

**Voluntary Resolution Agreement
Pueblo County School District 70
OCR Case Number 08-22-1255**

The United States Department of Education (Department), Office for Civil Rights (OCR), initiated investigation of the above-referenced complaint against Pueblo County School District 70 (District) and XXX (the School), pursuant to Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 C.F.R. Part 104 (Section 504) and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II), which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department.

During OCR's investigation, before OCR had made any findings, the District and School indicated their willingness to take steps necessary to ensure compliance with Section 504 and Title II. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement.

Accordingly, to resolve the issues of this investigation, the District and School voluntarily agree to take the following actions. This agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District or School.

Individual Remedies for the Student

1. **Within 30 calendar days of signing this Agreement**, the District will evaluate the Student in all specific and related areas of educational need for which he has not yet been evaluated by the District or School, including XXX.

REPORTING REQUIREMENT 1: Within 15 days of completing the evaluation of the Student in all areas of need, the District will provide documentation to OCR, such as the evaluation reports and data, indicating that the District has complied with Term 1.

2. **Within 60 calendar days of signing this Agreement**, the District will convene an IEP meeting with a group of persons knowledgeable about the Student, including a member of the School, the meaning of the evaluation data, and placement options within the District to determine:
 - A. Whether additional regular or special education aids and related services should be provided to the Student and in what educational setting;
 - B. Whether a health care plan should be developed for the Student; and
 - C. What, if any, compensatory services or remedial measures the District should

provide to the Student (at no cost to the Student's parents) as a result of the School's delays in evaluating the Student during the 2020-21 and 2021-22 school years (this will not include absences unless there is evidence the absence was caused by a disability -- i.e., not caused by COVID or other family related absences).

The District shall notify the Student's parents in writing of the District's determinations made pursuant to this Term and provide them notice of the District's system of procedural safeguards.

REPORTING REQUIREMENT 2: Within 10 calendar days of convening the IEP meeting for the Student, the District will provide documentation to OCR indicating that the District complied with Term 2. This report shall include, at a minimum, a copy of the Student's IEP, if amended; a written statement reflecting the determination made by the team with regard to compensatory services or remedial measures and the information considered in reaching that determination; and any notices provided to the Student's parents in accordance with Term 2.

3. If the IEP team determines that compensatory services or remedial measures are necessary for the Student in accordance with Term 2, **within 20 calendar days of said determination**, the IEP team will develop a compensatory education plan (Plan) that specifies, at a minimum, the type of services to be provided to the Student, the manner in which the services will be provided, when the services will be provided, the individuals responsible for providing the services, and the length of time the services will be provided. The IEP team will invite a School representative to participate in the development of the Plan. The Plan will specify that the compensatory and/or remedial services contained therein will be provided by the District and/or the School and paid for by the School. The District will promptly notify the Student's parents, in writing, of the team's decisions regarding compensatory services or remedial measures and provide the Student's parents with a copy of the Plan, if one was created.

REPORTING REQUIREMENT 3A: If the IEP team determines that compensatory services or remedial measures are necessary for the Student, then **within 30 calendar days of said determination**, the District will provide OCR with a copy of the Plan developed to provide the Student with those compensatory services, a list of individuals who participated in the development of the Plan, a summary of the information the team considered in developing the Plan, and the communications with the Student's parents regarding the Plan.

REPORTING REQUIREMENT 3B: If a Plan is developed pursuant to Term 3, then the District will provide documentation to OCR demonstrating the provision of the services in the Plan **within 30 calendar days of providing OCR with a copy of the Plan, and every 60 calendar days thereafter, until the District has completed providing all the services set forth in the Plan.**

Individual Remedies for the Complainant

4. **Within 30 calendar days of signing this Agreement**, the School will offer the Complainant in writing the opportunity to work as a XXX for the School provided that she submits all required documentation within 30 calendar days of receiving the written communication. The letter will clearly set forth the documentation that is needed by the School to re-employ the Complainant.

