Hayward Unified School District
Resolution Agreement
OCR No. 09-14-5004

To resolve the concerns in the above-referenced compliance review with the U.S. Department of Education, Office for Civil Rights (OCR), the Hayward Unified School District (District) agrees to implement this Agreement to resolve the compliance issues stated in this matter under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA or Title II), as amended by the ADA Amendments Act of 2008.

I. ADOPTION OF RESTRAINT AND SECLUSION POLICY

A. Attached as Exhibit A is a proposed District policy on Behavioral Interventions For Special Education Students, to be reviewed and returned to the District with OCR feedback by OCR’s Chief Regional Attorney within ten (10) days of execution of this Agreement, that governs the use of restraint and seclusion with its students who have disabilities.

B. Attached as Exhibit B is a proposed District memorandum, to be reviewed and returned to the District with OCR feedback by OCR’s Chief Regional Attorney within ten (10) days of execution of this Agreement, that: explains the use of restraint and seclusion with students with disabilities is subject to the provisions of Section 504, Title II, and their implementing regulations; explains the provisions of the created policy; describes when, how, and why restraint and seclusion may and may not be properly used with a student with disabilities; and, provides a point of contact for individuals who have any questions or desire further information about the policy or the use of restraint or seclusion with students with disabilities.

C. Within sixty (60) days of execution of this Agreement, the District will formally adopt and implement the policy and memorandum.

D. Within fifteen (15) days of adopting and implementing the policy and memorandum, as required by paragraph (I)(C) of this Agreement, the District will disseminate them to all parents/guardians of students with disabilities enrolled in the District regardless of the location at which the students may be receiving educational instruction and its faculty, administrators, and staff. Dissemination may be done by U.S. mail or e-mail (if a parent/guardian has previously consented to receipt of such information by e-mail). The policy and memorandum will also be posted on the District’s website and at all locations at which other such generally applicable documents are posted in order to be seen by the public, students, or staff. They will remain posted for a minimum of one year.

E. Within sixty (60) days of disseminating the policy and memorandum as required by paragraph (I)(D) of this Agreement, the District will provide training on the use of restraint and seclusion with students with disabilities to all faculty, staff, and administrators involved with providing instruction or services to students with disabilities. The training will include coverage of the policy and memorandum.
Reporting Requirements

F. Within fifteen (15) days of formally adopting the policy and memorandum as required by paragraph (I)(C) of this Agreement, the District will provide to OCR documentation of the adoption and implementation of the policy and memorandum.

G. Within fifteen (15) days of disseminating the policy and memorandum as required by paragraph (I)(D) of this Agreement, the District will provide to OCR documentation of the dissemination, including a web address at which the posting may be found, and the number and locations of the postings.

H. Within fifteen (15) days of completing the training required by paragraph (I)(E) of this Agreement, the District will provide to OCR documentation that the training occurred including attendance lists, the date, the subject matters covered, and the length of the course.

II. NOTICE TO NON-PUBLIC SCHOOL OF DISTRICT POLICY

A. Within (15) days of implementing the policy as required by paragraph (I)(C) of this Agreement, the District will provide a copy of the policy to any NPS providing special education to students with disabilities residing within the District who are placed at the NPS and communicate that the NPS must abide by the terms of the policy with regard to students residing within the District.

B. The District will ensure that prior to entering into any new contractual relationship with an NPS, the District provides a copy of its approved policy described in paragraph (I)(A) above and communicates to the NPS that it is required to act consistent with the District policy with regard to behavior interventions for District students with disabilities placed at an NPS.

Reporting Requirements

C. Within one (1) month of implementing the policy as required by paragraph (I)(C) of the Agreement, the District will provide to OCR documentary evidence that it has provided each NPS currently contracting with the District to provide services to students with disabilities a copy of the policy and communicated to the NPS that it must abide by the terms of the policy as required by paragraph (II)(A) above.

D. At the end of each school year during the course of this agreement, the District will provide OCR with documentary evidence that it has provided a copy of the policy described in paragraph (I)(A) above to any new NPS providers that the District has contracted with during the course of the school year to provide services to students with disabilities as required by paragraph (II)(B) above.
III. OVERSIGHT OF THE USE OF RESTRAINT AND SECLUSION

A. The District will designate the District Compliance Administrator, as the administrator who will monitor that the use of restraint and seclusion at District schools and NPS settings in the service of District students complies with District policy and Section 504 and Title II. The administrator will also be responsible for monitoring the creation and submission of Behavioral Emergency Reports (BERs), review of BERs, and ensuring proper routing of BERs and consideration of them by respective individuals and entities who have legal obligations to review and respond to the issues stated in the BERs (including District administrators, special education staff, NPS administrators and staff, and IEP teams). This includes taking proper review action, including revision of behavioral strategies currently in place or development of them if not in place, when there is repeated usage of restraint or seclusion with the same student, multiple uses in the same classroom, or multiple uses by the same staff member.). The administrator will also be responsible for the periodic review of District policies addressing the use of restraint and seclusion with special education students and updating or revising them when warranted along with creation and implementation of a training program to provide to relevant District employees regarding the use of restraint and seclusion.

