

**RESOLUTION AGREEMENT**  
**Albuquerque Public Schools**  
**OCR Case 08-22-1611**

Albuquerque Public Schools (District) agrees to implement this Resolution Agreement (Agreement) to resolve the violation identified by the U.S. Department of Education, Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations in the above-referenced OCR case. The District assures OCR that it will take the following actions to comply with the requirements of Section 504 and Title II.

In this case, OCR found, by a preponderance of the evidence, that the District, during the 2022-23 school year (SY), denied students with disabilities a free appropriate public education (FAPE) by: (a) failing to provide them with the transportation services to which they were entitled in their individualized education programs (IEP) or Section 504 plan; (b) modifying their Individual Education Program (IEP) or Section 504 plan to accommodate the District's driver shortage; (c) shortening their school day to accommodate the District's driver shortage; and (d) causing them to miss school and services because of the District's driver shortage.

**TERM I – AUDIT**

The District will conduct an audit to determine which students with disabilities, during the 2022-23 SY, were impacted by the District's driver shortage. The audit will be conducted by at least one qualified representative from the District's Student Transportation Department and one qualified representative from the District's Special Education Department. The auditors will develop a detailed audit plan that includes:

- how they will identify the students in Groups 1, 2, and 3 below (e.g., interviews of school staff, surveys of parents, review of communications and special education records, etc.); and
- a timeline of steps to ensure the audit can be completed within 60 calendar days.

*Group 1:* The audit will produce an Excel spreadsheet of students with disabilities (i.e., students with an IEP or Section 504 plan) who, at any point during the 2022-23 SY, had an IEP or Section 504 plan that entitled them to transportation but did not receive, for any amount of time, transportation due to a District transportation issue (e.g., a lack of vehicles or drivers). The spreadsheet will have a row for each student and columns for:

- the student's first name;
- the student's last name;
- the student's identification number;
- the student's school;
- the student's grade;
- whether the student had an IEP or a Section 504 plan;
- if applicable, the date that the student's IEP or Section 504 plan was modified to remove transportation; and

- the dates that the student was denied transportation.

*Group 2:* The audit will produce an Excel spreadsheet of students with disabilities who, at any point during the 2022-23 SY, had their school day modified (i.e., a school day that started later or ended earlier than their school's the regular school day, a school day that included in-person and remote instruction) due to a District transportation issue. The spreadsheet will have a row for each student and columns for:

- the student's first name;
- the student's last name;
- the student's identification number;
- the student's school;
- the student's grade;
- the dates when the student was provided with a modified in-person schedule;
- a description of the modified in-person schedule;
- a description of the instruction and/or in-person school activities the student missed as a result of the modified schedule; and
- whether the student's IEP or Section 504 plan reflected the modified school day.

*Group 3:* The audit will produce an Excel spreadsheet of students with disabilities who, at any point during the 2022-23 SY, missed any school because of a District transportation issue. The spreadsheet will have a row for each student and columns for:

- the student's first name;
- the student's last name;
- the student's identification number;
- the student's school;
- the student's grade;
- the date(s) that the student missed school; and
- the amount of time that the student missed school.

**Reporting Requirement A:** Within 30 calendar days of this Agreement being signed, the District will submit to OCR:

- the names, titles or positions, and qualifications of proposed auditors; and
- the audit 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 Reporting Requirement A.

**Reporting Requirement B:** Within 90 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement A, the approved auditors will implement the approved audit plan and the District will submit to OCR:

- written confirmation that the approved auditors implemented the approved audit plan;
- the Excel spreadsheets for Groups 1, 2, and 3;

- for each student in Group 1, a copy of the relevant page(s) of the student’s IEP or Section 504 (i.e., the page(s) showing that the student was entitled to transportation);
- for each student who appears in Group 1 and who had transportation removed from their IEP or Section 504 plan, a copy of relevant records (e.g., meeting notes, prior written notices, etc.) showing why transportation was removed; and
- for each student in Group 2 whose IEP or Section 504 plan reflected the modified school day, a copy of the relevant page(s) of the IEP or Section 504 plan and documentation (e.g., meeting notes, prior written notice, etc.) showing when and how the decision was made to modify the student’s IEP or Section 504 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 Reporting Requirement B.

## **TERM II – COMPENSATORY SERVICES OR OTHER REMEDIAL MEASURES**

For each student in Group 1, 2, or 3, the District will convene the student’s IEP or Section 504 team to discuss whether the student was denied a FAPE as a result of the District’s transportation issues, and if so, to develop a plan (hereinafter, “remedial plan”) to provide compensatory services or other remedial measures (hereinafter, “remedies”) at District expense.

The District will invite each student’s parent to attend the team meeting.<sup>1</sup> In the invitation, the District will:

- explain the purposes of the meeting;
- explain that parent is permitted to invite others who are knowledgeable about the student to attend the meeting;
- provide the name, title or position, phone number, and email address of a qualified District employee with whom the parent should communicate regarding the meeting.

The District will ensure that:

- the team meeting occurs in a timely manner;
- the team meeting occurs at a date, time, and location that are mutually agreed upon by the District and parent (if the parent chooses to attend);
- the team and meeting are consistent with the procedural requirements of Section 504;
- the parent is permitted to invite persons knowledgeable about the Student to attend the meeting; and
- the team carefully considers all information provided by all parties present at the meeting.

Remedial plans will include the:

- type(s) of remedies to be provided;
- amount(s) of remedies to be provided;

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<sup>1</sup> For purposes of this Agreement, “parent” includes guardians who have legal educational decision-making authority.

