

**Resolution Agreement**  
**Berkeley Unified School District**  
**OCR Case No. 09-15-1502**

The Berkeley Unified School District (District) agrees to implement this Resolution Agreement (Agreement) to resolve the violations and compliance concerns identified by the U.S. Department of Education, Office for Civil Rights (“OCR”), under Section 504 of the Rehabilitation Act of 1975, Title II of the Americans with Disabilities Act (“ADA”), and their implementing regulations in the above-referenced OCR case number.

A. Section 504 Policies and Procedures

1. The District will revise its Section 504 policies and procedures, including Board Policy and Administrative Regulation 6164.6, its Section 504 Handbook and Forms, and its Special Education and Office for Student Services webpages, to:
  - a. Identify that the determination of whether an individual has a disability is made consistent with the current requirements of the ADA Amendments Act of 2008 (ADAAA) and its implementing regulations, as also incorporated into Section 504, including that such a determination may not be foreclosed solely on the basis of bottom line measures, such as grades;
  - b. Identify the District’s process for responding to a referral for evaluation under Section 504 consistent with the statute and regulations by:
    - i. Identifying the individual(s) responsible for reviewing referrals, determining whether an evaluation is appropriate, and initiating any necessary evaluation; the factors to be considered when making the evaluation determination; and the reasonably prompt timeframes for these actions;
    - ii. Describing how and when the District will inform parents/guardians of a decision to not evaluate a student and of the procedural safeguards; and
    - iii. Explaining the components of an evaluation under Section 504, including, where appropriate, the administration of valid tests and other evaluation materials.
  - c. State that a significant change in placement, which would require an evaluation of a student who, because of disability, needs or is believed to need special education or related services under Section 504, includes transferring a student from one type of program to another or terminating or significantly reducing a related service; and
  - d. Ensure that any form used to create a Section 504 plan allows the team of knowledgeable persons to identify the unique needs of the student with a disability and any special education placement and related services that are appropriate to meet the unique needs of the individual students by providing for a fill-in section for “other services, accommodations, modifications, and placements” category.

2. The District will post the revised Board Policy and Administrative Regulation on the District's website, and will provide copies of all revised policies and procedures to all school site administrators and staff.
3. The District will draft a guidance memorandum to all school site administrators and staff summarizing the aforementioned changes to its policies and procedures.
4. Reporting Requirements.
  - a. By January 7, 2019, the District will submit to OCR for review and approval draft revised policies and procedures described in paragraph A.1.
    - i. Within 30 days of OCR approval of the revised policies and procedures, the District will provide OCR documentation showing that it has adopted the revised policies and procedures.
    - ii. Within 14 days of the District's adoption of the revised policies and procedures, the District will provide to OCR for review and approval a draft of the notice and the staff guidance memorandum.
    - iii. Within 14 days of OCR's approval of the notice and staff guidance memorandum, the District will provide OCR with a copy of the final notice and memorandum, and documentation to show that these documents were distributed to all staff in the District.

B. Training

1. The District will provide training to school site administrators and counselors at Berkeley High School, as well as any other District employees who oversee the Section 504 process at Berkeley High School, on the District's Section 504 obligations and its revised Section 504 policies and procedures, described in paragraph A.1.
  - a. Reporting Requirements.
    - i. Within 20 days of finalizing the guidance memorandum described above in Section A(8), the District will provide to OCR for review and approval draft training materials and the qualifications of the individuals providing the training required above in Section B(1). Within 30 days of OCR's approval, the District will notify OCR of the date of the training. The date of the training shall not be more than 45 days after the date of approval.
    - ii. Within 10 days after the training date, the District will provide OCR with documentation that it has provided training, as required above in Section B(1). The documentation will include the dates of the training, the names and titles of

the trainer(s), a copy of any materials used or distributed during the training, and a list of the District employees who attended the training.

- C. Data Collection. The District will adopt a system for tracking requests for Section 504 services, including when a request is made and when and how the District responds, and whether notice of procedural safeguards has been provided.
1. Reporting Requirements. By January 7, 2019, the District will provide OCR documentation confirming that it has adopted the tracking system described in paragraph C and describing this system.
- D. Independent Study Program. The District will draft guidance for staff on how to review and respond to applications to the Independent Study Program (ISP) submitted by students with disabilities who have an IEP or Section 504 plan, and to requests for disability-related services made for students participating in the ISP. The guidance will include a statement that the District will not deny a request for admission or exclude an existing ISP student who requests disability-related services unless an IEP or Section 504 team has determined that placement in the program would not be appropriate. The guidance also will explain the processes in place for evaluating existing ISP students with suspected disabilities and reevaluating students with existing IEPs and Section 504 plans. The guidance will set forth procedural safeguards to which students with disabilities and their families are entitled under 34 C.F.R. § 104.36.
1. Reporting Requirements.
    - a. By January 7, 2019, the District will submit to OCR for review and approval a draft of the guidance described in paragraph D.
    - b. Within 30 days of OCR approval, the District will provide OCR documentation showing that it has adopted the procedure described in paragraph D and distributed it to administrators and staff responsible for its implementation, as well as to the parents/guardians of prospective and existing ISP students.
- E. Advance Placement Exam Facilities. The District will not utilize locker rooms and lounges directly adjacent to restroom facilities as locations for administering Advanced Placement (AP) exams to students with disabilities who receive testing accommodations. In selecting testing facilities for students with disabilities who receive AP exam accommodations, the District will ensure that the facilities meet College Board guidelines for room conditions, to the same extent as those facilities made available to students without AP exam accommodations who take the same exam.
1. Reporting Requirements. By May 28, 2019, the District will provide OCR documentation of the actual locations at which AP exams were administered to students within the District in May 2019. For each testing location, the District will note whether students who received disability-related accommodations took their exams there.

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 the statutes and regulations implementing Section 504 and Title II, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

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.

BERKELEY UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_/s/\_\_\_\_\_  
Superintendent or District Representative

Date: 11/07/2018