

Esparto Unified School District
Resolution Agreement
OCR Case No. 09-14-1320

In order to resolve the issues raised under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) in the above-referenced complaint filed with the Office for Civil Rights (OCR), and without admitting any unlawful or wrongful acts or other liability or conceding any violation of Federal law with respect to the issues raised in the complaint, the Esparto Unified School District (District) agrees to implement this agreement.

Revisions to Section 504 Policies and Procedures

- 1. Administrative Regulation.** Within fifteen (15) school days of the execution of this Agreement, the District will submit revisions to Administrative Regulation 6164.6(b) to OCR for its review and approval. OCR will provide its edits (or its approval) to the revisions to the District within 30 days of receipt. The District's revisions will be consistent with the legal standards under 34 C.F.R. §§ 104.33-104.36; the ADA Amendments Act of 2008; and the guidance set forth in the January 19, 2012 Dear Colleague Letter from the U.S. Department of Education Assistant Secretary for Civil Rights and its attached FAQs. OCR commits to promptly review the District's revisions to Administrative Regulation 6164.6(b), and approve or return for further revision to the District.
- 2. Revisions to Section 504 Handbook and Forms.** Following OCR's review and approval of the District's revisions to Administrative Regulation 6164.6(b), the District will update its Section 504 handbook and forms consistent with revised Administrative Regulation 6164.6(b) and paragraphs 3-9 of this Agreement. The District will provide the revised documents to OCR for its review and approval within 60 days of OCR's approval of revised Administrative Regulation 6164.6(b). OCR will provide its edits (or its approval) to the revisions of the Section 504 Handbook and Forms to the District within 30 days of receipt.
 - a. Within fifteen (15) school days of OCR's approval of the Section 504 Handbook and Forms, the District will distribute them to each school site with instructions to cease using prior versions. Within one week of the District's distribution of the Section 504 Handbook and Forms, the District will provide OCR with evidence sufficient to demonstrate that they have been distributed in accordance with this agreement.
- 3. Definition of disability.** The District's Section 504 policies and procedures will include the definition of disability and explanatory guidance of the definition consistent with the following:

- a. Individual with a disability means an individual: who has a physical or mental impairment that substantially limits one or more major life activities; or who has a record of such an impairment; or who is regarded as having such an impairment.
- b. A physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- c. Major life activities means functions such as bending, breathing, caring for one's self, communicating, concentrating, eating, hearing, learning, lifting, performing manual tasks, reading, seeing, sleeping, standing, speaking, thinking, walking, and working. Major life activities may also include, but not be limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- d. Extent of limitation: An impairment need not prevent or severely restrict a major life activity to be considered substantially limiting. An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to similarly-aged children.
- e. Impairments that are episodic or in remission: An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- f. Temporary Impairments: A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Impairments causing limitations that last, or are expected to last, for six or fewer months may still be substantially limiting, and thus, an individual analysis of each case is required.
- g. Has a record of such an impairment means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities. Having a record of having such impairment—but not actually having such impairment—may allow a qualified individual to be eligible for protection from discrimination on the basis of disability under Section 504, though the individual may not require services or accommodations.

- h. Is regarded as having such an impairment means:
- a. Has a physical or mental impairment that does not substantially limit a major life activity, but that is treated as constituting such a limitation;
 - b. Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such impairment; or
 - c. Has none of the impairments as defined ... but is treated as having such an impairment.

Being “regarded as” having such impairment—but not actually having such impairment—may allow a qualified individual to be eligible for protection from discrimination on the basis of disability under Section 504, but not for services or accommodations.

- i. Impact of mitigating measures and other ameliorative elements: The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other therapy equipment and supplies; use of assistive technology; reasonable accommodations, auxiliary aids or services; or learned behavioral or adaptive neurological modifications.
 - j. Basis of determination: The District’s 504 policies and procedures will make clear that the determination of whether an impairment substantially limits a major life activity will be made on the basis of an individualized inquiry, and will not be made solely on the basis of a single measure such as a student’s grades.
- 4. Definition of FAPE.** The District’s policies and procedures will state that a free appropriate public education (FAPE) under Section 504 means the provision of either regular or special education and related aids and services, designed to meet the student’s individual educational needs as adequately as the needs of nondisabled students are met.
- 5. Referral.** The District’s Section 504 policies and procedures will clarify the District’s process for determining whether a student referred for evaluation under Section 504 will be evaluated. Specifically:
- a. Clarification of responsible individual(s). If the District’s process is to convene the “school site committee” to review the referral, the District’s revisions will specify who will participate on the school site committee, by category (e.g., school administrator, resource specialist, special education teacher, etc.). If the

District's process does not include the use of a "school site committee," the District's revision will specify the category of individual(s) responsible for reviewing the initial referral.