- name(s) and title(s) or position(s) of the person(s) who will be responsible for providing the remedies;
- location(s) where the remedies will be provided;
- schedule for the provision of the remedies; and
- name and title or position of the District employee who will ultimately be responsible for implementation of the remedial plan.

Within 10 calendar days of each team meeting, the District will:

- notify the parent, in writing, of the decisions made at the meeting;
- provide the parent with a copy of the remedial plan, if any; and
- provide the parent with a copy of applicable procedural safeguards.

The District will implement all remedial plans with fidelity.

**Reporting Requirement C:** Within 10 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement B, the District will submit to OCR a draft team meeting invitation template. 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 C.

**Reporting Requirement D:** Within 10 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement C, the District will send to each parent an individualized version of the OCR-approved invitation template. Within 30 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement C, the District will submit to OCR a copy of the invitation to, and all related communications with, parents.<sup>2</sup> 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 D.

**Reporting Requirement E:** Within 60 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement D, the District will hold a team meeting for each student and submit to OCR for each student:

- copies of communications with the student’s parent showing that the parent was notified of the decisions made at the meeting, received a copy of the remedial plan, if any, and received a copy of the District’s procedural safeguards;
- a list of all individuals who attended the meeting, including each individual’s first and last name and title or position; and
- notes or minutes from the meeting reflecting the team’s decisions, the perspectives shared by individuals during the meeting, the information that the team considered in reaching its decisions, and the rationales for the decisions made at the meeting.<sup>3</sup>

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<sup>2</sup> For purposes of this Agreement, “communications” include, but are not limited to, all emails, letters, text messages, electronic messages, and forms.

<sup>3</sup> At the District’s request, OCR can provide the District with a template that would assist in tracking the requirements of Reporting Requirement E.

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 E.<sup>4</sup>

**Reporting Requirement F:** Within 60 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement E, the District will submit to OCR, documentation showing that the District has implemented or is in the process of implementing the remedial plans. 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 F.<sup>5</sup>

### **TERM III – STAFF TRAINING**

The District will train all relevant staff about, at a minimum:

- Section 504’s and Title II’s prohibition on discrimination against students on the basis of disability;
- the District’s legal obligation to provide a FAPE to each qualified student with a disability in the District’s jurisdiction, regardless of the nature or severity of the student’s disability;
- the definition of an “appropriate education” under Section 504;
- how implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting Section 504’s FAPE requirement;
- the District’s policies and procedures related to transportation for students with disabilities;
- how schools must not shorten the school days of students with disabilities to accommodate a lack of District transportation;
- how schools must not remove transportation from students’ IEPs or Section 504 plans to accommodate a lack of District transportation; and
- the name, title or position, phone number, and email address for a qualified individual who should be contacted if a student with a disability is having an issue with transportation.

Relevant staff will include, at a minimum:

- at least one administrator (i.e., principal, assistant principal, or dean) from each District school;
- at least one special education leader (e.g., department chair, coordinator, head teacher, etc.) from each District school;
- District Special Education Department staff;
- District Transportation Department staff; and
- the District’s Section 504 Coordinator.

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<sup>4</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>5</sup> This case will remain in monitoring until all remedies have been provided.

**Reporting Requirement G:** Within 30 calendar days of this Agreement being signed, the District will submit to OCR for review and approval:

- draft training materials;
- the name(s), title(s) or position(s), and qualifications of one or more qualified individuals to provide the training; and
- a list of proposed individuals to be trained, including each person's name, title or position, and department or school.

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 G.

**Reporting Requirement H:** Within 60 calendar days of receiving notice from OCR that no further reporting is required for Reporting Requirement G, the District will ensure that the approved trainer(s) conducts the training, using the approved materials, for all individuals on the approved list of trainees. The District will also submit to OCR:

- the date, time, and location of the training;
- confirmation that the approved trainer(s) delivered the training;
- confirmation that the approved materials were used for the training;
- the names and titles or positions of all staff who attended the training; and
- if applicable, the name(s) and title(s) or 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 feedback, if any, until OCR notifies the District that no further reporting is required for Reporting Requirement H.

#### **TERM IV – TRANSPORTATION OF STUDENTS WITH DISABILITIES DURING THE 2023-24 SY**

The District will develop a plan to ensure adequate transportation for students with disabilities during the 2023-24 SY. The plan will include, at a minimum:

- the anticipated transportation needs for students with disabilities, including the number of students with disabilities who will rely on District transportation, and the number of drivers needed to serve students with disabilities;
- how the District will meet the anticipated needs, including recruiting and retaining an adequate number of qualified drivers; and
- a contingency plan to ensure that, if there is a driver shortage during the 2023-24 SY, students with disabilities are not denied a FAPE.

**Reporting Requirement I:** Within 60 calendar days of this Agreement being signed, the District will submit to OCR a draft 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 Reporting Requirement I.

**Reporting Requirement J:** Within 60 calendar days of OCR notifying the District that no further reporting is required for Reporting Requirement I – and every 60 calendar days thereafter until the 2023-24 SY ends and the OCR-approved plan is fully implemented – the District will submit to OCR a report about implementation of the plan.

### **GENERAL REQUIREMENTS**

The District understands that 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. 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, 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. Upon completion of the obligations under this Agreement, OCR will close 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 the terms of this Agreement and is in compliance with Section 504, Title II, and their implementing regulations, 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 the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR will give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.

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

**For the District:**

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/signed/  
Scott Elder, Superintendent

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Date