

**Resolution Agreement**  
**Butte Valley Unified School District**  
**OCR Case No. 09-15-1322**

To resolve the above-referenced complaint with the U.S. Department of Education, Office for Civil Rights (OCR), filed pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and Title IX of the Education Amendments Act of 1972 (Title IX) and their implementing regulations, the Butte Valley Unified School District (District), without admitting to any violation of the law, agrees to take the following actions:

**I. Individual Remedies for Student 1<sup>1</sup>**

A. On October 22, 2015, the District will dis-enroll Student 1 from Picard Community Day School and enroll him at the Butte Valley Elementary School.

**B. Until interim plan is developed**

1. When Student 1 is re-enrolled at Butte Valley Elementary School, as described in paragraph I.A above, and before the interim plan described in paragraphs I.C.1-4 below is put in place, Student 1 will immediately be assigned a one-on-one aide to assist him in his transition back to the elementary school.
2. Student 1 will be integrated with other students at Butte Valley Elementary School, and will not be disciplined for his classroom behavior by taking away his opportunities to interact with other students, including recess, lunch, or other integrated (classroom) setting, except as follows: the District may (1) require Student 1 to sit in a preferred seat at lunch or in an integrated setting; (2) require Student 1 to walk with a District staff member at recess for a period of time in lieu of participating in recess (Student 1 may walk with the District staff member before joining recess for a variable period of time depending on the nature of the conduct leading to the discipline); (3) require Student 1 to speak with a staff member of the District's selection if Student 1's aide is unable to re-direct him to an instructional task.

**C. Interim Plan**

1. Within ten (10) working days of signature to this Agreement, the District will complete an interim plan for providing services to Student 1 during the time he is assessed for his eligibility for a Section 504 Plan or Individualized Education Plan (IEP).

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<sup>1</sup> OCR notified the District of Student 1's identity at the beginning of this investigation. We are withholding his name from this document in order to protect his privacy.

2. The District will develop the interim plan collaboratively with, at minimum, Student 1's classroom teacher, one of Student 1's treating mental health professionals (provided that parents provide consent), at least one of Student 1's parents, and the County Psychologist.
  3. The interim plan will include: (a) a description of Student 1's daily school schedule; (b) if Student 1 will work with a classroom aide or other paraeducator pursuant to the interim plan, responsibilities with respect to Student 1, including specific actions and tasks; and (c) the steps to be taken and the responsible individuals to respond consistent with Section 504 and Title II in the event that Student 1's behavior, disability-related or otherwise, is impacting his ability to learn at school.
  4. The interim plan will be written and a copy will be provided to, at minimum, Student 1's classroom teacher and at least one of Student 1's parents. If Student 1 will work with a classroom aide(s) and/or other paraeducator(s) pursuant to the interim plan, the District will provide a written summary for the classroom aide(s) and/or other paraeducator(s) stating clearly their tasks and responsibilities with respect to Student 1. The District will simultaneously provide a copy of the interim plan and the written summary for any classroom aide(s) and/or other paraeducator(s), if applicable, to OCR.
  5. The interim plan will be implemented the next school day after it is developed.
  6. If a dispute arises between the parents and the District about the operational components of the interim plan, the District will promptly engage the SELPA for assistance in mediating the dispute. If the mediation does not result in a resolution, or if the SELPA does not agree to assist the District in mediating the dispute, then within two working days, the parents may proceed through the District's Section 504 due process procedure.
- D. On October 22, 2015, the District will expunge the March XX, 2015 expulsion from Student 1's disciplinary record. The District will notify Student 1's parents of the expungement by letter and include a copy of Student 1's corrected discipline record. The District will simultaneously provide a copy of the letter to the parents and the corrected record to OCR.
- E. Within five (5) calendar days of signature to this Agreement, the District will provide Student 1's parents with an assessment plan, a consent form, and all other documents necessary to initiate an evaluation of Student 1 in all suspected areas of disability pursuant to the Individual Education Amendments Act (IDEA). The District will contemporaneously provide OCR with a copy of the documents.