REPORTING REQUIREMENT 4: **Within 60 calendar days of signing this Agreement**, the School will provide OCR with a copy of the written communication that was sent to the Complainant and any responses and/or documentation received from the Complainant in response.

Policies and Procedures

5. **With 60 calendar days of signing this Agreement**, the School will draft for OCR's review and approval a memorandum to all current administrators, teachers, and staff of the School regarding the School's obligations under Section 504 and Title II that will include, at a minimum:
 - A. The definition of "handicapped persons" under Section 504 and Title II;
 - B. The legal requirements for "Child Find" and evaluation of persons who, because of disability, need or are believed to need special education or related services;
 - C. The legal requirements regarding requesting information from parents or guardians regarding a medical diagnosis or assessment;
 - D. Examples of indicators that may trigger an employee referral of a student with a disability or suspected disability for an evaluation (e.g., a student has a pattern of disciplinary referrals, a student has a pattern of poor attendance, a student has a medical diagnosis, a student is prescribed medication);
 - E. Steps employees of the School must take upon learning that a student may be eligible under Section 504 and Title II (e.g., who to notify and how); and
 - F. The prohibitions on retaliation in Section 504 and Title II and their implementing regulations.

REPORTING REQUIREMENT 5: **Within 75 calendar days of signing this Agreement**, the School will provide a copy of the draft memorandum required by Term 5 to OCR for review and approval.

6. **Within 15 calendar days of OCR's approval of the draft memorandum required by Term 5**, the School will disseminate the memorandum to all current administrators,

teachers, and staff of the School in whatever manner the School typically communicates important information to employees.

REPORTING REQUIREMENT 6: Within 25 calendar days of OCR's approval of the memorandum required by Term 5, the School will provide OCR with documentation demonstrating the completion of Term 6, including when the memorandum was disseminated, how it was disseminated, and to whom it was disseminated.

7. **Within 60 calendar days of signing this Agreement,** the School will draft for OCR's review and approval revised non-discrimination and anti-retaliation policies and procedures that apply to students, families, and employees and comply with Section 504 and Title II and their implementing regulations. The revised policies and procedures will address all the relevant concerns included in OCR's resolution letter and, at a minimum, include the following:
- A. A statement that the School does not discriminate on the basis of disability in admission or access to, or treatment or employment in, any of its programs or activities;
 - B. Grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination and/or retaliation;
 - C. A statement that the School will not retaliate, intimidate, threaten, coerce, or interfere with any individual in the exercise or enjoyment of any right protected by Section 504, Title II, and its implementing regulations and will take appropriate action against those individuals found to have retaliated; and
 - D. The name, title, and contact information for the School's Section 504/Title II Coordinator.

REPORTING REQUIREMENT 7: Within 75 calendar days of signing this Agreement, the School will provide a copy of its revised non-discrimination and anti-retaliation policies and procedures to OCR for review and approval.

8. **Within 60 calendar days of signing this Agreement,** the School will draft for OCR's review and approval revised attendance and continuing enrollment policies and procedures that address, at a minimum, all the relevant concerns included in OCR's resolution letter, including but not limited to the need for clarification regarding: a) when a Student's illness, injury, or disability will be considered; b) whether the number of absences needed for designations (i.e., probation, chronically absent, truant, habitually truant, referral to truancy court, continuing enrollment) include excused and/or unexcused absences; c) when documentation is needed for an absence to be excused; and d) what type of documentation is needed regarding an illness, injury, or disability for purposes of excusing absences under the School's attendance policies.

REPORTING REQUIREMENT 8: Within 75 calendar days of signing this Agreement, the School will provide a copy of its revised attendance and continuing enrollment policies and procedures to OCR for review and approval.

9. **Within 15 calendar days of OCR’s approval of the revised non-discrimination, anti-retaliation, continuing enrollment, and attendance policies and procedures required by Terms 7 and 8,** the School will publish and disseminate the revised policies and procedures to all families, students, and employees on its website and by using any other of its standard methods for disseminating new policies and procedures that impact the School’s families, students, and employees. Any requirement by OCR that the School make additional revisions to any of these draft policies and procedures shall not delay the publication or dissemination of those policies and procedures that have been approved by OCR.

