

## RESOLUTION AGREEMENT

Oakland Unified School District

OCR Case Number 09-14-1465

In order to resolve the findings of non-compliance made by the U.S. Department of Education, Office for Civil Rights (OCR) under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, the Oakland Unified School District (District) agrees to implement this Resolution Agreement (Agreement).

### Actions and Reporting:

#### I. Individual Student Remedies

- A. Evaluation. Contingent on the parents' consent, the District will arrange for an appropriately qualified individual, who has expertise and experience in identifying and evaluating adverse effects caused by seclusion from classroom instruction and repeated use of prone restraint on children with autism and anxiety disorder, to conduct a psycho-educational evaluation of the Student for harm related to all instances in which the Student was placed in a prone restraint and the related instances of seclusion during the eleven months he was enrolled in Anova Center for Education, XXXXXXXXXXXX campus (Anova), the non-public school (NPS) in which the District placed the Student.
1. The Student will be evaluated for adverse effects related to the frequency and duration of being placed in prone restraint and seclusion with respect to the Student's intellectual development, academic achievement, and social-emotional development.
  2. The District will provide the evaluator with relevant information about the Student including a copy of this Agreement, the resolution letter in this case, copies of all relevant records within the District's control that are requested by the evaluator, and by facilitating access to the Student for interviews and observation.
  3. The evaluation report will include recommendations for addressing any area of identified harm related to the use of restraints against the Student while he was placed at Anova. The District will provide a copy of the report to OCR.
- B. IEP Meeting. Upon receipt of the completed evaluation report, the District will provide proper written notice to the Student's parents and other IEP team members, including the evaluator, of the mutually agreeable date on which the District will convene an IEP team meeting to consider the evaluation report described in Item I.A. and to develop a plan for appropriate compensatory education and services for the denial of educational benefit, loss

of academic and other instruction, as well as any necessary mental health, counseling and/or other support services related to the Student's being held in prone restraint and removed from the instructional setting during his placement at Anova. The IEP team will consider the evaluation report recommendations, the actual restraint time, time in the Anova resource room and front office recovering, and the period of time between the Student's last date of attendance at Anova and his first day in his current placement as lost instructional time. The IEP team shall determine whether a revision of or an amendment to Student's current IEP is appropriate. The District will provide a copy of any revised or amended IEP to OCR. An offer of compensatory education and services may be memorialized in a separate agreement, and will not be considered a part of Student's applicable IEP. The District will provide to OCR a copy of any agreement providing compensatory education and services to Student.

- C. Procedural Safeguards. The District will provide the Student's parents notice of the procedural safeguards, including the right to challenge the IEP team's determination through an impartial due process hearing.

#### **Reporting Requirements for Section I:**

- 1) Within 45 days of execution of this Agreement, the District will provide OCR with documentation that shows that it sought the consent of the Student's parents for the evaluation described in Item I.A., and the name, contact information, and a description of the relevant expertise and experience of the individual who will conduct the evaluation.
- 2) Within 60 days of receipt of the completed evaluation described in Item I.A., , the District will provide for OCR's review documentation showing the attendees of the IEP team meeting described in I.B., the information considered at the IEP team meeting, IEP team meeting notes, and any revised or amended IEP. The District shall also provide for OCR's review and approval an agreement providing any compensatory education and services for the denial of educational benefit, loss of academic and other instruction, as well as any necessary mental health, counseling and/or other support services to the Student (Compensatory Education Agreement). Prior to approving the District's Compensatory Education Agreement, OCR shall review the documentation to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations

## **II. Prone Restraint Use**

- A. Effective immediately, the District will not make any new referrals to or new offers of placement for District students at Anova unless Anova agrees and the District has substantiated that Anova has: 1) discontinued the use of prone restraint; 2) implemented a practice to review and revise strategies in place when an individual student is subjected to physical restraint, when there are multiple uses of physical restraint within the same classroom, or multiple uses of physical restraint by the same individual; (3) implemented positive behavior intervention plans which identify, with specificity, problem behaviors, triggers for those behaviors and comprehensive support designed to meet an individual student's needs.
- B. The District will review, and revise as necessary, all relevant District policies and procedures to be consistent with the fifteen principles set forth in the U.S. Department of Education's Restraint and Seclusion: Resource Document.
- C. The District will take steps to ensure that NPSs with which the District enters into new contracts, for new placements of District students, do not use prone restraints against District students or otherwise utilize restraints as a substitute for individualized positive behavior planning, and that the NPSs have strategies in place to identify and address the needs of students who are subjected to a physical restraint and a system and strategy for identifying and remedying multiple uses of physical restraint within the same classroom, or multiple uses of physical restraint by the same individual.
- D. Upon renewal and execution of new NPS master contracts, the District shall engage in good faith to include the following modifications which will be applicable to those contracts into which the District enters following the effective date of this Agreement:
  - 1. The NPS will not use prone restraint against District students who are placed at the NPS.
  - 2. Restraint practices must be reviewed and revised when they have an adverse effect on a student and are used repeatedly for an individual child, either on multiple occasions within the same classroom or multiple uses by the same individual.
  - 3. The protocol for reporting to the District the use of any type of physical or mechanical restraint against or seclusion of a District student that includes the timeframe for filing the report with the District and the identification of the individual(s) in the District who should receive the report.
  - 4. The NPS is responsible for notifying a District student's parent/guardian of the use of any type of physical or mechanical restraint or seclusion and the timeframe in which the non-public school should notify the parent/guardian.

