

SETTLEMENT AGREEMENT

I. INTRODUCTION

American Samoa Department of Education (ASDOE) enters into this agreement to resolve the compliance issues identified by the U.S. Department of Education (OCR) in its investigation of OCR Reference Nos. 10141101, 10141165, 10141168, and 10141369, conducted under the authority of section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

II. GENERAL PROVISIONS

- A. This agreement resolves only those compliance issues identified by OCR in the investigation of OCR Reference Nos. 10141101, 10141165, 10141168, and 10141369, and does not constitute an admission by the ASDOE of any violation of Section 504, Title II, or any other law.
- B. The ASDOE understands and acknowledges that, if it does not fully implement this agreement, OCR will take appropriate measures within its authority to effect compliance and 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 ASDOE written notice of the alleged breach and (60) calendar days to cure the alleged breach.
- C. The ASDOE understands that by signing this agreement, it agrees to provide OCR data and other information in a timely manner. Further, the ASDOE understands that during the monitoring of this agreement, OCR may visit the ASDOE's schools or places of business, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the ASDOE has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 and Title II which were at issue in this case.
- D. The ASDOE understands that OCR will not close the monitoring of this agreement until OCR determines that the ASDOE has fulfilled the terms of

this agreement and is in compliance with the regulations implementing Section 504 and Title II.

III. REMEDIAL PROVISIONS

A. Policies and Procedures

By January 12, 2017, in consultation with OCR as described in the reporting section below, the ASDOE will review and revise, as appropriate, its Section 504 and Title II policies and procedures to ensure that the ASDOE provides a free appropriate public education (FAPE) to all students within its jurisdiction, regardless of the nature or severity of the student's disability. The policies and procedures will include, but not be limited to:

1. A procedure to provide disabled students with regular or special education and related aids and services that 1) are designed to meet individual educational needs of disabled students as adequately as the needs of nondisabled students are met and 2) are based on the procedures contained in the Section 504 regulations at 34 CFR 104.34 (Educational Setting); 34 CFR 104.35 (Evaluation and Placement); and 34 CFR 104.36 (Procedural Safeguards).
2. A procedure to ensure that students receive all the services that the students' Section 504 or IEP teams determine are appropriate for the student to receive a FAPE, including, but not limited to, services that may require a professional service provider.¹
3. A policy that ensures that any services provided to disabled students that need to be provided by a professional service provider are provided by professionals that have the appropriate certification, licensing, and/or training to provide the services to the disabled students.
4. A policy that ensures that students with disabilities are not treated differently than non-disabled students with respect to instructional time, unless based on the individual needs of the disabled student.

¹ All references in this agreement to "professional service providers" refers to those providers that require special training and/or qualifications to provide necessary services for disabled students in order for the students to receive a FAPE including, but not limited to, behavioral specialists; occupational therapists; speech and language pathologists; psychologists; and, physical therapists. "Professional services" refers to the services provided by the professional service providers.

The policy will specifically state that it is not appropriate to provide a shorter academic year for disabled students in a special program for reasons that are not based on the students' needs and ensure that disabled students do not receive less instructional time than non-disabled students for reasons unrelated to the student's individual needs, such as remodeling a self-contained classroom. In such cases where a temporary change in scheduling is unavoidable, the policy will state that ASDOE will take steps to ensure that it provides instructional time for the affected disabled students that is equivalent to non-disabled students, such as providing instruction in a temporary alternative appropriate setting, or providing compensatory education to disabled students to make up for the missed instructional time.

