

Resolution Agreement
San Diego Unified School District
09-18-1121

San Diego Unified School District (District), without admitting to any violation of law and without setting precedent for any subsequent case, agrees to implement this Resolution Agreement solely to resolve the compliance concerns identified in the above-referenced case by the U.S. Department of Education, Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and the implementing regulations for each of these statutes.

I. **Team Determination and Documentation of Para-educator Services**

- a. The District will develop and implement at XXXX Elementary School (School) a consistent Procedure for determining whether a student with a disability needs Para-educator support and, if so, accurately recording a student's need for such support in the student's individualized education program (IEP) or Section 504 Plan. The Procedure will ensure that the School's IEP and Section 504 teams:
 - i. Determine whether a student needs Para-educator support as a part of the student's appropriate placement, and, if so, determine the following: the duration and frequency of support; the type of Para-educator needed; whether the student needs one-on-one or group support; and the type of support the Para-educator is to provide. These determinations, including whether the student needs one-on-one support, must be based on the individualized needs of the student and not on resource or staffing limitations.
 - ii. Clearly and consistently document a student's need for Para-educator support in a specified section of the IEP or Section 504 Plan, including the following: the duration and frequency of support; the type of Para-educator needed; whether the student needs one-on-one or group support; the type of support the Para-educator is to provide; and the educational justification for any significant changes to Para-educator support. Para-educator support must be accurately identified in IEPs and Section 504 Plans and must not be referred to as specialized academic instruction (SAI).
- b. Reporting requirements:
 - i. By April 15, 2021, the District will provide OCR a draft of the School Procedure for determining and documenting Para-educator support. Incorporating OCR's input, the District will finalize and begin implementing the Procedure at the School within forty-five (45) calendar days of

receiving OCR's input. By the same date, the District will provide OCR a copy of the final Procedure and confirm that the School is implementing it.

- ii. By September 1, 2021, and March 15, 2022, the District will provide OCR a copy of the IEP or Section 504 Plan for all School students who have such a plan and will identify each student's classroom assignment by teacher, room number, or other identifier.

II. Para-educator Staffing and Classroom Assignment

- a. The District will develop and implement an effective Procedure for ensuring that the School has sufficient qualified staff consisting of the School reviewing its own staffing as well as considerations for additional requests to consistently implement Para-educator support in a timely manner as required by each student's IEP or Section 504 Plan at the beginning of the school year and throughout the school year.
- b. The Procedure will require the School to place students in, and assign Para-educators to, classes based on the individualized needs of each student, including students whose IEPs or Section 504 Plans require one-on-one full-time Para-educator support.
- c. Reporting requirements:
 - i. By April 15, 2021, the District will provide OCR a draft of the Procedure to provide sufficient Para-educator staff to the School and to assign students and Para-educators to classes based on the individualized needs of each student. Incorporating OCR's input, the District will finalize and begin implementing the Procedure at the School within forty-five (45) calendar days of receiving OCR's input. By the same date, the District will provide OCR a copy of the final Procedure and confirm that the School is implementing it.
 - ii. By September 1, 2021, and March 15, 2022, the District will provide OCR the following:
 - 1. The name and title of each Para-educator assigned to the School, and the length of each assignment; and
 - 2. A copy of each Para-educator's weekly schedule including classroom assignment(s), hours of support provided to each student, and whether support is provided to each student one-on-one or in a group setting.

- iii. By April 15, 2022, the District will provide OCR a list of each request for additional Para-educators to be allocated to the School for the 2020-21 school year and fall of the 2021-22 school year. For each request, the District will provide the following:
 - 1. Who made the request and when;
 - 2. The basis for the request;
 - 3. Who responded to the request and when;
 - 4. A description of the response to the request and the basis for that response; and
 - 5. A copy of all documentation of the request and the response.

III. Monitoring and Oversight

- a. The District will develop and implement a Procedure for the School to accurately document and monitor whether it consistently implements Para-educator support required by a student's IEP or Section 504 Plan, and to address any identified gaps in service. The Procedure will include the following elements:
 - i. Qualified assigned personnel to maintain a running record of the Para-educator support required by each School student's IEP or Section 504 Plan, including duration and frequency of support, type of Para-educator to be assigned, whether the support is to be delivered one-on-one or in a group, and the type of support the Para-educator is to provide.
 - ii. Qualified assigned personnel to maintain a running record of the support each student received, including: the duration (hours) and frequency (dates) of Para-educator support provided; the name and/or title of the Para-educator who provided the support; whether the Para-educator provided support one-on-one or in a group; and the type of support the Para-educator provided.
 - iii. Qualified assigned personnel to monitor this information for each student, document any inconsistencies in support required and support delivered, promptly and fully address any such inconsistencies, and document when and how the School addressed the inconsistencies.
- b. Reporting requirements:
 - i. By April 15, 2021, the District will provide OCR a draft of the monitoring and oversight Procedure. Incorporating OCR's input, the District will finalize and begin implementing the Procedure at the School within forty-five (45) calendar days of receiving OCR's input. By the same date, the

District will provide OCR a copy of the final Procedure and confirm that the School is implementing it.

- ii. By September 1, 2021 and March 15, 2022, the District will provide OCR documentation generated under the Procedure concerning the Para-educator support required by each School student's IEP or Section 504 Plan; the Para-educator support provided to each student; any inconsistencies in required and delivered support; and how and when the School addressed these inconsistencies.