- E. The District will develop a written protocol to be followed whenever it receives a report from a NPS that it has subjected a District student to physical or mechanical restraint or seclusion. The protocol will include:
1. How the District will monitor the reports for the manner, frequency and duration of restraint use.
  2. How the District will analyze the information on the manner, frequency and duration of restraint use to prompt the need to evaluate the student's behavior and convene an IEP team or Section 504 team meeting to review and revise strategies in place for a student.
  3. How the District will ensure that the student's behaviors are appropriately analyzed and that a comprehensive plan of support is put into place that eliminates or substantially reduces the use of restraint. Among other things this process should:
    - a. Define the behavior with observable precision;
    - b. Conduct a formal process (interviews, direct observation and, if necessary, functional analysis) to determine the context (when, where, with whom) the problem behavior is most and least likely to occur;
    - c. Define the primary maintaining consequence for the problem behavior in that context; and
    - d. Determine whether all other appropriate alternative strategies have been identified and tried and the effectiveness of each alternative strategy.
  4. How the District will ensure that the student has a comprehensive plan of support that addresses the identified behavior that:
    - a. Includes strategies for arranging the student's learning environment for academic and social success on a continuous basis;
    - b. Includes strategies for avoiding situations that are likely to lead to problematic behavior;
    - c. Teaches socially appropriate behaviors that achieve the same effect for the student as the problem behavior;
    - d. Ensures that the student has immediate and regular access to reinforcers/rewards for pro-social behavior;
    - e. Minimizes the likelihood that the problem behavior is rewarded;
    - f. Ensures that adequate safety procedures are in place for the student, staff and peers;
    - g. Include a data system for continuous monitoring of the fidelity of staff implementation of the plan, intervention effects, and impact on student outcomes which will be used to improve the support being provided to the student; and
    - h. Ensures that staff working with the student is trained on implementing the plan of support.

## F. Training

1. The District will hire an expert who has expertise and experience regarding the adverse effects caused by repeated use of restraint, including prone restraint, on children diagnosed with autism or who have other disabilities that may affect their behavior, as well as successful non-restraint strategies, to provide training on positive, pro-social, non-aversive alternatives interventions and strategies for addressing serious maladaptive behaviors (“Training”). The Training will include information about the trauma caused by the use of restraints on students. The Training will be provided to District special education administrators and staff who are responsible for monitoring children placed at NPSs. The District will offer to make the Training available to staff of local NPSs with which it has contracts.
  - a. The training will be conducted no later than November 1, 2016.
  - b. The materials from the training will be made available to the District to train newly hired District staff who are responsible for monitoring children placed at NPSs, who must be trained within three months of hire.
2. The District will provide training to special education administrators and staff with responsibilities for students placed at NPSs on the protocol described in Item II. E.

### **Reporting Requirements for Section II:**

- 1) Within 45 days of the date this Agreement is signed, the District will provide OCR with the following:
  - a. documentation that it has implemented Item II.A.;
  - b. a list of the policies and procedures that need to be revised in accordance with Item II.B, and proposed revisions for OCR review and approval;
  - c. a list of the non-public schools with which the District has contracts; and
  - d. Identification of the expert described in Item F.1.
- 2) Within 60 days of the date this Agreement is signed, the District will provide OCR with the following:
  - a. documentation that shows it has implemented Item II.C.; and
  - b. the draft protocol described in Item II.E for OCR’s review and approval.
- 3) Within 90 days of the date this Agreement is signed,, the District will provide OCR with documentation that shows it has implemented Item II.B

4) By November 1, 2016, the District will provide OCR with documentation that shows it has implemented Items II.D and II.F.

**Monitoring**

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 in compliance with Section 504 and Title II.

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.

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 sixty (60) calendar days to cure the alleged breach.

Oakland Unified School District

By: \_\_\_\_\_/s/\_\_\_\_\_  
James Harris  
President, Board of Education

Date: 6/20/2016

By: \_\_\_\_\_/s/\_\_\_\_\_  
Antwan Wilson  
Superintendent & Board Secretary

Date: 6/20/2016

By: \_\_\_\_\_/s/\_\_\_\_\_  
Michael L. Smith  
Deputy General Counsel

Date: 6/20/2016