

Resolution Agreement
Konocti Unified School District
Case No. 09-19-1133

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 (Title II), and their implementing regulations at 34 C.F.R. Part 104 and 28 C.F.R. Part 35. In order to resolve the noncompliance identified by OCR, and without admitting to any violation of state or federal law, Konocti Unified School District (District) agrees to implement this Resolution Agreement (Agreement).

- I. Evaluation of all Areas of Suspected Disability: The District will ensure that the Student has been evaluated in all areas of suspected disability and placed appropriately, by completing the following:
- A. determine whether there is reason to suspect the Student may have any other areas of disability, in addition to Attention Deficit Hyperactivity Disorder (ADHD), including whether there is reason to suspect the Student may have a sensory processing deficit and/or a disability related to trichotillomania;
 - B. develop an evaluation plan and offer to conduct an evaluation of the Student under Section 504 and/or the Individuals with Disabilities Education Act (IDEA), with respect to ADHD and any other areas of suspected disability to help determine the appropriate placement for the Student. This shall include an offer to conduct a functional behavior analysis or other appropriate behavior assessment to determine the function of the Student's behaviors and strategies to prevent the Student's disability related behavior from harming his educational progress;
 - C. conduct the above described evaluation(s) and hold a corresponding Individualized Education Program (IEP) or Section 504 meeting with individuals knowledgeable about the Student, the evaluation information, and placement options to determine appropriate placement for the Student within 60 days of receiving consent from the Student's parent(s)/guardian(s), to the District's offer to evaluate and evaluation plan; and,
 - D. if the Student's parents/guardians do not consent to the proposed evaluation within 60 days of the District's written offer to evaluate, the District is not required to take further action with respect to this item.

Reporting Requirements: Within 10 days of the execution of this Agreement, the District will provide OCR with a copy of the offer to evaluate the Student and corresponding evaluation plan that is provided to the Student's parent(s)/guardian(s). If the District determines there is no reason to suspect any other disabilities in addition to ADHD, it will provide OCR with documentation that it has provided a written explanation of this determination to the Student's parent(s)/guardian(s) with a copy of their procedural safeguards within 10 days of the execution of this Agreement. Within 70 days of receiving consent from the parent(s)/guardian(s) to evaluate the Student, the District will provide OCR with documentation that it has conducted the appropriate evaluation(s) and held the corresponding IEP and/or Section 504 meeting(s), including by providing OCR with a copy of all IEP and/or Section 504 meeting notes, resulting plan(s) and related documentation of all placement decisions.

II. IEP and/or Section 504 Meeting for Student: Within 70 days of execution of this Agreement, and after providing proper written notice to the Student's parent(s)/guardian(s), the District shall hold an IEP or Section 504 meeting with a group of knowledgeable persons, including the parent(s)/guardian(s), to determine whether the Student needs compensatory and/or remedial services as a result of the District's failure to implement the Student's Section 504 plan during the 2017-2018 school year and 2018-2019 school year (through the date a new Section 504 or IEP meeting is held and placement is determined pursuant to Provision I above), including with respect to the loss of instruction the Student incurred as a result of out-of-school suspensions and behavior referrals during this time. If so, the IEP or Section 504 team will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond July 31, 2020. The District will provide the Student's parent(s)/guardian(s) with notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

Reporting Requirements: Within 10 days of the IEP or Section 504 meeting to determine whether compensatory and/or remedial services are needed, the District will submit to OCR documents supporting the group's decision, including meeting notes, the individuals in attendance, all evaluative and other information considered, an explanation for the 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. By January 15, and August 15, 2020, 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 August 15, 2020 report will document that all compensatory and/or remedial services, as determined by the IEP or Section 504 team, have been provided.

III. Manifestation Determination: Prior to any further disciplinary removals of the Student from his educational program (including in or out-of-school suspensions), the District will conduct a manifestation determination with a group of knowledgeable persons (*e.g.* the IEP or Section 504 team) to evaluate whether any misconduct that would result in further discipline removals was caused by, or was a manifestation of the student's disability. To determine whether the Student's conduct was a manifestation of his disability, the group of knowledgeable people will determine whether the Student's conduct was (A) caused by, or had a direct and substantial relationship to his disability; or, (B) was the direct result of the District's failure to implement his Section 504 plan. If the answer to either question is "yes," then the Student's conduct is a manifestation of his disability and the District may not take the disciplinary action and should determine whether the Student's current placement is appropriate including by conducting a functional behavior assessment and any other appropriate evaluations and reviewing the Student's IEP or Section 504 placement (including behavior plan) in light of these evaluations. If the answer to both questions is "no," then the Student's conduct is not a manifestation of his disability and the disciplinary action may be administered in the same manner as for non-disabled students.

