

## Resolution Agreement

### Mesa County Valley School District 51 OCR Case Number 08-22-1237

In order to resolve the allegations in OCR Case Number 08-22-1237 filed against Mesa County Valley School District 51 (District) and opened for investigation by the U.S. Department of Education, 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 October 14, 2022, the District will convene a group of persons knowledgeable about XXX, evaluation data, and placement options to determine whether the District, at Mesa Valley Community School (School), denied XXX an opportunity to participate in XXX XXX because XXX was not performing work at grade level because of XXX disability. If the group determines that XXX was denied an opportunity to participate XXX XXX because of his disability, the group will discuss whether it owes XXX compensatory education or related services.

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

**REPORTING REQUIREMENT A:** By October 14, 2022, the District will hold XXX’s meeting to consider whether XXX was denied an opportunity to participate in XXX XXX because of XXX disability and whether the District owes XXX compensatory education. By October 21, 2022, the District will submit documentation to OCR that includes:

- i. a list of the individuals who attended the meeting(s) 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(s) and obtain her input;<sup>1</sup>

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<sup>1</sup> The District will send an invitation to the Complainant’s last known email address and last known physical address.

- iii. a summary of information the team considered in reaching its determination regarding whether and, if so, what compensatory services are appropriate for XXX;
- iv. notes from the meeting demonstrating that the team carefully considered input from persons knowledgeable about XXX, the meaning of evaluation data, and placement options;
- v. if applicable, a plan for the prompt provision of compensatory services to XXX 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 XXX's rights and any 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.

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) and no further reporting is required.

**REPORTING REQUIREMENT B:** After OCR has determined that the District has fulfilled Reporting Requirement 1(A), the District will take steps to implement the compensatory services and remedial measures, if any, agreed upon by XXX's team.

Within 120 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)

and no further reporting is required.

### Term 2: Policies and Procedures

2. The District shall submit to OCR, for review and approval, the School's revised enrollment procedures (Procedures). The Procedures must state:
  - a. the provisions of 34 C.F.R. § 104.37 require that school districts provide students with disabilities an equal opportunity to participate in and benefit from the districts' nonacademic services, including their existing extracurricular activities and enrichment programs, such as those provided by the School;
  - b. the District (or School, if the District has delegated this responsibility to the School) must conduct an individualized inquiry to determine whether reasonable modifications or necessary aids and services would provide a student with a disability with an equal opportunity to participate in an extracurricular activity, such as the program offered by the School;
  - c. the District (or School, if the District has delegated this responsibility to the School) must make reasonable modifications to an activity if necessary to allow participation by the student with a disability in all aspects of the activity; and
  - d. to determine whether a reasonable modification is legally required, the District (or School, if the District has delegated this responsibility to the School) must first engage in an individualized inquiry to determine whether the modification is necessary and whether there exist reasonable modifications that could be made, or aids and services provided.<sup>2</sup>

**REPORTING REQUIREMENT A:** Within fourteen (14) calendar days of the date this Agreement is executed, the District will provide to OCR a copy of the School's revised Procedures, which incorporate the requirements outlined at Agreement Term 2(a)-(d). The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the Procedures.

**REPORTING REQUIREMENT B:** Within ten (10) calendar days of receiving OCR's final approval of the Procedures, the District will ensure that the Procedures are published on the District and School's webpages and provide OCR with the links to the webpages containing the Procedures.

### Term 3: Letter to Parents

3. The District and School will send a letter to all parents and guardians of students who were enrolled at the School during the 2021-2022 school year (SY) to explain that the School's communications regarding the enrollment of students with disabilities during the Spring 2022 semester were incorrect. The letter shall, at a minimum:
  - a. state that neither the District nor School discriminate based on disability in enrollment;

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<sup>2</sup> This will require a fact-intensive, case-by-case analysis.