B. During OCR’s monitoring of this Agreement, the administrator will also be responsible for performing a semi-annual review and report (one at the conclusion of the calendar year and one at the conclusion of the school year) of the District’s activities in the use of restraint and seclusion with special education students to ensure that the District and the NPS settings providing contracted services to District students are: using restraint and seclusion in a manner consistent with the District policy described in paragraph (I)(A) above; properly documenting usages of restraint and seclusion; properly distributing all required information surrounding the use of restraint and seclusion when it occurs; ensuring that those responsible for taking action responsive to the information provided are taking the proper actions including District administrators, special education staff, NPS administrators and staff, and IEP teams; and, reviewing whether students being subjected to multiple instances of restraint or seclusion are properly receiving a FAPE and, in those instances where the District determines that remedial services are appropriate as a result of past use of restraint and seclusion, the District will identify what remedial services are needed and whether the student’s placement remains appropriate. The District will retain for two (2) years all documents used to create the report.

C. The administrator will be vested with sufficient authority to take proper actions to remedy any issues of noncompliance identified in the use of restraint or seclusion with students with disabilities within the District’s schools or its contracted NPS settings.

Reporting Requirements
D. Within fifteen (15) days of designating the administrator as required by paragraph (III)(A) of this Agreement, the District will provide to OCR written verification of the designation of the administrator (e.g., copy of board minutes or superintendent’s action approving position and designation of specified employee), a resume, CV, or other statement of the qualifications of the administrator, and a copy of the section of the District’s personnel manual or similar document that details the obligations, responsibilities, and authority of the position.

E. On or before February 1 and August 1 of each year, for two years subsequent to the date that this Agreement is signed by the District, the District will provide to OCR a copy of each review report prepared as required by paragraph (III)(B) of this Agreement along with a statement that the audit has shown the District is in compliance with the requirements governing the use of restraint or seclusion or, if it is not, that it has taken corrective action to address any areas of noncompliance along with a description of the corrective action. If any issue of noncompliance has not been corrected by the time that the audit report is submitted to OCR, the District will report on the issue in its subsequent audit report to OCR. The District understands and agrees that this requirement may extend beyond the two-year period provided herein if what is intended to be the District’s final review report to OCR reflects any issues of noncompliance that still need to be corrected and the reporting and monitoring requirement herein will continue until such time as the District submits a review report to OCR that reflects no outstanding issues of noncompliance that need corrective action. In any case, OCR will identify and specify any alleged deficiencies to the District in writing within thirty (30) calendar days of District’s submission of audit report, and OCR will specify the extension of the monitoring period necessary for the District to remedy the alleged deficiencies. The District will have thirty (30) calendar days to respond to OCR’s notice of alleged deficiencies/non-compliance if the District believes the alleged deficiencies/non-compliance are inaccurate. OCR’s specification of any alleged deficiencies shall be within the issues that were the subject of this compliance review. If the OCR discovers compliance issues outside the scope of this Agreement and matter, such issues may become the subject of a new compliance review and/or investigation.

F. If OCR finds it necessary to interview any District students as part of the monitoring of this Agreement, OCR will work with the District to obtain written parent permission prior to interviewing any student.

IV. INDIVIDUAL STUDENT ASSESSMENTS

A. OCR has provided the District a list of students (listed students) whose records OCR reviewed as part of the above-referenced compliance review. By December 22, 2017, the District will review the educational records of all listed students who
remain residents of the District. In its review for each of the listed students the District will determine whether the past use of restraint or seclusion warrants the provision of remedial services.

B. For any of the listed students identified in paragraph (IV)(A) above who are determined by the District to be appropriate for the provision of remedial services due to the past use of restraint and seclusion, by December 22, 2017, after providing proper written notice to the student’s parent/guardian, a group of knowledgeable persons will determine what remedial services are appropriate for the student as a result of past use of restraint or seclusion while at the Seneca NPS during the period from 2012 to 2015. If so, within one (1) week of its determination, the IEP team will develop a plan for providing timely remedial services with a completion date not to extend beyond December 22, 2018.

**Reporting Requirements**

C. Within two (2) weeks of completing the review of the students’ records as required by paragraph (IV)(A) of this Agreement, the District will provide to OCR a report showing the results of the District’s review, including: the name; and the determination reached for each student;

D. Within two (2) months of completing the review of the students’ records as required by paragraph (IV)(A) of this Agreement, the District will provide to OCR written documentation of action taken if necessary to implement the determinations referenced in paragraphs (IV)(A) and (IV)(B) above.

E. Within two (2) weeks of reaching the decision regarding whether remedial services are needed for any student as required by paragraph (IV)(B) of this Agreement, the District will submit to OCR documents supporting the group’s decision. It will include a description of and schedule for providing any remedial services to each student. OCR will, prior to approving the District’s decision and plan for providing the proposed services, review the documentation to ensure that the District met the requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, and, as applicable, Title II, at 28 C.F.R. § 35.160, in making these determinations.

F. By December 22, 2108, the District will provide documentation to OCR, for each student identified as needing remedial services as required by paragraph (IV)(E) of this Agreement, of the dates, times, and locations that remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).

**V. MONITORING**
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 statute(s) and regulations implementing Section 504 and Title II, which were at issue in this compliance review.

The District understands that OCR will not close the monitoring of this Agreement until such time that OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with Section 504, Title II, and their respective implementing regulations, which were at issue in this matter.

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.

By: ______/s/______________________ Date: 06/26/2017
Hayward Unified School District
Matt Wayne, Ed.D., Superintendent