

**Resolution Agreement**  
**Fresno County Superintendent of Schools**  
**OCR Case Number 09-15-1021**

The Fresno County Superintendent of Schools (County), without admitting to any violation of law, agrees to implement the following provisions in this Resolution Agreement (Agreement) to resolve the violations and concerns identified in the investigation of the above-referenced complaint by the Office for Civil Rights, U.S. Department of Education (OCR) under the Title II of the Americans with Disabilities Act, as amended (Title II) and Section 504 of the Rehabilitation Act (Section 504).

**Actions and Reporting**

**I. Individual Remedies**

- A. The County provided the Complainant with a written assessment plan on April 14, 2016 and received consent from Complainant on that same date. The County provided the Complainant with a second and revised written assessment plan on May 25, 2016 and received consent from Complainant on that same date. Under these assessment plans, the County will assess the Student for a suspected disability in the following areas, specific learning disability, other health impairment, emotional disturbance, and autism, as defined under the Individuals with Disabilities in Education Act, Title 20 of the United States Code sections 1400, *et. seq.* (IDEA) and its implementing regulations.
  
- B. The County will provide the Complainant with a third assessment plan to conduct a functional behavior assessment which should address such issues as the characteristics of the setting and events; removing antecedents that trigger behavior; adding antecedents that maintain appropriate behavior; removing consequences that maintain or escalate dangerous behaviors; adding positive behavioral interventions and supports that maintain appropriate behavior; teaching alternative appropriate behaviors, including self-regulation techniques, and to replace the dangerous behaviors to the extent that these are appropriate for the Student based on the antecedent, behavior, and consequences data collected in the functional behavior assessment.

The County will also provide the Complainant with a referral for an educationally-related mental health assessment.

- C. The County will ensure that all assessments are conducted by appropriately qualified assessors as required by applicable federal law and regulations.
  
- D. Within 60 calendar days of receiving consent to assessment (not counting days between regular school sessions, terms or days of school vacation in excess of five school days) as contained in Paragraphs I.A. and I.B., the County will convene an Individualized Education Program (IEP) team meeting to review the

assessment reports and make a determination regarding Student's eligibility for special education consistent with applicable federal law and regulations. However, the County may extend the 60-day timeline for good cause, namely if the Complainant does not make the Student available for the consented-to assessment or the Student does not participate in the consented-to assessments described in Paragraphs I.A. and I.B.

1. If the Student qualifies for special education and related services under the IDEA, based on the assessment data obtained and reviewed pursuant to Paragraphs I.A. and I.B., the IEP team will make an appropriate placement and service determinations consistent with applicable federal law and regulations and review and revise the Student's behavior intervention plan (BIP) (currently called a behavior support plan). The team will insure that any interventions included will be positive in nature; and
  2. At the IEP team meeting, the Complainant will be provided with a copy of the County's notice of special education procedural safeguards.
- E. If the IEP team determines that the Student is not eligible for special education and related services under the IDEA at the IEP meeting provided for in Paragraph I.D. above, the County will convene a meeting within 30 calendar days in accordance with section 104.35 of Title 34 of the Code of Federal Regulations to review and revise the Student's Section 504 plan and BIP in accordance with 34 C.F.R. §§104.33-104.36. A copy of the County's Section 504 notice of parental rights and procedural safeguards, consistent with 34 C.F.R. §104.36, will be provided to the Complainant at this meeting.
- F. The County will communicate with the Student's school district of residence and counsel for the Student's prior district of residence, Fresno Unified School District (FUSD), to invite one or more representatives from these school districts knowledgeable about the Student to attend the Section 504 or IEP team meeting and contribute to the group's discussion about placement and service decisions for the Student. The County will send a copy of the assessment data obtained to the Student's district of residence prior to the IEP or Section 504 team meeting. If the parent consents, the County will send the same data to counsel for FUSD.
- G. The County will offer the Complainant ninety (90) compensatory/remedial service hours in the areas of academics and counseling for the Student to address the allegations investigated in this matter and will include a completion date not to extend beyond December 22, 2017. If Complainant does not agree to number of service hours, the County will provide the Complainant with a copy of the County's special education and Section 504 procedural safeguards, which include the Complainant's rights with respect to resolution of the issues in the dispute.
- H. If the Complainant disagrees with the County's assessment pursuant to Paragraphs I.A. and I.B. above, the Complainant may request an independent

educational evaluation at public expense. If requested, the County must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation(s) is/are appropriate or ensure that an independent educational evaluation is provided at public expense.

- I. If the IEP team provided for in Paragraph I.D. above and/or the Section 504 meeting provided for in Paragraph I.E. above is not convened within the timelines provided for in those paragraphs because the Complainant does not attend, the County may convene the meeting(s) without the Complainant in order to ensure that the Student is provided with a Free Appropriate Public Education (FAPE). In that event, the County will provide the Complainant with a copy of the IEP and/or Section 504 plan within three (3) school days of the IEP and/or Section 504 meeting for signature.