- b. The District's revisions will state that upon receipt of a referral for eligibility, the individual(s) or committee shall consider the referral and determine whether an evaluation is appropriate within a reasonable amount of time. The determination shall be based on a review of the student's school records, including academic and nonacademic areas of the school program; consultation with the student's teacher(s), other professionals, and the parent/guardian, as appropriate; and consideration of the student's needs.
- c. Denial of request. The District's revisions will state that if it is determined that an evaluation is unnecessary, the individual(s) or committee shall inform the parents/guardians of the student in writing of this decision and provide parents/guardians with a copy of their procedural safeguards.

6. Evaluation. The District's Section 504 policies and procedures will be revised to include the following:

- a. Evaluation prior to placement: If it is determined that a student needs or is believed to need special education or related services under Section 504, the District will conduct an evaluation of the student prior to initial placement and before any significant change in placement.
- b. Parent/guardian consent: Prior to conducting an initial evaluation of a student for eligibility under Section 504, the District will obtain written parent/guardian consent.
- c. Tests and evaluation materials: Tests and other evaluation materials used to evaluate a student under Section 504 must be validated for the specific purpose for which they are used and must be administered by trained personnel in conformance with the instructions provided by their producer. Tests and other evaluation materials used will include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- d. Measurement of aptitude or achievement level: The District will select and administer evaluation tests so as to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

- 7. Section 504 services plan and placement.** The District's Section 504 policies and procedures will be revised to reflect the following:
- a. 504 team: The District will convene a 504 team meeting to review the evaluation data in order to make a placement decision. The 504 team will consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
 - b. Information from a variety of sources: In interpreting the evaluation data and making placement decisions, the team will draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The team will also ensure that information obtained from all such sources is documented and carefully considered and that the placement decision is made in conformity with 34 C.F.R. 104.34.
 - c. Written plan: If, upon evaluation, a student is determined to be a qualified student with a disability who is eligible for services under Section 504, the team will meet to develop a written 504 plan which specifies the types of regular or special education services, accommodations, and supplementary aids and services necessary to ensure that the student receives a FAPE.
 - d. Parent participation in meeting and review of records: The District will invite and encourage parents/guardians to participate in the meeting, and will exercise reasonable flexibility in scheduling meetings in order to enable the parents/guardians to attend the meeting. Parents/guardians will be given an opportunity to examine all relevant records and review the 504 plan developed at the conclusion of the meeting.
 - e. Review and signature of services plan: The team will sign and date the services plan to document each member's participation in the development of the services plan, including parents/guardians.
 - f. Copy of final document to parent: The District will promptly provide the parents/guardians with a copy of the 504 Plan, as well as a copy of their procedural safeguards.
 - g. Student transfer and matriculation: If a student transfers or matriculates to another school within the District, the principal or designee from which the student is transferring will ensure that the principal or designee at the new school receives a copy of the plan within five business days of being notified of the student's enrollment in the new school.

8. **Review and reevaluation.** The District's Section 504 policies and procedures will be revised to reflect the following:
 - a. *Monitoring of student progress:* The 504 team will monitor the progress of the student and the effectiveness of the student's services plan to determine whether the services are appropriate and necessary and whether the student's needs are being met as adequately as the needs of nondisabled students. The team will review the student's 504 plan annually. In addition, the student's eligibility under Section 504 will be reevaluated at least once every three years.
9. **Procedural safeguards.** The District's Section 504 policies and procedures will be revised to reflect the following:
 - a. *Internal grievances:* The District's notification to parents/guardians of their procedural safeguards will provide a brief description of how to file an internal complaint of disability discrimination, including the procedure under which a complaint of disability discrimination would be investigated.
 - b. *Due process hearing:* In addition to a description of the District's Section 504 due process hearing procedure, the District will include information about when a complaint is appropriate for the District's Section 504 due process hearing procedure.

