

**RESOLUTION AGREEMENT**  
Mt. Diablo Unified School District  
OCR Case Number 09-17-1118

In order to resolve the issues raised in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), the Mt. Diablo Unified School District (District) agrees to take the actions outlined in this Resolution Agreement.

**I. INDIVIDUAL STUDENT PROVISIONS**

1. Special Education Evaluation and Eligibility

The District will complete a full evaluation of the Student for all identified and suspected areas of disability and convene an Individualized Education Program (IEP) meeting to determine the Student's eligibility and services under the Individuals with Disabilities Education Act (IDEA) by 4/15/17.

**Reporting Requirement:**

Within 15 days of convening the IEP meeting to determine eligibility and services under the IDEA, the District will provide OCR with a copy of the Student's assessment reports and other documents used in determining the Student's eligibility and services (including the need for compensatory and/or remedial services as described in Section I.2 below), as well as a documentation of the IEP meeting, including the IEP meeting notes.

2. Compensatory and/or Remedial Services

If the Student is found eligible under the IDEA, within 15 days of this decision, the IEP team will determine whether the Student needs compensatory and/or remedial services (including tutoring and counseling) related to any adverse effects experienced by the Student due to the alleged harassment and denial of free appropriate public education during the 2016-17 school year. The District will provide the Complainant notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

If the Student is found not eligible under the IDEA, within 15 days of this decision, the District will convene a Section 504 meeting to review and revise, as appropriate, the Student's current services and placement under Section 504, and also to determine whether the Student needs compensatory and/or remedial services (including tutoring and counseling) related to any adverse effects experienced by the Student due to the alleged harassment and denial of free appropriate public education during the 2016-17 school year. The District will provide the Complainant

notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

If either the Student's IEP or Section 504 team determines that the Student needs compensatory and/or remedial services and the Complainant consents to the offer, the District will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond December 31, 2017.

**Reporting Requirement:**

If a Section 504 meeting is held for him, within 15 days of the Section 504 meeting, the District will provide OCR with a copy of all documents reviewed or relied upon by the Section 504 team to determine the Student's placement and services under Section 504, and a copy of the Student's revised Section 504 plan.

Within 15 days of any decision by the Student's IEP or Section 504 team that the Student needs compensatory and/or remedial services, the District will submit to OCR documents supporting the group's decision. The documentation submitted shall include documentation showing the participants in the meeting, the information considered, an explanation for decisions made, and a copy of the plan for providing the compensatory and/or remedial services to the 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.

Within 15 days of completion of all compensatory and/or remedial services noted in the plan, 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).

3. Notification for Implementation

The District will notify all individuals with responsibility for implementing the Student's IEP or Section 504 plan: on the nature and scope of their responsibilities under the IEP or Section 504 plan; that they must implement all services specified in the Student's IEP or Section 504 plan under the law; and who to contact if they have any questions or concerns about the Student's IEP or Section 504 plan.

**Reporting Requirement:**

Within 15 days of the Student's IEP or Section 504 meeting, the District will provide documentation of how it fulfilled this provision, including whether the notification was done in writing or in person. If done in writing, the District will provide a copy of the written notification, and if done orally, the District will provide information

regarding who provided the notification, when the notification was provided, and a description of the information that was provided.

4. Point(s) of Contact

In consultation with the Student and the Student's family, the District will identify an employee at the School who will serve as the Student's point of contact and/or mentor, to whom the Student can go to discuss any School-related challenges or issues, and who will, in turn, check-in with the Student to develop a positive relationship with him.

Also, in consultation with the Student and the Student's family, the District will identify a School or District administrator who will serve as the designated point of contact for the Student and the Student's family in the event that they wish to report concerns or incidents regarding harassment of the Student and/or a denial of FAPE.

**Reporting Requirement:**

Within 15 days of the Student's IEP or Section 504 meeting, the District will provide OCR with the name and contact information of the individuals selected as the points of contact for the Student and the Complainant in fulfillment of this provision.

**II. SYSTEMIC PROVISIONS**

1. Section 504 Written Guidance and Training

The District will provide a written guidance memorandum on its Section 504 policies and procedures to all District and site level administrators and staff who have or may have responsibility for initiating, developing or coordinating the implementation of Section 504 plans and evaluating students for a disability under Section 504. In addition, the District will conduct in-service training on its Section 504 policies and procedures for the Section 504 Coordinators, and other individuals with responsibility for Section 504 compliance as the District deems appropriate; the training will be conducted by an individual with experience and expertise in Section 504 requirements. The written guidance and training will, at minimum, address the following topics:

- (i) The District's responsibilities for providing FAPE to students with disabilities under Section 504;
- (ii) The role and responsibilities of the Section 504 Coordinator and name or title of the Section 504 coordinator at each school site;
- (iii) District's Section 504 policies and procedures for identification, evaluation and placement process, including required timelines, and the procedural rights of parents and guardians, including for filing a complaint;
- (iv) The District's 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 of circumstances where evaluation may be appropriate, which includes repeated absences due to medical illness, and the responsibilities of all employees to refer and to whom to refer if a disability is suspected;

- (v) The full range of services that can be provided under Section 504 including special education and related aids and services; and
- (vi) The District's obligation to consider the appropriateness of disciplining a student with a disability when the student's alleged misconduct or behavior is potentially a result of that student's disability.