REPORTING REQUIREMENT 9: Within 25 calendar days of OCR’s approval of the School’s revised non-discrimination, anti-retaliation, continuing enrollment, and attendance policies and procedures, the School will provide OCR documentation demonstrating the completion of Term 9.

Training

10. **Within 90 calendar days of signing this Agreement,** the School will develop training materials regarding the requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act. The training must cover, at a minimum, all the requirements in 34 C.F.R. sections 104.31-36, including the prohibition against discrimination and the requirements regarding free appropriate public education (FAPE), educational setting, evaluation and placement, and procedural safeguards.

REPORTING REQUIREMENT 10: Within 105 calendar days of signing this Agreement, the School will submit for OCR’s review and approval its draft training materials regarding the requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

11. **Within 30 calendar days of OCR’s final approval of the School’s draft training materials,** the School will provide the training regarding Section 504 and Title II of the ADA to all School administrators, teachers, counselors, paraprofessionals, and nurse(s).

REPORTING REQUIREMENT 14: Within 10 calendar days of providing the training, the School will provide OCR with: 1) the name and qualifications of the person who provided the training; (2) the names and job titles of persons attending the training; (3) the date and the agenda for the training; and (4) a copy of any materials distributed in connection with the training.

Audits

12. With respect to the concerns included in OCR’s resolution letter regarding a potential waitlist for an evaluation for an XXX by the District’s XXX team, the District will submit to OCR an affidavit from the District’s Director of Exceptional Student Services stating that there was no waitlist for XXX evaluation by the District during the relevant time period – i.e., August 1, 2021 through March 31, 2022.

REPORTING REQUIREMENT 12: Within 15 calendar days of signing this Agreement, the District will provide OCR with the affidavit required by Term 12.

13. **Within 90 calendar days of signing this Agreement**, the School will review its health records, notes, and correspondence from the 2021-22 school year to determine if there are any students currently enrolled at the School who meet the following criteria: (a) a parent, guardian, District or School employee, or private service or medical provider indicated that the student has or may have a disability or health condition; (b) the student has not been evaluated to determine eligibility for a Section 504 plan or individualized education program (IEP); and (c) the student’s parent or guardian has not refused to provide consent for evaluation.

If any such students are identified, the School will determine whether to initiate the evaluation process for the students. The absence of a medical diagnosis or documentation from a medical provider or other outside provider may not be used to delay or refuse to initiate the evaluation process. If the School decides to initiate the evaluation process, it will seek informed parental consent for an evaluation. If informed parental consent is provided, the School will notify the District to conduct an evaluation and determine eligibility consistent with the procedural requirements of Section 504 (34 C.F.R. §§ 104.35-36) and the District will conduct this evaluation and determination.

REPORTING REQUIREMENT 13: Within 105 calendar days of signing this Agreement, the School will submit to OCR a list of all students, if any, who were identified pursuant to Term 13, including, for each student:

- a. Name;
- b. Grade;
- c. An explanation of the information the School possesses that the student has or may have a disability and all related records;
- d. An explanation of why the School decided to pursue or not pursue an evaluation of the student and all related records; and
- e. If the School decided to pursue an evaluation, the communication with the student’s parent or guardian and all records reflecting the evaluation that was conducted of the student.

The District and School understand that by signing this Agreement, they agree to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District and School understand that during the monitoring of this Agreement, if necessary, OCR may visit the District and School, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District and School have fulfilled the terms of this Agreement and are in compliance with the regulations implementing Section 504 and Title II, which were at issue in this case.

The District and School understand that OCR will not close the monitoring of this Agreement and dismiss the case until OCR determines that the District and School have fulfilled the terms of this Agreement and are in compliance with the regulations implementing Section 504 and Title II.

The District and School understand and acknowledge that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the 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 and School written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

For District:

Date

For XXX:

Date