in Reporting Requirement 2(B). The District agrees to update all student, parent, or staff handbooks where information regarding relevant policies and procedures is present.

The District will disseminate the revised policies and procedures by email distribution to all District and school administrators, and school administrators will be directed to distribute and discuss the revised policies and procedures with school-based staff. The dissemination will include a web link to the revised policies and procedures.

REPORTING REQUIREMENT A: By September 30, 2022, the District will submit to

OCR documentation that demonstrates the District has: identified all relevant policies and procedures; convened a group of District staff for review; and revised the policies and procedures pursuant to the requirements of Term 2. The District will include in its submission a draft of the proposed revisions for OCR's review and approval.³

The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the revised policies and procedures and notice from OCR that no further reporting is required for Reporting Requirement 2(A).

REPORTING REQUIREMENT B: Within 30 calendar days of receiving OCR's final approval of the revised policies and procedures, the District will submit to OCR documentation which demonstrates the District has: (i) formally adopted the revised policies and procedures; (ii) disseminated the adopted policies and procedures to all District and school administrators; and (iii) updated all student, parent, or staff handbooks where information regarding relevant policies and procedures is present.

The District will promptly and fully address OCR's concerns, if any, until the District receives notice from OCR that no further reporting is required for Reporting Requirement 2(B).

Term 3: Training

3. The District will either select one or more qualified individuals to train all Community Superintendents, the District's Title IX Coordinator, District School Safety Directors, and the administrators, building-level 504 coordinators, teachers and related service providers at XXX School and XXX XXX School (together, the Schools) or arrange for OCR to conduct training to the same audience that addresses, at a minimum:
 - the definition of disability under Section 504;⁴
 - the District's obligation to provide a free appropriate public education (FAPE) to all qualified students;⁵
 - educating students with disabilities in the least restrictive environment;⁶
 - the evaluation and placement of students with disabilities, including the need to conduct a reevaluation prior to making a significant change in placement;⁷
 - the policies and procedures that were revised consistent with the requirements of Term 2.⁸

³ The District will submit the revised policies and procedures by submitting a red-lined version of the proposed changes; a clean copy of the proposed final policies and procedures; and a red-lined version of student, parent, and staff handbooks, if any.

⁴ See 34 C.F.R. § 104.3

⁵ See 34 C.F.R. § 104.33.

⁶ See 34 C.F.R. § 104.34.

⁷ See 34 C.F.R. §§ 104.35-36.

⁸ If OCR provides the required training, the District will ensure that a highly qualified employee is present to discuss the revised policies and procedures.

The training will be completed by November 18, 2022 or within 30 calendar days of OCR's approval of the policies and procedures updated in accordance with Term 2 of this Agreement and the training material(s) and trainer(s), whichever is later. The District may invite additional staff to participate.

REPORTING REQUIREMENT A: If the District arranges for OCR to conduct the required training, within seven (7) calendar days after OCR conducts the training described herein, the District will provide OCR with documentation reflecting that the individuals listed in Term 3 participated.

The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that Reporting Requirement 3(A) has been satisfied. If the District arranges for OCR to conduct the required training and OCR determines the District has satisfied Reporting Requirement 2(A), no further reporting will be required for Agreement Term 3.⁹

REPORTING REQUIREMENT B: If the District intends to conduct the training, within 14 calendar days of the date this Agreement is signed, the District will submit to OCR for approval the name(s) and qualifications of the highly qualified employee(s) or independent third-party consultant(s) (Trainer(s)) the District proposes to use to fulfill Agreement Term 3. The District will promptly and fully address OCR's concerns, if any, until the District receives notification from OCR that the Trainer(s) are approved.

REPORTING REQUIREMENT C: If the District intends to conduct the training, within 30 calendar days of OCR's approval of the Trainer(s), the District will submit to OCR documentation for the training described in Agreement Term 3. The documentation will include copies of all training materials the District intends to use, which are subject to OCR's review and approval. The District will promptly and fully consider and respond to OCR's feedback, if any, until the District receives notification from OCR that the training materials and plan are approved.

REPORTING REQUIREMENT D: If the District intends to conduct the training, within 30 calendar days of OCR's approval of the training material(s) and trainer(s) or by August 19, 2022, whichever is later, the District will provide OCR with documentation that demonstrates that the training has been completed. This documentation must include, minimally, the date(s) of the training, a list of all School A and School B staff, related service providers, and administrators, and a list of training participants. If any necessary training attendees have not completed the training by this reporting deadline, please provide a plan to ensure that the individual(s) are trained. 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 3(D).

Term 4: Assurance

⁹ If OCR provides the required training, the District will not be required to submit documentation consistent with Reporting Requirements 3(B)-(D).

4. The Superintendent will issue a statement that will be published on the District's enrollment website, stating that the District does not discriminate based on disability when making enrollment decisions. The statement will invite any person who believes they have been denied enrollment based on their disability to report the alleged discrimination and identify the process by which one may file such a report.

REPORTING REQUIREMENT A: By September 30, 2022, the District will submit to OCR a draft statement written pursuant to Term 4. The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the statement.

REPORTING REQUIREMENT B: Within 30 days of receiving OCR's final approval of the statement, the District will submit to OCR documentation that demonstrates the District has published the statement on its enrollment website. The District will promptly and fully address OCR's concerns, if any, until the District receives notice from OCR that the District has fulfilled Reporting Requirement 4(B).

The District understands that by signing this Agreement, it agrees to provide data and other 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 and their implementing regulations at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, respectively, which were at issue in this case.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has demonstrated compliance with all terms of this Agreement and is in compliance with Section 504 and Title II and their implementing regulations at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, respectively, which were at issue in 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 the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Matt Palaoro, Chief Student Success Officer
For Jefferson County Public Schools

Date