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

- A. Within 15 days of the date on which this Agreement is signed, the County will provide OCR with a copy of the assessment plan described in Paragraph I.B. and documentation that the County has provided the assessment plan to the Complainant.
- B. Within 30 days of the completion of the assessments described in Paragraph I.A. and I.B., the IEP team meeting described in Paragraph I.D., and/or the Section 504 meeting described in Paragraph I.E., the County will provide OCR with a copy of the assessment reports, IEP, BIP, and, if revised, Section 504 plan for the Student. If the Complainant has not consented to the assessments described in Paragraphs I.A. and I.B., the County need not provide the reports and documentations described herein.
- C. Within 30 days of the County providing the offer of compensatory/remedial services to the Complainant, as discussed in Paragraph I.G., the County will submit to OCR a copy of the offer provided or proof that the Complainant was provided with his procedural safeguards, if the Complainant decides not to accept the offer of services.
- D. By January 5, 2018, the County will provide documentation to OCR of compliance with Paragraph I.G. if the Complainant accepts the offer of services, including any dates, times and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) and title(s) of the service provider(s).

### **II. Policies and Procedures: Guidance Memorandum**

- A. The County will draft a guidance memorandum for certificated staff of the County's court and community schools that reminds staff that:
  1. All disciplinary removals from class that are made by County staff, including Return to Pod (RTP) and other short term removals, shall be documented in a central location, which may be the County's student

information data system, along with information about where the student was placed or housed during the removal, the length of the removal, and whether the student received the special education instruction and related services required by his or her IEP or Section 504 plan during such removals, including the length of such instruction and services and the provider.

2. If a County staff member makes the initial disciplinary removal from the classroom as described in Paragraph II.A.1., and Fresno County Probation or Fresno County Mental Health staff determine that the student shall be removed from the classroom or school for that violation of a code of student conduct for a longer period of time than County staff have directed, this additional time of removal shall also be documented in the manner described in II.A.1.;
3. When counting the number of days of removals, the County must include removals made at any educational site during the school year, including but not limited to the student's prior school district, and removals documented in II.A.1. and II.A.2.;
4. When a student with a disability or a student for whom the County has a basis of knowledge is removed from his or her current placement for a period that exceeds 10 consecutive school days or 10 non-consecutive school days that constitute a change in placement, the County shall hold a manifestation determination meeting within 10 school days of the decision to change the placement of the student with a group of knowledgeable people and review all relevant information in the student's file, including the child's IEP or Section 504 plan, any teacher observation, and any relevant information provided by the parent(s) of the student;
5. If it is determined by the group that the removals were a manifestation of a student's disability or due to the failure to implement the student's IEP or Section 504 plan, the County must take immediate steps to remedy the failure to implement the IEP or Section 504 plan and either conduct a functional behavior assessment for the student (unless one has already been conducted prior to the change in placement) and implement a BIP or if a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior;
6. Consistent with 34 C.F.R. § 104.35 and existing AR 6146.6, a reevaluation of the student's needs shall be conducted before any subsequent significant change in placement;
7. A description of the process for requesting, maintaining, and timely reviewing documents for students with disabilities or suspected disabilities entering County court and community schools, including transcripts,

disciplinary history, assessments, Section 504 plans and IEPs, BIPs (sometimes also called behavior support plans or BSPs in County documents and by referring school districts) from students' sending school districts; and

8. A description of the process for ensuring that certificated staff at County court and community schools are kept apprised of disciplinary and behavioral issues, updates to Section 504 plans, IEPs or behavior intervention plans, and other issues affecting the educational program of students who transfer between the County court and community schools.
9. Nothing in this section relieves the County from any independent requirements it has under IDEA, such as the requirement to comply with sections 300.530, *et. seq.* of Title 34 of the Code of Federal Regulations when removing students with disabilities from classes and all other requirements of sections 300.530, *et. seq.* of Title 34 of the Code of Federal Regulations, including those applicable to students who are not yet eligible for special education and related services as described in section 300.534 of Title 34 of the Code of Federal Regulations.

#### B. Professional Development and Training

1. The County will distribute the guidance and provide mandatory training to all certificated staff of County court and community schools on the guidance developed under Paragraph II.A.
2. The County will provide mandatory training to all certificated staff of County court and community schools on implementing Section 504 plans, behavior intervention plans, and other responsibilities under Section 504, including identification, evaluation and placement of students with disabilities.

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

- A. Within 30 days of the date on which this Agreement is signed, the County will provide OCR with a draft of the memorandum described in Paragraph II.A for review and approval. Within 30 days of OCR's approval of the memorandum, the County will distribute it to all certificated staff and provide proof of distribution to OCR regarding the same.
- B. Within 60 days of the receiving OCR's approval of the memorandum provide in Paragraph II.A. above, the County will provide the training described in Paragraph II.B. The training may be provided in more than one session. OCR will be provided with a copy of the training materials, dates of training(s), the names and job titles of individuals who conducted the training(s), and the list of certificated staff who attended the training(s) within 30 days of the completion of the training(s).

**Monitoring**

The County understands that OCR will not close the monitoring of this agreement until OCR determines that the County has fulfilled the terms of this agreement in compliance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 C.F.R. part 104, and Title II and its implementing regulations at 28 C.F.R. part 35, which were at issue in this case.

The County 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 County understands that during the monitoring of this agreement, if necessary, OCR may visit the County, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the County has fulfilled the terms of this agreement and is in compliance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 C.F.R. part 104, and Title II and its implementing regulations at 28 C.F.R. part 35, which were at issue in this case.

The County 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 County written notice of the alleged breach and 60 days to cure the alleged breach.

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/s/  
Superintendent  
Fresno County Superintendent of Schools

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07/28/2016  
Date