

**Resolution Agreement**  
**Keppel Union School District**  
**OCR Case No. 09-17-1190**

The Keppel Union School District agrees to implement this Agreement to resolve the issues opened for investigation by the U.S. Department of Education, Office for Civil Rights (“OCR”), under Section 504 of the Rehabilitation Act of 1975 and Title II of the Americans with Disabilities Act (“ADA”) in the above-referenced OCR complaint.

A. Section 504 Policies and Procedures

1. **Administrative Regulation/Board Policy.** The District will draft Administrative Regulation(s)/Board Policy to be consistent with the legal standards under 34 C.F.R. §§ 104.33-104.36 and the ADA Amendments Act of 2008.
2. **Definition of disability.** The District’s Section 504 policies and procedures will include the definition of disability and explanatory guidance of the definition consistent with the following:
  - a. *Individual with a disability:* an individual who has a physical or mental impairment that substantially limits one or more major life activities; or who has a record of such an impairment; or who is regarded as having such an impairment.
  - b. *A physical or mental impairment:* any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  - c. *Major life activities:* functions such as bending, breathing, caring for one’s self, communicating, concentrating, eating, hearing, learning, lifting, performing manual tasks, reading, seeing, sleeping, standing, speaking, thinking, walking, and working. Major life activities may also include, but not be limited to: functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
  - d. *Extent of limitation:* An impairment need not prevent or severely restrict a major life activity to be considered substantially limiting.
  - e. *Impairments that are episodic or in remission:* An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
  - f. *Impact of mitigating measures and other ameliorative elements:* The determination of whether an impairment substantially limits a major life activity shall be made without



an evaluation of the student prior to initial placement and before any significant change in placement.

- b. *Parent/guardian consent:* Prior to conducting an initial evaluation of a student for eligibility under Section 504, the District will obtain written parent/guardian consent.
  - c. *Tests and evaluation materials:* Tests and other evaluation materials used to evaluate a student under Section 504 must be validated for the specific purpose for which they are used and must be administered by trained personnel in conformance with the instructions provided by their producer. Tests and other evaluation materials used will include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - d. *Measurement of aptitude or achievement level:* The District will select and administer evaluation tests so as to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
6. **Section 504 services plan and placement.** The District's Section 504 policies and procedures will be revised to reflect the following:
- a. *Multi-disciplinary team:* The District will convene a multi-disciplinary 504 team to review the evaluation data in order to make a placement decision. The 504 team will consist of a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
  - b. *Information from a variety of sources:* In interpreting the evaluation data and making placement decisions, the team will draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. The team will also ensure that information obtained from all such sources is documented and carefully considered and that the placement decision is made in conformity with 34 C.F.R. 104.34.
  - c. *Written plan:* If, upon evaluation, a student is determined to be eligible for services under Section 504, the team will meet to develop a written 504 services plan which specifies the types of regular or special education services, accommodations, and supplementary aids and services necessary to ensure that the student receives a FAPE.
  - d. *Parent participation in meeting and review of records:* The District will invite and encourage parents/guardians to participate in the meeting, and will exercise reasonable flexibility in scheduling meetings in order to enable the parents/guardians to attend the meeting. Parents/guardians will be given an opportunity to examine all relevant records.