Reporting Requirements: Within 10 days of any manifestation determination meetings required for the Student and as described above (held prior to any further disciplinary removals), the District will provide OCR with documentation of the IEP or Section 504 meeting of knowledgeable persons, including all meeting notes, the individuals in attendance, all evaluative and other information considered, and an explanation of the manifestation determinations made by the group. If the Student's conduct is found to be a manifestation of his disability, within 30 days of this determination, the District will provide OCR with a copy of the functional behavior assessment and any other evaluations that are conducted as a result, as well as documentation of any subsequent placement related Section 504 or IEP meetings, including all meeting notes, the individuals in attendance, all evaluative and other information considered, and an explanation of the placement decisions made.

- IV. Student Discipline Record: The District will expunge the disciplinary incidents on the Student's records from the 2017-2018 school year and the 2018-2019 school year through the date a new Section 504 or IEP meeting is held and placement is determined pursuant to Provision I above, including all suspensions (except with respect to his Section 504 and/or IEP plan(s) and related evaluation(s), which will retain this information for proper consideration in placement and other FAPE related decisions).

Reporting Requirement: Within 30 days of the execution of this Agreement, the District will provide OCR and the Student's parent(s)/guardian(s), with documentation showing it has expunged the Student's records as described above.

- V. Section 504 Memorandum: The District will issue a written memorandum and provide an updated Section 504 "Eligibility and Accommodation Plan" form to all District and site staff who are responsible for compliance with Section 504, including all site Section 504 coordinators. The written memorandum and updated form will clarify that:
- A. the District is responsible for providing a FAPE to all students with disabilities and evaluating all students who the District has reason to suspect may have a disability, to determine Section 504 or IDEA eligibility;
 - B. a student is considered an individual with a disability and qualifies for a Section 504 plan if s/he has a mental or physical impairment that substantially limits a major life activity and s/he needs special education or related aids and services. The substantial limitation need not affect learning for the student to qualify for a Section 504 plan;
 - C. the District will timely evaluate all students for whom it has reason to suspect a disability (for eligibility under the IDEA and/or Section 504), and may not require a medical diagnosis in order to consider whether a student is eligible under IDEA or Section 504;
 - D. the District will evaluate any student who, because of disability, needs or is believed to need special education or related services before initially placing the student and before any subsequent significant changes in placement, including before any disciplinary removals that constitute a significant change in placement such as disciplinary removals for more than 10 consecutive days or for a total of more than 10 cumulative days in a school year under circumstances that show a pattern of exclusion. In such situations, the District will evaluate whether the student's misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and shall determine whether the student's current placement is appropriate. If the misconduct is not

a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

- E. in making placement decisions, IEP or Section 504 teams will consider a full range of placement options, 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;
- F. the IEP or Section 504 team is responsible for carefully considering and documenting all relevant information regarding a student's eligibility and/or placement; and,
- G. District procedures to register all Section 504 plans with the District Special Education Department and ensure that the staff who are responsible for implementing a student's plan are notified of the plan and its content.

Reporting Requirement: By August 1, 2019, the District will provide OCR with a draft of the written memorandum described above, and any proposed revisions to Section 504 forms and publications. Within 15 days of approval from OCR, the District will provide OCR with documentation that the written memorandum and revise form have been distributed.

- VI. Training: The District will conduct training for all site staff at the School who are responsible for compliance with Section 504, including staff responsible for the development or implementation of Section 504 plans and any site Section 504 coordinator(s), regarding its obligations under Section 504 with respect to providing a FAPE to students with disabilities, including the areas outlined in provisions IV(A-G) above. An individual with expertise in Section 504/Title II and the IDEA requirements for serving students with disabilities will provide the training.

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

- VII. 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

5/30/2019
Date