Guidance and Training for District Staff Regarding Section 504 Responsibilities

10. By May 18, 2015, the District will provide to OCR for its review and approval a memorandum for District and school staff notifying them that revisions have been made to the Section 504 policies and procedures, and providing a summary of the revisions and the impact of such revisions on staff duties and responsibilities. The memorandum will be written at a level appropriate for staff without a legal or policy background. OCR will provide its edits (or its approval) to the memorandum to the District within 30 days of receipt.
 - a. Within two weeks of OCR's approval of the memorandum, the District will distribute it to all certificated personnel and classified personnel who are involved with the Section 504 process. Within one week of the District's distribution of the guidance, the District will provide OCR with evidence sufficient to demonstrate that the guidance has been distributed in accordance with this agreement.
11. By August 28, 2015, the District will conduct in-service training on the revised Section 504 requirements and the District's Section 504 policies and procedures for District staff, including site administrators, special education teachers, school psychologist, counselors and any other staff members who work with students with special needs. At

the District's request, OCR may provide training at no cost to the District. The training will cover an explanation of the following:

- a. The District and School's responsibilities for providing a free appropriate public education (FAPE) to students with disabilities under Section 504;
- b. The District's Section 504 policies and procedures (AR 6164.6), for the identification, evaluation and placement process, and procedural safeguards for parents;
- c. The definition of an individual with a disability and the definition of major life activities consistent with Section 504 and Americans with Disabilities Amendments Act of 2008 (Amendments Act).¹
- d. The District's specific responsibility for conducting an evaluation of a student under Section 504 if it believes or has reason to believe that the student needs or may need special education or related services due to a disability; the academic and behavioral indicators for determining when such an evaluation is needed, and examples, pertaining to both physical and emotional/psychological disabilities, of circumstances where evaluation may be needed; and
- e. The full range of services that can be provided under Section 504 including special education and related aids and services.

12. Within 15 days of completing the training, the District will provide documentation to OCR verifying that the appropriate staff members have received the training.

Nondiscrimination Policy and Complaint Procedures

13. **Revisions to Complaint Procedures.** Within fifteen (15) school days of the full execution of this Agreement, and in consultation with OCR, the District will review its nondiscrimination policy and complaint procedures, including its Uniform Complaint Procedures, to ensure that they identify their applicability to discrimination based on disability.

14. **Training to District Staff.** By September 11, 2015, and in consultation with OCR, the District will provide training or issue a memorandum to all District administrators and designees who may be responsible for responding to complaints of discrimination based on disability. The training or memorandum will include a review of the District's disability harassment policies and procedures and cover, for example, how to conduct thorough investigations, how to evaluate evidence and weigh it in an impartial manner, how to make credibility determinations, and the appropriate standards for determining

¹ These issues and other matters related to Section 504/Title II and the Amendments Act are explained in a "Dear Colleague Letter," including frequently asked questions, that was issued by OCR on January 12, 2012.

whether disability harassment/discrimination has occurred. At the District's request, OCR may provide training at no cost to the District.

Individual remedies

15. Within 30 days of the full execution of this Agreement, the District will convene a meeting of the Student's Section 504 or IEP team and will review and revise the Student's services plan, if appropriate. At this meeting, the team will also determine whether any compensatory services are necessary for Student as a result of the District's delay in convening a 504 meeting when Student transitioned to the high school setting. If the Section 504 or IEP team is unable to reach an agreement, then the dispute would be decided through the appropriate 504 or IDEA due process procedures.
16. The District will implement the Student's last agreed upon 504 Plan or IEP, and will provide OCR with a copy of the proposed 504 Plan/IEP within 15 days of said meeting, as referenced in Paragraph 15, above. The District will also provide OCR with evidence that compensatory services were discussed at the 504/IEP meeting, as well as a status update regarding whether Student's parents agreed to the District's proposed IEP/504 Plan.
17. Within 30 days of the full execution of this Agreement, the District will provide the complainant with a revised written response to her April 2014 complaint that explains the reasons for the determination reached by the District regarding her complaint and will provide OCR with a copy.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further the District understands that during the monitoring of this Agreement, 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 regulations implementing Section 504 and Title II.

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 regulation implementing Title VI at 34 C.F.R. §§ 100.3(a) and (b)(1) and (2).

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.

Esparto Unified School District

_____/s/_____

_____03/20/2015_____

Aida Buelna
Superintendent

Date