

## **Resolution Agreement Reached During an Investigation**

Berkeley Unified School District

09-14-1158

In order to resolve the issues raised in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), and without admitting any violation of law, the Berkeley Unified School District agrees to implement the following actions:

### I. Individual Remedy

- a. The District will process the Complainant's application for the Student to participate in the Berkeley United in Literacy Development (BUILD) and Links Enrichment, Academics, and Recreation to the Needs of Students (LEARNS) programs during the 2014-15 school year and will confirm to the Complainant that the Student is eligible to participate in both programs.
- b. The District will develop a memorandum of understanding (MOU) with the Complainant's input to specifically address the Student's participation in the LEARNS and BUILD programs during the 2014-15 school year. The MOU will include the following:
  - i. District provision of curb to curb transportation to the Student's home from the LEARNS and BUILD programs; and
  - ii. District provision of any other supplemental aids, supports, or services necessary for the Student to have an equal opportunity to participate in the LEARNS and BUILD programs.
- c. The District will provide a copy of the MOU to the Complainant and will fully implement the MOU effective the beginning of the 2014-15 school year.

### II. Procedure

- a. The District will develop a written procedure to ensure that students with disabilities are provided the aids, supports, services, and/or modifications to policies, practices or procedures necessary to have an equal opportunity to participate in District nonacademic and extracurricular programs and activities, in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans With Disabilities Act of 1992. The procedure will include, at a minimum, the following:
  - i. a description of how and to whom requests for disability-related aids, supports, services, and/or modifications should be made;
  - ii. a description of the process for approving such requests;

- iii. confirmation that approved requests will be documented and fully implemented;
- iv. a description of the process available for challenging a denial of such requests; and
- v. clarification that participation in the nonacademic or extracurricular program or activity need not be required by the student's IEP or Section 504 Plan in order for the student to receive disability-related aids, supports, services, and/or modifications.

III. Notice

- a. The District will distribute the written procedure to: all school principals; District and site-level administrators who oversee the District's nonacademic and extracurricular programs and activities; and special education program supervisors. The District will provide additional training and written guidance as necessary to ensure consistent implementation of the procedure across school sites.
- b. The District will take effective steps on an ongoing basis to notify parents and guardians of students with disabilities of: the equal opportunity of disabled students to participate in District nonacademic and extracurricular programs and activities; and the written procedure.

IV. Reporting

- a. By August 27, 2014, the District will confirm to OCR that the Student is eligible to participate in both the BUILD and LEARNS programs beginning the 2014-15 school year.
- b. By August 27, 2014, the District will provide OCR a copy of the MOU, developed in accordance with I.b. of this agreement, and will confirm that it provided a copy to the Complainant and will fully implement the MOU effective the beginning of the 2014-15 school year.
- c. By, September 30, 2014, the District will provide OCR a draft of the written procedure developed in accordance with II. of this agreement. Incorporating OCR's input, the District will finalize the procedure and provide OCR with a final copy by October 30, 2014.
- d. Within 60 calendar days of the date the written procedure is finalized, the District will confirm distribution of the written procedure to site and District level administrators in accordance with III.a. of this agreement, and will describe any additional training or written guidance provided to ensure consistent implementation.

- e. Within 60 calendar days of the date the written procedure is finalized, the District will confirm that it has notified parents and guardians of students with disabilities of the students' equal opportunity to participate in nonacademic and extracurricular programs and activities, and of the written procedure. The District will also describe how it will notify such parents and guardians of this information on an ongoing basis.

V. Monitoring

- a. The District understands that OCR will not close the monitoring of this agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 of the Rehabilitation Act of 1973, at 34 C.F.R. §§104.33 and 104.37; and Title II of the Americans with Disabilities Act of 1990, at 28 C.F.R. §§35.103(a), 35.130(b)(1)(ii) and (iii), and 35.130(b)(7), which were at issue in this case.
- 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 the regulation implementing Section 504, at 34 C.F.R. §§104.33 and 104.37; and Title II, at 28 C.F.R. §§35.103(a), 35.130(b)(1)(ii) and (iii), and 35.130(b)(7), which were at issue in this case.
- c. 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 this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

\_\_\_\_\_/s/\_\_\_\_\_  
Dr. Donald Evans, Superintendent

\_\_\_\_\_8/13/2014\_\_\_\_\_  
Date