

Fairfax County Public Schools
Resolution Agreement
OCR Docket No. 11-21-5901

Fairfax County Public Schools (the Division) agrees to resolve the above-referenced directed investigation initiated by the U.S. Department of Education, Office for Civil Rights (OCR), by voluntarily entering into this Resolution Agreement (Agreement) to address the violations and concerns that OCR identified in a letter of resolution. In this directed investigation, OCR investigated whether the Division provided a free appropriate public education (FAPE) to each qualified student with a disability as required by federal law and provided students with disabilities equal access to education under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. This Agreement is made to settle disputed claims and shall not be construed by any party as an admission of liability, or a waiver or modification of any legal defense, or an admission of violation of any of the parents' or students' rights under any federal, or state law.

I. Designated Administrator to Ensure Implementation of this Agreement

- A. The Division will designate an administrator (Plan Administrator) who will oversee the creation and implementation of a plan for compensatory education (Plan¹). The Division will ensure that the Plan Administrator is a Division-level administrator who has Section 504 and Title II expertise.

Reporting Requirements:

1. **By December 9, 2022**, the Division will provide for OCR review and approval, based on the requirements outlined in Section I.A, the qualifications, position roles and responsibilities, and support structure for the Plan Administrator identified in Section I.A. above.
2. **Within twenty-one (21) days of OCR's approval**, the Division will provide OCR the name and contact information for the Plan Administrator.

II. Creation of a Plan for Compensatory Education (Plan)

To ensure that the Division (1) determines whether students with disabilities received an appropriate education to meet their individual needs from April 14, 2020, through June 10, 2022 (Pandemic Period), (2) makes individualized determinations for each student with a disability regarding whether compensatory education and/or related services ("compensatory education") is owed, and (3) makes decisions regarding compensatory education that are distinct from decisions the Division is making regarding recovery services for students, including providing the procedural protections afforded by Section 504, the Division will create a plan that will describe for Division staff, students, and parent/guardians the efforts the Division will undertake to

¹ Plan described in Section II.

consider and address the compensatory education needs of students with disabilities. The Plan will describe the following:

- A. **Criteria for Determining Provision of FAPE and Compensatory Education:** A description of the criteria Individualized Education Program (IEP) teams and 504 knowledgeable committees will use in determining whether a student with a disability did not receive appropriate services to meet their individual educational needs during the Pandemic Period and the method for determining compensatory education for students who did not receive a FAPE during the Pandemic Period as further described in Section III below.
- B. **Tracking Mechanisms:** The mechanisms the Division will use to document and track for each student with a disability whether the determination regarding compensatory education has been made; the amount, nature of, and timeframe for the compensatory education (if any) to be provided; and how the Division will monitor the implementation of compensatory education for those students who are to receive it as further described in Section IV below.
- C. **Division Staff Training and Parent/Guardian and Stakeholder Outreach:** A description of the training and/or written guidance regarding the Plan for compensatory education, including the criteria to be used when making those determinations; and the Division's outreach to parents/guardians and stakeholders regarding the Plan as further described in Section V below.

Reporting Requirement:

By December 9, 2022, the Division will provide for OCR's review and approval the Plan described under Section II A-C above.

III. Criteria for Determining Compensatory Education

The Division will follow the criteria described in this section to determine what, if any, associated compensatory education the Division owes to students with disabilities as a result of a failure or inability to provide regular or special education and related aids and/or services designed to meet the individual educational needs of the student during the Pandemic Period. These criteria include the following process to be followed and factors to be considered throughout the process:

- A. **Compensatory Education:** The Division will provide prior written notice to all parents or guardians of students with disabilities or eligible students stating that by the end of the 2022-2023 school year, the Division will convene Section 504 and Individualized Education Program (IEP) meetings for each student. During these meetings, the Section 504 knowledgeable committees or IEP teams will make a determination and document the determination made regarding whether a student was provided regular or special education and related aids and services designed to meet their individual needs during the

Pandemic Period. To make this determination, Section 504 knowledgeable committees and IEP teams will consider and document the following:

1. Whether the Division, during the Pandemic Period, failed to provide the student with the regular or special education and related aids and services required by the student's Section 504 plan or IEP that was in effect at the beginning of March 2020.
 - a. In making this determination, Section 504 knowledgeable committees or IEP teams will determine whether the student received the amount of and the type of the regular or special education, and related aids and services that were required by the Section 504 plan or IEP that was in effect April 14, 2020. The services provided by parents or guardians during the Pandemic Period will not be counted as services provided by the Division. For example, for a student whose IEP called for one-on-one assistance by a paraprofessional, if that assistance was in fact provided by a parent or guardian, the Division may not count the provision of that assistance as a service provided by the Division.
 - b. The Division will provide the student's parent or guardian access to the information recorded by the Division regarding the amount of special education, related aids or services provided during the Pandemic Period, including the option to review IEP or Section 504 service logs.
 - c. The Division will notify the parent or guardian of the process to challenge the determination made by the Section 504 or IEP team regarding whether or to what degree services were provided to the student during the Pandemic Period, consistent with Section 504 procedural safeguards.
2. Whether changes to the student's Section 504 plan or IEP that were made during the Pandemic Period, including any Temporary Learning Plans (TLPs), Virtual IEPs, or other remote learning plans that were developed, were based on the student's individualized educational needs, particularly where changes resulted in lesser services being provided to the student than the Section 504 plan or IEP in effect prior to the changes.
3. For students with IEPs, whether the student's goal progress was impacted by remote learning provided during the Pandemic Period. To make this individualized determination, the IEP team will consider, at minimum:
 - a. the student's present levels of academic achievement and functional performance;
 - b. the student's previous rate of progress toward IEP goals pre-Pandemic Period;
and

- c. the documented frequency and duration of special education and related services provided to the student prior to the service disruptions caused by the COVID-19 pandemic.
- B. Compensatory Education Owed:** For students with disabilities who did not receive the regular or special education and/or related aids or services designed to meet their individual educational needs during the Pandemic Period, the Section 504 knowledgeable committees or IEP teams will do the following:
1. Make an individualized determination regarding what compensatory education the student needs to return the student to the position the student would be in if the student received services that met his or her individual needs;
 2. State the factors considered by the Section 504 knowledgeable committee or IEP team in determining any compensatory education owed to the student;
 3. Develop a plan for providing timely compensatory education:
 - a. the team may consider recovery services already being provided as a factor in determining compensatory education if those recovery services, based on an individualized determination of the student's compensatory education needs, address the specific individualized needs of the student;
 - b. however, when the recovery services already being provided do not address the specific individualized compensatory education needs of the student, the team cannot directly subtract provided recovery minutes from the total amount of compensatory education the team determines is needed;
 - c. the team will include an appropriate and reasonable timeframe for the completion of the agreed-upon compensatory services.
 4. Provide the student's parent or guardian notice of the procedural safeguards, including the right to challenge the Section 504 knowledgeable committee or IEP team's determination through an impartial hearing;
 5. Provide the student's parent or guardian notice of the process to follow for requesting reimbursement for out-of-pocket expenses incurred by the parent or guardian to provide services required by the student's Section 504 plan or IEP by private or non-Division personnel that were not provided by the Division during the Pandemic Period.

Reporting Requirements

1. By December 9, 2022, the Division will provide for OCR's review and approval a written notification that it will provide to parents or guardians of all students with Section 504 plans and IEP plans. The notification to parents or guardians

will be provided without request by the parents or guardians within 30 calendar days of OCR's approval of the written notification. The notification will be translated into the major languages spoken in the Division.

2. The notification will include:
 - a. A statement that the Division will convene meetings for all FCPS students who had an IEP or Section 504 plan during the Pandemic Period to discuss IEP and Section 504 implementation and consideration of compensatory education as described under Sections III.A. and III.B above. For students who are no longer with the Division, the notification will state that a meeting will be held at the request of the eligible student, parents or guardians.
 - b. The Division's process for all IEP teams and Section 504 knowledgeable committees to make an individualized determination regarding whether Pandemic Period compensatory education is owed to a student.
 - c. The Division's process for the student's parents or guardians to request reimbursement for out-of-pocket expenses incurred to provide services required by students' Section 504 plans or IEPs by private or non-Division personnel that were not provided by the Division during the Pandemic Period.
3. Written notification of the compensatory education assessment determination by the Section 504 knowledgeable committee or IEP team:
4. By December 9, 2022, the Division will provide for OCR's review and approval a written template Prior Written Notice that it will provide to parents or guardians of all students with IEPs and Section 504 plans to describe the completed Pandemic Period compensatory education assessments as determined by the student's Section 504 knowledgeable committee or IEP team. The Prior Written Notices will be sent to each parent or guardian within 10 business days of the IEP team or Section 504 knowledgeable committee meeting.
5. On a quarterly basis through June 30, 2023, the Division will provide OCR with documentary evidence that written notifications of the compensatory education assessment determination by the IEP teams or Section 504 knowledgeable committees have been sent to parents or guardians of all students with Section 504 plans and IEPs. (Section IV below describes how the Division will track decisions made at the Section 504 and IEP team meetings and the reporting requirements to OCR for that tracking.)