- b. state that the District is committed to providing students with disabilities a free appropriate public education (FAPE);
- c. explain how the School's enrollment process affords students with disabilities an equal opportunity to participate in and benefit from the School's activities and programs;
- d. state that, for each qualified student with a disability who wishes to enroll in the School, the School will engage in an individualized inquiry to determine the student's needs;
- e. state that the individualized inquiry will involve the student's parents and will be conducted for the purpose of determining how the School may support the student to ensure an equal opportunity for them to participate in and benefit from the School's activities and programs;
- f. provide a link to and/or copy of the School's revised Procedures; and
- g. provide contact information for the District's Section 504 Compliance officer and information about where to find relevant complaint procedures.

**REPORTING REQUIREMENT A:** Within ten (10) calendar days of receiving OCR's final approval of the Procedures required by Agreement Term 2, the District will provide to OCR:

- a list of all parents and guardians of students enrolled at the School during the 2021-2022 SY, along with their contact information; and
- a draft letter from the School, to be addressed to the identified parents and guardians, that incorporates the requirements outlined at Agreement Term 3(a)-(g).

The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the letter.

**REPORTING REQUIREMENT B:** Within ten (10) calendar days of receiving OCR's final approval of the letter, the District will send the approved letter to each parent/guardian of a student at the School during the 2021-2022 SY. The letter may be sent via email, read receipt requested, or certified mail. The District will provide OCR with evidence that the letters were sent.

#### Term 4: Notices

4. The District and School will display notices (Notices) on their websites to provide assurance that the School does not discriminate based on disability when enrolling students. The Notices shall, at a minimum:
  - a. state that neither the District nor School discriminate based on disability in enrollment;
  - b. state that the District is committed to providing students with disabilities a free appropriate public education (FAPE);
  - c. explain how the School's enrollment process affords students with disabilities an equal opportunity to participate in and benefit from the School's activities and programs;

- d. state that, for each qualified student with a disability who wishes to enroll in the School, the School will engage in an individualized inquiry to determine the student's needs;
- e. state that the individualized inquiry will involve the student's parents and will be conducted for the purpose of determining how the School may support the student to ensure an equal opportunity for them to participate in and benefit from the School's activities and programs; and
- f. provide contact information for the District's Section 504 Compliance officer and information about where to find relevant complaint procedures.

**REPORTING REQUIREMENT A:** Within ten (10) calendar days of receiving OCR's final approval of the Procedures required by Agreement Term 2, the District will provide to OCR a draft Notice, that incorporates the requirements outlined at Agreement Term 4(a)-(f). The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the Notice.

**REPORTING REQUIREMENT B:** Within ten (10) calendar days of receiving OCR's final approval of the Notice, the District will post the approved Notice to the District and School's webpages and provide OCR with the links to the webpages containing the Notices.

#### Term 5: Training

5. The District will provide training regarding disability-based discrimination and the School's new Procedures to both District administrators tasked with overseeing the School and all School staff and administrators who are involved in teaching or supervising students. The training will include, at a minimum, a detailed review of the revised Procedures and the requirements of the Section 504 regulation at 34 C.F.R. § 104.37.

The training will be completed within 30 calendar days of OCR's approval of the training material(s) and trainer(s).<sup>3</sup>

**REPORTING REQUIREMENT A:** Within thirty (30) calendar days of the Agreement being 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 5. 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 B:** Within ten (10) calendar days of OCR's approval of the revised Procedures, the District will submit to OCR draft materials for and a plan to provide the training described in Agreement Term 5. The District will promptly and fully

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<sup>3</sup> The training may be conducted in-person or remotely, and synchronously or asynchronously, so long as the District designates an individual to field questions and concerns that arise from the training and displays that individual's name, title, and contact information prominently in the training materials.

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 C:** Within thirty (30) calendar days of OCR’s approval of the training material(s), 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 District administrators tasked with overseeing the School and all School staff and administrators who are involved in teaching or supervising students, and a list of training participants. If any identified District administrators or School staff or administrators 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 5(C).

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 close the monitoring of this Agreement once OCR determines that 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 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.

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Dr. Brian Hill, Superintendent  
For Mesa County Valley School District 51

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Date

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Ms. Laura Jean Downs, Director  
For Mesa Valley Community Schools

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Date