

**Voluntary Resolution Agreement
Lopez Island School District No. 144
OCR Reference No. 10161070**

I. INTRODUCTION

Lopez Island School District No. 144 (district) enters into this agreement with the U.S. Department of Education, Office for Civil Rights (OCR) to resolve OCR Reference No. 10161070, conducted under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act (Title II) and its implementing regulation at 28 C.F.R. Part 35.

II. RESOLUTION PROVISIONS

A. Policies and Procedures

1. **Action Item**: The district will review and revise, as necessary, its policies, procedures and practices (revised procedures) regarding the disciplining of students with disabilities to ensure that they are consistent with the requirements of Section 504. Specifically, the revised procedures will ensure that:
 - a. Prior to the imposition of any disciplinary exclusion from school that may result in a significant change in placement for a student with a disability or suspected of having a disability, a determination is made that meets the requirements of 34 C.F.R. §104.35, as to whether the behavior for which the student is being disciplined is a manifestation of the student's disability.
 - b. If a proposed exclusion of a student with or suspected of having a disability is permanent (expulsion) or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a "significant change in placement" under § 104.35(a) of the Section 504 regulation.
 - c. If a series of suspensions that are each of 10 days or fewer in duration creates a pattern of exclusions that constitutes a "significant change in placement," the requirements of 34 C.F.R. § 104.35(a) also would apply. The determination of whether a series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors that should be considered in determining

whether a series of suspensions has resulted in a "significant change in placement" are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

- d. In order to implement an exclusion that constitutes a "significant change in placement," a recipient must first conduct a reevaluation of the student, in accordance with 34 C.F.R. § 104.35, as it must prior to making any significant change in placement of a student with a disability.
- e. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform with the Section 504 regulation, whether the student's misconduct is caused by the student's disability.
- f. If it is determined that the student's misconduct is caused by the student's disability, the evaluation team must continue the evaluation, following the requirements of § 104.35 for evaluation and placement, to determine whether the student's current educational placement is appropriate.
- g. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated nondisabled students are excluded.

2. **Reporting Requirement:**

- a. By **March 10, 2018**, the district will submit a draft of the revised procedures developed in accordance with section A.1 to OCR for review and approval. OCR will review the draft submitted by the district and notify the district if revisions are required. If OCR requires revisions to the draft, the district will re-submit the revised procedures to OCR for review and approval within 30 days of receiving notice of the revisions required by OCR. OCR and the district will follow the same process until OCR approves the district's revised procedures.
- b. Within 45 days of receiving OCR's written approval of the revised procedures, the district will submit to OCR documentation verifying it has adopted and implemented them, including a working link to the revised procedures on the district's website, if available.

B. Notice to Staff

1. **Action Item:** Within 60 calendar days after receiving the OCR-approved revised procedures, the district will provide written notice to all administration and staff of the district's procedures regarding the imposition of discipline for students with disabilities, including any revisions made pursuant to section A, above. In addition, the district shall provide specific written notice to all administrators and staff who may be involved directly or indirectly in the implementation of discipline that, in all such actions involving students with disabilities, a manifestation determination must be made, in accordance with 34 C.F.R § 104.35, if the imposition of a disciplinary exclusion from school would constitute a significant change in placement for the student.
2. **Reporting Requirement:** Within 30 calendar days after distributing the notice described above, the district will provide a report to OCR that reflects the specific actions taken to comply with section II.B, above. The report will include: a copy of the written notice provided to administrators and staff; the date the notice was provided; and the name and position/title of the individuals who received the written notice.

C. Student Specific Actions

1. **Action Item:** The district will offer to conduct an evaluation of the student who was the subject of this complaint to determine whether the student's behavior that caused his expulsion from November 2015 to February 2016 was related to his disability. This offer will be made through a letter to the student's parent which explains that the district is prepared to conduct an evaluation of the student pursuant to 34 C.F.R. §104.35. The letter will explain that, if the parent accepts the district's offer to conduct the evaluation, and a determination is subsequently made that the student's behavior was a manifestation of his disability, the district will then determine whether compensatory education is appropriate for the student to compensate the student for any educational services that were not provided during the student's exclusion from school from November 2015 to February 2016. The letter will provide a specific deadline by which the parent must respond to the district's offer.
2. **Reporting Requirements:**

- a. By **March 10, 2018**, the district will submit a draft of the letter to the student's parents for OCR review and approval. OCR will review the letter submitted by the district and notify the district if revisions are required. If OCR requires revisions, the district will re-submit the draft of the letter to OCR for review and approval within 30 days of receiving notice of the revisions. OCR and the district will follow the same process until OCR approves the district's letter.
 - b. Within 15 days of receiving OCR's written approval of the letter to the student's parent, the district will send the letter to the student's parent and provide OCR with a copy of the letter.
 - c. If the parent does not respond by the deadline, within 15 days of the deadline, the district will so inform OCR in writing.
3. **Action Item**: If the parent accepts the district's offer to evaluate the student, within 30 days, the district will evaluate the student and determine whether compensatory education is appropriate to compensate the student for any educational services that were not provided during the student's exclusion from school from November 2015 to February 2016. If the district determines that compensatory education is necessary, within one week of its determination, the team will develop a plan for providing timely compensatory services with a completion date not to extend beyond the end of the 2018-19 school year.
4. **Reporting Provision**: Within 30 days of the decision as to whether compensatory education services are needed, the district will submit to OCR, for its review and approval, documents supporting the team's decision. The documentation submitted shall include the names and titles of the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing any compensatory and/or remedial services, if any, to the student, and a copy of the plan for providing the services.
5. **Action Item**: Within 30 days of receiving OCR approval, the district will implement the plan as approved by OCR and provide compensatory education services, if any, outlined therein to the student.
6. **Reporting Requirement**: Within 30 days after providing any compensatory services, the district will provide documentation to OCR of the dates, times and locations that compensatory, if any, were provided, a description of what was provided, and the names(s) of the service providers.

III. GENERAL PROVISIONS

The district understands that by signing this agreement, it agrees to provide OCR 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 with the regulation implementing Section 504 and Title II at 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130, which were at issue in this case. Upon completion of the obligations under this agreement, OCR shall close this case.

The district 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 district written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Signed:

_____/s/_____
Mr. Brian Auckland
Superintendent
Lopez Island School District

_____December 20, 2017_____
Date