

Resolution Agreement
San Jose Unified School District
Case No. 09-17-1511

The U.S. Department of Education, Office for Civil Rights (OCR) initiated the above referenced investigation pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act as Amended (ADA), and their implementing regulation at 34 C.F.R. Part 104. In order to resolve the noncompliance identified by OCR, and without admitting to any violation of state or federal law, San Jose Unified School District (District) agrees to implement this Resolution Agreement (Agreement).

A. Section 504 Meeting: If the Student returns to a school in the District while identified for a Section 504 Plan or Individualized Education Program (IEP) with a skin sensitivity/urticaria eligibility basis, the District will hold a Section 504 or IEP meeting with a group of people knowledgeable about the Student to make the following free appropriate public education (FAPE) related placement determinations about the Student, consistent with 34 C.F.R. §§ 104.33-104.36¹:

1. whether the Student requires door-to-door or other transportation services from the District in order to receive a FAPE. If the Student's parent/guardian consents to further evaluation of the Student with respect to this issue, the District may delay this determination until such evaluation(s) have been conducted. If the Student's parent/guardian declines to provide such consent, the Section 504 or IEP team shall make this placement decision based on all of the relevant information available; and,
2. if the Section 504 or IEP team determines that the Student requires transportation services to receive a FAPE, the team shall also determine whether any compensatory or other services are therefore appropriate due to the District's failure to make this determination during the 2016-2017 school year.

Reporting Requirement: Within 30 days of the Student returning as an identified Section 504 or IEP student as described above, to a school in the District, the District will provide OCR with documentation that the Section 504 or IEP team has met and made the decisions described above. The documentation shall include the resulting Section 504 or IEP plan and related documents, including the meeting notes documenting the basis for the decisions described above. The District's written notice for the meeting shall include any previously proposed transportation related assessment plans for the Student (if still appropriate), and if the Student's parent/guardian consents to any such assessment, the District shall have 70 days from the date such consent is provided to provide documentation of the above described Section 504 or IEP meeting to OCR. If the Section 504 or IEP team determines compensatory services and/or reimbursement is appropriate the District shall provide OCR with documentation of delivery of such services by July 15, 2019.

¹ If an IEP is held for the Student, the District's compliance with the Individuals with Disabilities Education Act (IDEA) with respect to evaluation and placement of the Student regarding transportation services, will satisfy this item of the Agreement.

B. Policies and Procedures: The District will revise its Section 504 policies and procedures, (including its Section 504 Manual and any published policies and procedures on its website and parent/student handbooks) to ensure they are consistent with the regulations implementing Section 504, and will issue written guidance regarding the revisions. The revisions will address the provision of a FAPE, evaluation and placement, and procedural safeguards for students with disabilities consistent with 34 C.F.R. §§ 104.33-104.36, including as follows:

1. the District is responsible for providing a FAPE to all qualified students with disabilities and evaluating all students who need or are believed to need special education or related services because of a disability², to determine Section 504 eligibility;
2. the District will timely evaluate all students for whom it has reason to believe need special education or related services because of a disability under Section 504, and will not unnecessarily delay any such evaluations;
3. the District may not require a medical diagnosis in order to consider whether a student is eligible under Section 504;
4. in making placement decisions, Section 504 teams will consider a full range of relevant placement options³, including regular or special education and related aids and services that are designed to meet the individual needs of any such students with disabilities as adequately as the needs of non-disabled students are met;
5. all eligibility and placement decisions related to a FAPE, including for transportation, behavioral, or other services shall be made through the Section 504 process, by a group of individuals who are knowledgeable about the student, the evaluation data, and the placement options; and,
6. the 504 team is responsible for documenting and carefully considering all relevant information regarding a student's eligibility and/or placement.

Reporting Requirement: The District will provide OCR with a list of all such policies and procedures within 20 days of the execution of this Agreement, and a draft of all such revisions and corresponding written guidance by November 1, 2018. Within 60 days of approval from OCR, the District will provide documentation to OCR that all such revisions have been adopted and the written guidance has been distributed.

C. Training: The District will conduct staff training for all principals, vice/assistant principals (one per school site), Section 504 District and site coordinators, and any other appropriate staff as determined by the District, regarding its revised Section 504 policies and procedures for providing a FAPE to students with disabilities, including the areas described above (B.1-

² For the purposes of this Agreement, the term "disability" is used consistent with the term "handicap" as contained in the regulations implementing Section 504 at 34 C.F.R. Part 100.

³ Such placement options shall include any proposals from members of the Section 504 team, including the parent or guardian and the student if s/he is participating in the meeting.

6).⁴ An individual with expertise in Section 504/Title II requirements for serving students with disabilities will provide the training.

Reporting Requirement: By February 15, 2019, and October 1, 2019, the District will provide OCR with documentation that it has conducted the trainings described above, including by providing OCR with the trainer's expertise, a list of individuals trained, and a copy of all of the training materials.

- D. Review: The District will conduct a review of: (1) all students currently receiving transportation services related to a health impairment or medical related issue to determine whether the student has been evaluated for a disability under IDEA or Section 504 if the health impairment led to their transportation services (Group 1); and, (2) all students who were not considered for Section 504 eligibility because their parent(s)/guardian(s) did not provide a medical diagnosis (since January 1, 2017) (Group 2 – identified as described in the "Reporting Requirements" Section below). Based on the review, the District will offer to evaluate any student who has not been evaluated for IDEA or Section 504, and for whom the District determines there is reason to suspect the student may have a disability requiring special education or related services. If any such student is found eligible under IDEA or Section 504, the IEP or Section 504 team will also decide whether any compensatory services are due as a result of any failure to timely evaluate such student.

Reporting Requirement: Within 30 days of the execution of this Agreement, the District will provide OCR with a list of students in Groups 1 (i.e., those students currently receiving transportation services as a result of a health impairment or medical related issue and who were not evaluated under Section 504 or IDEA relevant to such health impairment/medical issue) and a proposed email or memo to site staff (site nurses, site Section 504 Coordinators, and any other relevant District or site employees) to identify all students in the District under Group 2, for OCR's review and approval. Within 75 days of the execution of this Agreement, the District will provide a summary of the review of all such students, including the area of possible disability and the basis for the District's determination of whether evaluation is appropriate, as well as a list of any supporting documents relied upon (i.e. relevant IEP, Section 504 plans, medical diagnoses, etc.) As needed, OCR may request additional documentation based on this report. Within 90 days of the execution of this Agreement, the District will provide OCR with documentation that it has offered to evaluate any students it identified as requiring evaluation under Section 504 or IDEA because there was reason to suspect the student may have a disability requiring special education or related services. By February 15, 2019 the District will provide OCR with documentation of the results of all such evaluations and corresponding IEP or Section 504 meetings in the form of a list of all such students with their corresponding area of suspected disability(ies), whether they were part of Group 1 or Group 2; the type of evaluation conducted for the student, if any (e.g. psychoeducational, health, behavioral or other evaluation), the date of the Student's IEP or Section 504 meeting, the eligibility results as determined by the IEP or Section 504 team, and the nature and amount of any compensatory education determination(s). As needed, OCR may request additional documentation based on this list. The District will provide

⁴ For school sites with just one principal and one vice or assistant principal, the site may send just one of these administrators to the training – if one is the site 504 Coordinator, s/he shall be the one to attend the training.

OCR with documentation of the delivery of any resulting compensatory education by February 15, 2020.

- E. Monitoring: 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 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. Upon completion of the obligations under this Agreement, OCR shall close and dismiss the 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 will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

_____/s/_____
Superintendent or Designee

_____09/28/2018_____
Date