B. Professional Service Providers– Task Force

1. By the dates described in the reporting section below, the ASDOE will take steps to ensure that it has a sufficient number of professional service providers to fully deliver the services required for disabled students in its schools to receive a FAPE, including all the services contained in students' IEP's and Section 504 Plans.
2. The steps taken by the ASDOE to ensure a sufficient number of professional services providers will include, but not be limited to, creating a task force to review the ASDOE's recruiting, hiring, retention, and contracting procedures for professional service providers. The task force members will consist of, at a minimum, the ASDOE director or director's representative (i.e. someone with the authority to create the procedures described in this section), the ASDOE human resources director, the ASDOE special education director, at least one resource specialist, at least one professional service provider qualified to provide services to disabled students in the ASDOE (e.g. a physical therapist, speech language pathologist, psychologist), at least one parent of a child that requires such professional services to receive a FAPE, and a community member that specializes in disability services issues (unless the ASDOE is unable to get a volunteer in any of these categories to serve on the task force after attempts to locate and offer a spot on the task force to such potential volunteers, and the ASDOE documents such attempts and provides the documentation to OCR).

3. The ASDOE will recruit members for the task force from school staff, parents, students, and the community by announcing the formation of the taskforce and describing the volunteer opportunity to those groups. The ASDOE may limit the number of persons sitting on the task force to a number, as long as such limitation does not result in failing to have all of the types of task force members described above. If a task force member leaves the task force, the ASDOE is required to replace that member with someone from the same type of task force member described above, unless a person of the same type of task force member is already a member of the task force, or the ASDOE is unable to find a replacement after documented attempts to fill the task force vacancy.
4. The task force will conduct a review of the use of professional service providers in all ASDOE schools, including the number and type of additional professional service providers the ASDOE requires to adequately evaluate and provide services to all of the ASDOE's disabled students.
5. The task force will use the information from the review to create a plan to hire or contract professional service providers to provide services required for disabled students to receive a FAPE, including, but not limited to, a strategy for hiring or contracting a sufficient number of behavioral specialists, occupational therapists, speech language pathologists, psychologists, and physical therapists.
6. The task force will, at a minimum, consider the following factors in developing the plan for hiring or contracting a sufficient number of professional service providers:
 - a. The most effective method for recruiting professional service providers to the ASDOE, including advertising for positions, the hiring process, paying for current employees to receive professional certifications, and terms of employment, to help ensure the ASDOE will secure the services of professional service providers as needed to provide FAPE to its disabled students.
 - b. The most effective method for retaining current professional service providers.

- c. The most effective method for contracting for the services of professional service providers in American Samoa that are not employees of the ASDOE, as needed to provide FAPE for ASDOE disabled students, including contacting all such professional service providers on the island working in public or private practices to notify them of the ASDOE's interest in contracting for services, and ensuring that the ASDOE has a timely method for contracting for such services and providing payment to the professional contractors as provided for in their contracts.
- d. The most effective method for providing evaluations and services for students with disabilities who require evaluations and services from professional service providers in the interim until those professionals are hired or contracted by the ASDOE. The process will include a method for contracting with professional service providers for evaluations, and providing appropriate training to staff to provide those services until a qualified professional service provider is contracted or hired to provide the services.

The ASDOE will adopt and implement the task force's plan as described in the reporting sections below.

C. Notice and Training

1. Within 45 days of receiving notice that OCR approved its policies and procedures developed under section III.A, as described in the reporting section below, the ASDOE will provide written notice of the policies and procedures to all teaching and administrative staff working at the ASDOE. The notice may be made electronically by e-mail, or by mail.
2. Within 45 days of receiving notice that OCR approved its policies and procedures, as described in the reporting section below, the ASDOE will publish its approved policies and procedures pursuant to section III.A, above, on ASDOE's publically accessible website and school websites, accessible to persons with vision disabilities. If a school does not have a website, the school will provide written notice to all parents of the policies and procedures, with a

description where the parents can review the policies and procedures.

3. Within 45 days of receiving notice that OCR approved its policies and procedures, as described in the reporting section, below, the ASDOE will provide training to all of its teaching, paraprofessional, disability services provider staff, and administrators on the policies and procedures developed pursuant to section III.A, above.