IV. Individual Students

- a. The District will identify each School student whose IEP or Section 504 Plan requires Para-educator support at the time the Procedure for determining and documenting such services pursuant to Section I. of the Resolution Agreement is finalized and extend a written offer to the student's parent or guardian to convene an IEP or Section 504 team meeting and, where appropriate, amend the IEP or Section 504 Plan consistent with that Procedure.
 - i. For each parent or guardian who accepts the District's offer, the District will promptly convene an IEP or Section 504 meeting comprised of a group of knowledgeable individuals, including the parent or guardian.
 - ii. The IEP or Section 504 team will determine and document the student's need for Para-educator support consistent with the Procedure and provide the parent or guardian with notice of procedural safeguards, including the right to challenge the team's determination through an impartial due process hearing procedure.
- b. The District will also identify each student currently enrolled in the District who attended the School from June XX-XX, 20XX and/or for any portion of the 20XX-XX, 20XX-XX and/or 20XX-XX school year(s) and who did not receive the Para-educator support required by the student's IEP or Section 504 Plan and who still receives Para-educator support on an IEP or Section 504 Plan. The identified students will include, but not be limited to, six students identified by OCR's investigation, regardless of whether those six students still receive Para-educator support on an IEP or Section 504 Plan. For each identified student, the District will document: the total number of hours the student did not receive any Para-educator support; and the total number of hours the student received another type of Para-educator support.
 - i. The District will provide written notice to the parents or guardians of each identified student who remains enrolled in the District and who still receives Para-educator support on an IEP or Section 504 Plan of the total

number of hours the student missed support and/or received another type of support. The District will offer to convene an IEP or Section 504 meeting to specifically consider whether and what additional services, modifications, and/or aids are necessary to address the impact of any gap in the student's receipt of required Para-educator support.

- ii. For each parent or guardian who accepts the District's offer, the District will promptly convene an IEP or Section 504 meeting comprised of a group of knowledgeable individuals, including the parent or guardian. The IEP or Section 504 team will specifically consider whether and what additional services, modifications, and/or aids are necessary to address the impact of any gap in the student's receipt of required Para-educator support.

The District will document the IEP or Section 504 team's determination and provide the parent or guardian with notice of procedural safeguards including the right to challenge the team's determination through an impartial due process procedure.

If the IEP or Section 504 team determines that additional services, modifications, and/or aids are necessary, the District will implement the additional services, modifications and/or aids as required by the IEP or Section 504 Plan.

- c. If the District identifies the same student under both Section IV.a. and IV.b. of the Resolution Agreement, it will issue one notice to the parent or guardian and convene one IEP or Section 504 meeting to address the requirements of both sections.
- d. Reporting requirements:
 - i. By June 30, 2021, the District will provide OCR the list of students identified under Section IV.a. of the Resolution Agreement.
 - ii. By June 30, 2021, the District will provide OCR the list of students identified under Section IV.b. of the Resolution Agreement, along with: the number of hours each student did not receive the amount or type of Para-educator support required by the student's IEP or Section 504 Plan; and a description of the process used by the District to reach this determination.
 - iii. By July 15, 2021, the District will provide OCR copies of the written offers it extended to parents and guardians under Section IV.a., IV.b., and/or IV.c.

- iv. By December 1, 2021, the District will provide OCR a list of all parents and guardians who accepted the offers extended under Section IV.a., IV.b., and/or IV.c. For each parent or guardian who accepted the offer, the District will provide:
 - 1. A copy of the IEP or Section 504 Plan.
 - 2. A copy of procedural safeguards provided to each parent or guardian.

V. Training and Written Guidance

- a. The District will provide training and written guidance on the Procedure for determining and documenting Para-educator support developed under Section I.a. of the Resolution Agreement to all School personnel who routinely participate in IEP and/or Section 504 team meetings for School students.
- b. The District will provide training and written guidance on the Para-educator staffing and classroom assignment Procedure developed under Section II.a. and II.b. of the Resolution Agreement to the following:
 - i. All School and District-level personnel responsible for assessing the need for Para-educator staff at the School, including those requesting that additional staff be allocated and those responding to such requests; and
 - ii. All School personnel responsible for determining the classroom assignment for students receiving Para-educator support as well as those responsible for assigning Para-educators to students and developing Para-educator schedules.
- c. The District will provide training and written guidance on the School's monitoring and oversight Procedure developed under Section III.a. of the Resolution Agreement to the following:
 - i. All School personnel assigned to maintain a running record of the Para-educator support required by each School student's IEP or Section 504 Plan;
 - ii. All School personnel assigned to document the Para-educator support each student received pursuant to the Student's IEP or Section 504 Plan; and
 - iii. All School personnel assigned to monitor implementation of Para-educator support, document implementation pursuant to the Student's IEP or

Section 504 Plan, address any inconsistencies in implementation, and document when and how the School addressed the inconsistencies.

d. Reporting requirements:

By April 15, 2021, the District will provide OCR with draft written guidance and a draft outline of the training content for the guidance and training required by Section V.a., V.b., and V.c. Incorporating OCR's input, the District will complete the trainings and distribute the written guidance documents within forty-five (45) calendar days of receiving OCR's input. By the same date, the District will report the following: the dates of the trainings; a list of participants, by title; the individual(s) conducting the trainings by title and qualifications; a summary of the training content; and a copy of any training materials used. The District will also provide OCR a copy of the final written guidance documents and confirm distribution.

Monitoring:

The District understands that by signing the Resolution Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Resolution Agreement. Further, the District understands that during the monitoring of the Resolution 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 and obligations of the Resolution Agreement. Upon the District's satisfaction of the commitments made under the Resolution Agreement, OCR will close the case.

The District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of the Resolution Agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

_____/s/_____
Ed Baisley
District Special Education Local Plan Area Director

03/17/2021
Date