**Reporting Requirement:**

By 7/30/17, the District will provide OCR with draft written guidance and training materials and the qualifications of the individuals providing the training as required by this section for OCR review and approval. Within 60 days of OCR approval, the District will submit documentation that the written guidance was distributed and that training was conducted, including a copy of any materials used or distributed during the training, a list of District employees who attended the training, and date(s) when the training was provided.

2. School Staff Training on Positive Behavior Approaches and Disability Harassment

By 9/30/17, the District will provide mandatory training by an individual with appropriate expertise to all School administrators, teachers, and other staff at the School who interact with students, including custodians and playground supervisors, on the District's use of proactive positive behavior approaches to deal with student behavior and on the District's commitment and legal obligation to provide students with an environment that is free of disability harassment. The training will, at minimum, address the following topics:

- (i) The District's positive behavior approaches, such as Positive Behavior Interventions and Supports (PBIS), restorative justice and/or a social emotional program or curriculum that is aligned with a response to intervention (RTI)<sup>1</sup> framework, to respond to student behavior, including best practices with regard to positive behavior interventions to reduce or minimize removal from the classroom or other school activities;
- (ii) How students may have disabilities that impact their behavior and social interactions, and training on what to do if they suspect a student of

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<sup>1</sup> Response to intervention is an approach to academic and behavioral intervention to provide early, systematic, and appropriately intensive assistance to children who are at risk for or already underperforming as compared to appropriate grade- or age-level standards. RTI seeks to prevent academic and behavioral failure through universal screening, early intervention, frequent progress monitoring, and increasingly intensive research-based instruction or interventions for children who continue to have difficulty.

- having a disability or what to do if a student with a disability exhibits escalating behavioral, social and/or emotional needs which are negatively impacting their ability to access their education;
- (iii) A review of District policy and federal law (Section 504 and Title II) prohibiting discrimination, including harassment, against a student based on disability by another student, a District employee, or a third party;
  - (iv) The types of conduct that could constitute disability-based harassment, such as verbal acts and name calling; and
  - (v) A review of the procedure the District uses to respond to complaints of discrimination, including harassment based on disability, and what administrators and staff must do when they observe or learn of disability-based harassment of a student by a peer, a District employee, or a third party.

**Reporting Requirement:**

By 7/30/17, the District will provide a written description of the proposed training, including the names and qualifications of the proposed trainer(s) and the proposed training presentation, to OCR for review and approval. Within 60 days of OCR's approval of the proposed training, the District will confirm to OCR that it provided the training, which will include the training dates, a sign-up sheet or other evidence of attendance by name, and the training presentation materials.

3. Training for Students

The District will provide an age-appropriate information program for students at the School that is designed to increase awareness of what constitutes harassment based on disability, inform students of the consequences of harassment for both the student who is the target of the harassment and for the harasser, and encourage students to report incidents of harassment. The training will, at minimum, address the following topics:

- (i) The differences between bullying and harassment that may be discriminatory in nature;
- (ii) The types of conduct that could constitute such harassment, such as verbal acts and name-calling, graphic and written statements, or other conduct that may be physically threatening, harmful, or humiliating;
- (iii) The negative impact that such harassment has on the educational environment;
- (iv) The consequences, including discipline, that may be imposed on students who engage in harassment of other students based on disability, and

- (v) How students should respond if they experience or witness such harassment, including the reporting avenues available.

**Reporting Requirement:**

By 7/30/17, the District will provide OCR with a description of how it intends to provide the informational program to students described in this section for review and approval, including information about the materials to be used, the name(s) and affiliations of the individual(s) who will deliver the instruction, and the schedule for providing it. Within 60 days of OCR approval, the District will provide OCR with documentation demonstration that the informational program for students has been completed. The documentation will include the date(s) of the instruction, the names of the individuals providing the instruction, and copies of the materials used and/or given to students.

**MONITORING**

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 and Title II, and their implementing regulations, at issue in the matter.

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 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.

\_\_\_\_\_/s/\_\_\_\_\_

\_\_\_\_\_4/14/2017\_\_\_\_\_

Bryan Cassin  
ADR Administrator  
Mt. Diablo Unified School District

Date