IV. Data Tracking of Services Provided to Students with Disabilities and Compensatory Education

- A. **Data tracking:** By January 17, 2023, the Division will develop an electronic tracking system that tracks each determination made by IEP teams or Section 504 knowledgeable committees regarding compensatory services, including the reason for the determination. For each student determined to be in need of compensatory services, the Division will provide the exact minutes, type, and date of related aids and services provided as compensatory education for students with IEPs and Section 504 plans. This system will include and allow for the creation of weekly reports that show the number of minutes of special education, related aids, or services that are required by a student's IEP or Section 504 Plan, the actual service minutes provided, the type of services, and service date; and the corresponding compensatory services specific to minutes, type, and date of provision for services.
- B. **Training on data tracking:** The Division will train and/or provide written guidance to the relevant Division level and school level staff on the use of this tracking system by March 1, 2023.

Reporting Requirements:

1. By February 1, 2023, the Division will provide documentation to OCR illustrating its special education tracking system as required by Section IV.A.
2. By March 1, 2023, the Division will provide OCR with documentation that the Division level and school level staff received the data tracking training.
3. By February 1, 2023, the Division will provide OCR with the name and contact information for a designated staff member knowledgeable about the tracking system. The designated staff member will provide to OCR quarterly data of aggregate Pandemic Period compensatory education services provided to students with disabilities listed by student ID number.
4. On a quarterly basis following the signing of this Agreement and lasting through the implementation of the Plan, the Division will provide OCR with a report, which will include:
 - a. Documentary evidence that approved written notifications as described in the Reporting Requirements to Section III.B. have been sent to parents or guardians of all students with IEPs and Section 504 plans;
 - b. Documentation of the number of Pandemic Period compensatory education determinations that were completed by the Division during the time period; and

- c. A random sampling of reports generated from the electronic data tracking system, not to exceed 100, reflecting individual compensatory services determinations, including all information outlined in Section IV A. The sampling shall include an equal distribution of students from each region in the Division and include elementary, middle, and high schools. OCR reserves the right at any point to request additional reports for its review.
5. The Division will meet with OCR on a quarterly basis until such time as OCR closes its monitoring of this agreement to discuss the compensatory education data. The Plan Administrator, designated staff member knowledgeable about the tracking system, and/or their designees will attend the meetings.

V. Division Staff Training and Outreach Plan

- A. Division Staff Training and Guidance:** The Division will provide written guidance and/or training regarding the Plan described in Section II, the criteria described in Section II, and the data tracking process described in Section IV above to all relevant Division-level and school-level staff who have responsibilities under Section 504 and Title II. The guidance and training will include information about:
1. The Division's commitment to implement the Plan as described in Section II as part of its obligation to provide a free and appropriate public education to students with disabilities.
 2. The distinction between recovery services and compensatory education.
 3. Compensatory education service determinations, including the criteria IEP teams and Section 504 knowledgeable committees are to use as described in Section III.
 4. The requirement that staff input data as described in Section IV.A.
 5. Compensatory education being an equitable remedy to address the inability or failure of the Division to provide appropriate services to a student with a disability during the Pandemic Period.
 6. The staff's role in implementing the Plan.

Reporting Requirements:

1. Within ten (10) business days of OCR's approval of the Plan, the Division will provide a draft of the written guidance and/or training materials for the training described in Section V.A. above to OCR for review and approval.
2. Within seventy-five (75) school days of OCR's approval of the training materials, the Division will provide OCR documentation demonstrating that the written guidance and/or training has been provided to all to relevant Division-level and

school-level staff who provide special or regular education, and related aids or services to students with disabilities.