- e. *Review and signature of services plan:* The team will sign and date the services plan to document each member's participation in the development of the services plan, including parents/guardians.
  - f. *Parent review of plan:* The District will provide the parents/guardians an opportunity to review and request revisions to the services plan.
  - g. *Copy of final document to parent:* The District will promptly provide the parents/guardians with a copy of the final document.
  - h. *Student transfer and matriculation:* If a student transfers or matriculates to another school, the principal or designee from which the student is transferring will ensure that the principal or designee at the new school receives a copy of the plan prior to the student's enrollment in the new school.
7. **Review and reevaluation.** The District's Section 504 policies and procedures will be revised to reflect the following:
- a. *Monitoring of student progress:* The 504 team will monitor the progress of the student and the effectiveness of the student's services plan to determine whether the services are appropriate and necessary and whether the student's needs are being met as adequately as the needs of nondisabled students. The team will review the student's plan annually. In addition, the student's eligibility under Section 504 will be reevaluated at least once every three years.
8. **Procedural safeguards.** The District's Section 504 policies and procedures will be revised to reflect the following:
- a. *Internal grievances:* The District's notification to parents/guardians of their procedural safeguards will provide a brief description of how to file an internal complaint of disability discrimination, including the procedure under which a complaint of disability discrimination would be investigated.
  - b. *Due process hearing:* In addition to a description of the District's Section 504 due process hearing procedure, the District will include information about when a complaint is appropriate for the District's Section 504 due process hearing procedure.
9. Reporting Requirements
- a. By 5/10/2017, the District will submit a draft of an Administrative Regulation and/or Board Policy described in paragraph A.1. to OCR for its review and approval. OCR will provide its edits (or its approval) regarding the revisions to the District.
  - b. Within 60 days of OCR approval, the District's School Board will adopt the OCR approved Administrative Regulation and/or Board Policy described in paragraph A.1.

- c. Within 90 days of OCR approval, the District will revise its publications, including its website, to reflect the newly adopted Administrative Regulations and/or Board Policy described in paragraph A.1.

**B. Guidance and Training for District Staff Regarding Section 504 Responsibilities**

1. By 5/10/2017, the District will ensure that required information regarding the District level Section 504 Compliance Coordinator are posted and made available as required by law.
2. The District will draft a memorandum for District and school site staff notifying them of the Section 504 policies and procedures described in paragraph A, and providing a summary of the impact of such the policies on staff duties and responsibilities. The memorandum will be written at a level appropriate for staff without a legal or policy background. OCR will provide its edits (or its approval) to the memorandum to the District.
3. The District will conduct in-service training on the Section 504 requirements and the District's Section 504 policies and procedures for District staff, including school site administrators, special education teachers, school psychologists, counselors and any other staff members who work with students with special needs. The training will cover an explanation of the following:
  - a. The District's responsibilities for providing a free appropriate public education (FAPE) to students with disabilities under Section 504;
  - b. The District's Section 504 policies and procedures, for the identification, evaluation and placement process, and procedural safeguards for parents;
  - c. 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) including an explanation of hidden disabilities, including emotional impairments, that may also cause a student to need special education or related services;
  - d. 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
  - e. The full range of services that can be provided under Section 504 including special education and related aids and services.

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4. Reporting Requirements

- a. By 7/1/2017, the District will provide OCR with documentation of the steps it has taken to meet the requirements Paragraph B.1.
- b. By 8/1/2017, the District will provide a draft of the memorandum described in Paragraph B.2. to OCR for its review and approval.
- c. 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.
- d. 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.
- e. By 8/16/2017, the District will provide information (e.g., PowerPoint, handouts, etc.) concerning the in-service training described in Paragraph B.3. to OCR for its review and approval. The information will include the names and qualifications of the proposed trainers.
- f. By 11/1/2017, the District will confirm to OCR that it provided the training described in paragraph B.3., including documentation confirming the dates, times and names of individuals who received the training.

C. Individual Remedy

1. By 10/31/2017, the District will conduct an evaluation of the Student to determine if the Student is eligible for a 504 Plan or IEP, or if it is determined that an evaluation is unnecessary, the 504 Team or IEP Team shall inform the Complainant in writing of this decision and of the procedural safeguards.
2. If the Student is found eligible for a 504 Plan or IEP, by 12/1/2017, after providing proper written notice to the Student's parent, a group of knowledgeable persons, including the parent, (e.g., the Student's 504 Team or IEP team) will determine whether the Student 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 (i.e., from the date the Complainant first requested services for the Student to the present). If so, within one week 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 5/31/2019. The District will provide the Student's parent notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

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3. Reporting Requirements

- a. Within two weeks 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, the information considered, an explanation for decisions made, and a description of and schedule for providing any compensatory and/or remedial services (if any) 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.
- b. By 6/30/2019, 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).

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.

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 implementing regulations.

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.

KEPPEL UNION SCHOOL DISTRICT

By: \_\_\_\_\_/s/\_\_\_\_\_

Dr. Ruben Zepeda  
Superintendent  
Keppel Union School District

Date: 05/10/2017