1. If the District determines that Student 1 is eligible for an IEP, the District will develop an IEP in accordance with federal law. The District will provide a copy of the IEP to OCR within ten (10) calendar days of its completion.
  2. If Student 1 is found to be ineligible for an IEP, the District will provide Student 1's parents with notice of their procedural safeguards, including the right to file a due process complaint with the State. In addition to providing the parents with their procedural safeguards if Student 1 is deemed ineligible for an IEP, the District will promptly complete its assessment of the Student's eligibility for a plan pursuant to Section 504. The District will provide notice of these actions and a copy of the procedural rights to OCR within ten (10) calendar days.
  3. If Student 1 is found to be eligible for services pursuant to Section 504, the District will develop a written 504 Plan in accordance with federal law. The District will provide a copy of the 504 Plan to OCR within ten (10) calendar days of its completion.
  4. If the District concludes that Student 1 is ineligible for services pursuant to Section 504, the District will provide Student 1's parents with notice of their procedural safeguards, including the right to file a due process complaint through the District's procedures. In the event that Student 1 is found ineligible for either an IEP or 504 Plan, it will engage Student 1 and his parents in the District's Student Study Team (SST). The District will provide notice of these actions and a copy of the procedural rights to OCR within ten (10) calendar days.
- F. By November 25, 2015, after providing proper written notice to the Student's parent/guardian, the IEP team or Section 504 team, including the parent/guardian, will determine whether Student 1 needs compensatory and/or remedial services as a result of the District's failure to provide appropriate regular and/or special education or related services from October 17, 2014 to November 25, 2015. If so, within five (5) working days of its determination, the group will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond March 1, 2016. The District will provide the Student's parent/guardian notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.
1. Reporting requirements:
    - i. Within ten (10) working days of the decision as to whether compensatory and/or remedial services are needed, the District will submit to OCR documents supporting the group's decision. The documentation submitted shall include documentation showing the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing any compensatory and/or remedial services (if any) to Student 1. 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 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. If compensatory and/or remedial services are owed, by March 15, 2016 the District will provide documentation to OCR of the dates, times and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).
- G. If a 504 Plan or IEP is prepared for Student 1, at 60 days and 120 days after the District adopts the IEP or 504 Plan, or begins engaging in the SST process (whichever occurs first) regarding Student 1, the District will provide to OCR a letter describing the status of Student 1 and whether the steps taken to address his disruptive behavior and/or disability have had a positive effect on his educational environment. The District will also state whether or not Student 1 has been disciplined for disruptive behaviors, including but not limited to in-school suspension, out-of-school suspension, loss of privileges, or time-outs.
- H. If Student 1 moves outside of the District's attendance boundaries prior to completion of the actions specified in paragraphs I.A., I.B., I.C., or I.E., OCR will no longer enforce those paragraphs effective the date of Student 1's exit from District attendance, and the District will be relieved of implementing same.
- I. If Student 1 moves outside of the District's attendance boundaries prior to the completion of the actions specified in paragraph I.F., and it has been determined pursuant to paragraph I.F. that compensatory and/or remedial services will be provided, and that Student 1 qualifies for an IEP or 504 plan, then:
1. The District will contact the receiving school district promptly in writing upon notice of Student 1's enrollment in the receiving school district. The District will inform the receiving school district that Student 1 is receiving compensatory and/or remedial services from the District pursuant to this Agreement, explain the services remaining to be provided pursuant to this Agreement, request that the receiving school district convene a meeting of Student 1's new IEP team or Section 504 team, and ask that the receiving district notify the District of the meeting so that a District representative can participate in the meeting, which may occur telephonically.
  2. The District will provide to OCR documentation of its offer to meet with Student 1's IEP team or 504 team at the receiving school district.
  3. Provided that the receiving district has agreed to hold a meeting for Student 1 and has agreed to allow the District to participate in same, then the District shall make a good faith effort to attend the meeting with the receiving school district to discuss the provision of remaining compensatory and/or remedial services in accordance

with this Agreement. The District shall provide OCR with evidence of its good faith effort to attend the meeting; which may take the form of an email reciting its efforts to attend same.