- B. Outreach Plan:** The Division will ensure that parents/guardians and other stakeholders are informed about the Plan, including Division processes for resolution consistent with the requirements of IEP and Section 504 processes, regarding disputes arising from compensatory education determinations and utilizing the Division's existing points of contact for addressing parent/guardians questions and concerns.
1. Within five (5) calendar days of OCR's approval of the Plan, the Division will announce in a public statement to all parents and guardians – including all parents and guardians of students with disabilities enrolled in the Division during the Pandemic Period – that the Division has created a plan to determine whether compensatory education is owed to students with disabilities due to the Pandemic Period and that the Division will actively work with parents and guardians of students with disabilities to make the determinations discussed in the Plan.
 2. The existing Division points of contact for addressing parents/guardians inquiries and concerns include but are not limited to the following:
 - a. FCPS Office of Special Education Procedural Support
 - b. FCPS Parent Resource Center
 - c. FCPS Office of the Family and Student Ombudsman
 - d. Plan Administrator
 3. The Plan Administrator will document, track, and address concerns and/or complaints regarding the implementation of the Plan that are submitted to the Division points of contact; and
 4. The Plan Administrator will coordinate the communications outreach to parents/guardians and other stakeholders about the Plan, including the following:
 - a. In order to educate parents/guardians on the Division's Plan and the process for Pandemic Period compensatory education assessments and determinations to be completed through the IEP and Section 504 processes, the Division will provide, at public meetings, an overview of the Plan, including informal and formal resolution consistent with the requirements of IEP and Section 504 processes for disputes arising from compensatory education determinations. The Division will convene three such community education public meetings, which will take place within ninety (90) business days of executing this Agreement.

b. The Division will create a public-facing website with links to the Plan itself, as well as notifications of the three (3) formal parent/guardian public meetings described above and contact information for addressing concerns with the Division points of contact. This will be posted on the Division's homepage, each school's website, and on the special education webpage, and will be accessible for persons with disabilities and translated in the major languages spoken in the Division.

Outreach Plan Reporting Requirements:

1. By December 9, 2022, 2022 the Division will provide for OCR's review and approval the public Statement of Provision of Services for All Students with Disabilities described under Section V.B.1. Within five (5) days of OCR's approval of this statement, the Division will publish this statement on the main Division website and the special education procedural support website and distribute this statement to all parents/guardians – including all parents/guardians of students with disabilities enrolled in the Division during the Pandemic Period.
2. By December 22, 2022, the Division will provide OCR with copies of presentation slides and/or written materials it will use for the three (3) formal parent/guardian-attended public meetings described above in Section V.B.3. OCR will provide substantive feedback to the Division regarding any misalignment with law or this Agreement.
3. By January 9, 2023, the Division will provide to OCR the dates of the scheduled public meetings and the website links to the announcement of the public meetings.
4. By March 15, 2023, the Division will provide OCR documentary evidence that the meetings were conducted.
5. By December 22, 2022, the Division will provide for OCR's review and approval the content to be posted on its public-facing website described above in Section V.B.3.c. Within 15 days of OCR's approval, the Division will provide OCR with the links to the information posted on the Division's website.
6. Twice a year, the Plan Administrator will provide OCR with a summary of the complaints and concerns related to implementation of the Plan reported through the Division's resolution processes or otherwise collected by Division schools from parents/guardians or other stakeholders, disaggregated by region, until the conclusion of the monitoring of this Agreement. The summary must include any complaints or concerns relating to barriers to providing compensatory education deemed necessary for receipt of FAPE, such as staffing shortages.

General Requirements

The Division understands that OCR will not close the monitoring of this Agreement until OCR determines that the Division has demonstrated compliance with all the terms of this Agreement and is in compliance with Section 504 and its implementing regulation, 34 C.F.R. Part 104, and Title II and its implementing regulation at 28 C.F.R. Part 35, which were at issue in this case.

The Division understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or Section 504, Title II, and their implementing regulations. Before initiating such proceedings, OCR will give the Division written notice of the alleged breach and 60 calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the Division's representative below.

Superintendent

Date