D. Student Remedies

1. By June 1, 2017, the ASDOE will conduct a review of all ASDOE disabled students' IEPs and Section 504 plans to determine whether the students are receiving evaluations and/or services from professional services providers that they need to receive a FAPE, including behavioral evaluations and services, speech and language evaluations and services, psychological evaluations and services, occupational therapy evaluations and services, and physical therapy evaluations and services for the 2014-2015, 2015-2016, and 2016-2017 school years. The purpose of the review will be to identify all ASDOE disabled students who are not receiving appropriate disability evaluations, or not receiving all the services the students need to receive a FAPE due to a lack of professional service providers.
2. The ASDOE will provide OCR with a report of this review as described in the reporting section IV.D, below. The report will include the information the ASDOE used to conduct the review, including student IEP's and Section 504 plans, and the ASDOE will use the information from the review to create a list of all students with IEPs and Section 504 plans who did not receive appropriate evaluations and services due to the lack of professional service providers during the 2014-2015 2015-2016, and 2016-2017 school years. The student list will include, at a minimum, the student's name, grade, identified disability (if already evaluated), and a description of the services the student did not receive.
3. Within 15 days of receiving OCR's approval of the student list created pursuant to section III.D.2, and as described in the reporting section below, the ASDOE will provide notice to all the parents/guardians of the students on the list (including the parents of

the four subject students) that apologizes to the parents/guardians for the lack of services, provides information on the ASDOE's plan to provide evaluations and services to the individual student, describes the ASDOE's actions pursuant to the task force described in section III.B, above, and offers compensatory and/or remedial services as a result of the ASDOE's failure to provide appropriate regular and/or special education or related services during the 2014-2015, 2015-2016, and 2016-2017 school years.²

4. The letter described in section III.D.3, above, will provide the parents/guardians with a minimum of 30 days to respond to ASDOE with the parents'/guardians' decision whether to accept compensatory or remedial services. If the parent/guardian accepts the services, within 30 days of the parents/guardians acceptance, a group of knowledgeable persons, including the parent/guardian, will have a meeting regarding each of the students on the list created pursuant to section III.D.1, above. The team will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond one calendar year (unless the compensatory services required are so extensive as to require additional time to complete). The ASDOE will provide the students' parents/guardians notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.
5. By January 12, 2017, the ASDOE will send a letter to all the parents of current students who were assigned to the class in the resource room at Matafao Elementary School at the beginning of the 2014-2015 school year that offers the parent/guardian compensatory and/or remedial services as a result of the ASDOE's failure to provide an educational program for the students for one week. The letter will provide the parents/guardians with a minimum of 30 days to respond to the offer for compensatory or remedial services. If the parent/guardian accepts the compensatory or remedial service, the ASDOE will follow the same procedure described in section III.D.3, above, to determine appropriate compensatory education and/or remedial services for the students.

² For parents who have moved out of American Samoa, the ASDOE will send the letter to the parent's last known address providing the same information being provided to other parents, except that the ASDOE will notify the parent that it will provide the special education and related aids and services, and offer the compensatory services determination meeting, upon the student's return to the ASDOE.

IV. REPORTING PROVISIONS

A. Policies and Procedures

1. By January 12, 2017, the ASDOE will provide OCR a copy of its draft revised policies and procedures, which it developed pursuant to section III.A of the agreement, for OCR's review and approval. OCR will review the policies and procedures and provide feedback to the ASDOE. Within 20 days of receiving OCR's feedback, the ASDOE will submit revised policies and procedures to OCR based on OCR's feedback. The ASDOE and OCR will repeat this process until OCR approves the policies and procedures. The ASDOE will take no action to adopt the policies and procedures before receiving final approval from OCR.
2. Within 60 days of receiving OCR's final approval of the revised policies and procedures submitted pursuant to section III.A of the agreement, the ASDOE will provide OCR with documentation to substantiate that it has adopted the OCR-approved policies and procedures.