4. If a meeting is held, then at the meeting, the District will use its best efforts to ensure that the IEP team or 504 team discusses the remaining compensatory and/or remedial services due to Student 1 pursuant to the Agreement and determine if Student 1's receiving school district, the receiving SELPA, and/or some combination thereof will agree to provide Student 1 with the remaining compensatory services. If the receiving district and/or SELPA agree to provide Student 1 with the remaining compensatory services, then the District will use its best efforts to ensure that a plan for providing the remaining compensatory and/or remedial services is documented in writing and is provided to Student 1's parents, and to the District so it can provide it to OCR.
5. If the District makes a good faith effort to: attend the meeting; ensure that compensatory services are discussed at the meeting; and that a written plan is developed and that it is provided to Student 1's parents and to the District so it can provide it to OCR, then the District shall be relieved of its obligations to provide Student 1 with compensatory services as set forth in paragraph I.F., on or after the date of the meeting, if one is held; or of the date that the District provides OCR with a copy of the written plan, if the receiving district develops one; or on the date that the receiving district refuses to hold an IEP or 504 team meeting, whichever date occurs first. Nothing in this agreement shall require the District to ensure that the receiving district and/or SELPA agree to: (a) hold a meeting to discuss compensatory services; (b) allow the District to attend same; (c) provide Student 1 with compensatory services; (d) develop a written plan for the provision of the remaining compensatory services; or (e) provide the District and/or parent with the written plan, if one is developed.

## **II. Guidance and Training Regarding Section 504 Responsibilities**

- A. By January 15, 2016, the District will provide to OCR for its review and approval a memorandum for District and school staff regarding Section 504. The memorandum will be written at a level appropriate for staff without a legal or policy background. The memorandum will address the following:
  1. The District's responsibilities pursuant to Section 504 with reference to the applicable federal regulations;
  2. Provide a description and explanation of the District's Section 504 policies and procedures, and the District's established protocol pursuant to those policies and procedures with respect to the identification and evaluation of students who need or are believed to need accommodations pursuant to Section 504;

3. Provide a description and explanation of the District's policies and procedures with respect to the Individuals with Disabilities Amendments Act (IDEA) and the District's established protocol pursuant to those policies and procedures; and
  4. How Section 504 and IDEA are related and the differences between the District's responsibilities with respect to each law.
- B. 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.
- C. By March 1, 2016, 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:
1. The District and School's responsibilities for providing a free appropriate public education (FAPE) to students with disabilities under Section 504;
  2. The District's Section 504 policies and procedures for the identification, evaluation and placement process, and procedural safeguards for parents;
  3. 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).<sup>2</sup>
  4. 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
  5. The full range of services that can be provided under Section 504 including special education and related aids and services.

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<sup>2</sup> 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.

- D. Within fifteen (15) calendar days of completing the training, the District will provide documentation to OCR demonstrating that the appropriate staff members have received the training.

### **III. Training Regarding Investigation and Response to Harassment Allegations**

- A. OCR will provide training on responding to harassment to District administrators and teachers during the 2015-2016 school year. The training will be scheduled within 120 days of the date on which the agreement is signed. The topics of the training will include:
  - 1. the October 2010 “Dear Colleague Letter” issued by OCR, which clarifies the relationship between bullying and discriminatory harassment and how schools should respond;<sup>3</sup>
  - 2. the types of conduct that could constitute harassment based on disability, sex or gender, such as verbal acts and name-calling, graphic and written statements about disability, sex or gender, or other conduct that may be physically threatening, harmful or humiliating;
  - 3. appropriate investigatory steps, including interviewing all witnesses with relevant information, maintaining records of the complaint and investigation, standards for reaching conclusions regarding whether discrimination occurred, and providing notification of decisions; and
  - 4. developing and implementing appropriate remedies, including remedies for victims of harassment in addition to discipline of the harasser.

### **IV. 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 and Title II at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, and Title IX at 34 C.F.R. §106.31, 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

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<sup>3</sup> On October 26, 2010, OCR released a Dear Colleague Letter concerning recipients’ obligations to protect students from student-on-student harassment on the basis of sex; race, color and national origin; and disability. The full text of the letter may be found at the following link: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

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 at 34 C.F. R. Part 104 and 28 C.F.R. Part 35, and Title IX at 34 C.F.R. §106.31, 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 sixty (60) calendar days to cure the alleged breach.

\_\_\_\_\_/s/\_\_\_\_\_  
Superintendent Ed Brown  
Butte Valley Unified School District

\_\_\_\_\_10/30/2015\_\_\_\_\_  
Date