B. Task Force

1. By December 12, 2016, the ASDOE will provide OCR with a report that contains a description of the task force created pursuant to section III.B, above. The report will include the members of the task force, their qualifications, the category they fill on the task force, a schedule for task force meetings, and the agenda for the first task force meeting.
2. The ASDOE will provide additional reports within ten days after each task force meeting that contains a description of items that were discussed and decided at the meetings, and an agenda for the next meeting. OCR will provide feedback, as necessary, on items for the agenda and task force decisions. The ASDOE will implement OCR's feedback to ensure that it is taking the steps contained in section III.B in a timely manner. The ASDOE will continue to provide these additional reports, and continue with the task force meetings, until OCR determines that it has met the requirements in section III.B.

C. Notice and Training

1. Within 60 days of receiving OCR's final approval of the policies and procedures in section III.A, the ASDOE will provide OCR with a report containing its plan to provide the notice and training contained in section III.C, above. The report will contain copies of the proposed notice to staff of the policies and procedures, and the proposed location of the policies and procedures on ASDOE's and schools' websites. For schools without websites, the report will contain the proposed notice to parents described in section III.C.2.
2. Regarding the training described in section III.C.3, above, the report will contain, at a minimum: 1) the proposed date of the training; 2) the name and qualifications of the proposed trainer; and 3) an outline of the proposed training with a copy of training materials.
3. After OCR approves the notice and training, and within 14 days after the agreed-upon training is completed, the ASDOE will provide OCR with a report containing the actual notice provided pursuant to sections III.C.1 and III.C.2, above, and, regarding the training, contain: 1) sign-in sheets for the training that identifies the participants by name and position; and 2) a list of any staff who were required to take the training but did not complete it, with a plan to provide the training for those staff.

D. Student Remedies

1. By January 12, 2017, the ASDOE will provide OCR with a report that documents its review and student list completed pursuant to section III.D, above. The report will include a copy of the Section 504 plan or IEP of every student subject to the review, a description of the method the ASDOE used to create the student list, and the student list that complies with section III.D. OCR will provide the ASDOE feedback on its review and the ASDOE will take steps required by OCR to conduct an additional review and revised student list, as needed. The ASDOE and OCR will repeat this procedure until OCR approves the review and student list.
2. Within 30 days of creating the student list pursuant to section III.D.2, the ASDOE will provide OCR with a report containing the notice sent to all the parents/guardians of the students on the list as

described in section III.D.3, above. As students are added to the list based on OCR feedback described in section IV.D.1 above, the ASDOE will submit additional reports within 30 days of adding students to the list that contain the notices sent to the parents/guardians of the added students.

3. Within 60 days of sending the notice to parents described in section III.D.2, above, the ASDOE will submit a report to OCR containing documentation of parent responses to the ASDOE's offer of compensatory education. For every parent that accepted the offer of compensatory education, the report will also contain information from the meeting described in section III.D.3, above, showing the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing the compensatory and/or remedial services to the students. OCR will, prior to approving the ASDOE's decision and plan for providing the proposed services, review the documentation to ensure that the ASDOE met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations. However, ASDOE will begin implementing the plans for providing compensatory education and/or remedial services immediately, and will amend or add compensatory and/or remedial services based on OCR's feedback. The ASDOE will follow the same reporting timelines and documentation for each student added to the student list pursuant to OCR's feedback pursuant to the reporting section above.
4. By June 1, 2018, the ASDOE will provide a report to OCR with documentation that it completed providing all compensatory education and/or remedial services to each student that required such services pursuant to the team meetings and OCR's feedback. The ASDOE will provide documentation to OCR of the dates, times and locations that compensatory and/or remedial services were provided for each student, a description of what was provided, and the name(s) of the service provider(s).
5. By January 12, 2017, the ASDOE will provide OCR with a report that contains a copy of the letter sent to parents/guardians pursuant to section III.D.5, above. Within 60 days of sending the letter, the

ASDOE will submit a report to OCR containing the same information described in section IV.D.3, above.

6. By June 1, 2017, the ASDOE will provide OCR with a report documenting that it completed providing all compensatory and/or remedial services pursuant to section III.D.5, using the same reporting procedure contained in section IV.D.4, above.

Signed:

_____/s/_____
Mr. Philo Jennings
Acting Director of Education.
American Samoa Department of Education

October 11, 2016
Date