Resolution Agreement

Burlington School District RE-6J
Case Number 08-13-1259

In order to resolve the allegations and other potential issues in Case Number 08-13-1259, filed against Burlington School District RE-6J (the District) and opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR), the District voluntarily agrees to implement the following Resolution Agreement. The complaint was opened for investigation pursuant to allegations of the District's noncompliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 100 (Title VI), which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. Subsequent to opening the complaint for investigation, OCR received information from the District that potentially raises additional compliance concerns with respect to Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12131-65, and its implementing regulation at 28 C.F.R. Part 35 (Title II), which prohibit discrimination on the basis of disability by public entities.

During the course of OCR's investigation, before OCR had made any findings, the District indicated its willingness to take steps necessary to ensure compliance with Title VI, Title IX, Section 504, and Title II. OCR has not made any findings that the District discriminated against students on the basis of their race, color, national origin, sex or disability. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint, OCR believes that doing so is appropriate, and the remedies align with the allegations. The District's decision to enter into this Agreement is not an admission of liability or wrong-doing, nor shall it be construed as such.

RESOLUTION ACTION

1. **Training:** Through a third party with expertise in the subject matter, the District will develop training materials for administrators and staff members regarding the District's legal obligations under Title VI, Title IX, Section 504, and Title II. The training will include a segment regarding Title VI's disparate impact regulations, 34 C.F.R. § 100.3(b)(2). The training will ensure that the District will consider the potential for disparate impact based on race, color, or national origin, when developing and implementing programs and activities.

REPORTING REQUIREMENT: Within 60 days[1] from the date of this Agreement, the District will submit to OCR for review and approval (1) the qualifications of the individual who will provide the training; and (2) the proposed training agenda and training materials.

2. **Training:** The District will consider and respond to any feedback from OCR with respect to the qualifications of the individual who will provide the training and the proposed training agenda and training materials. After obtaining OCR's approval of the trainer and training materials, the District will provide training to all appropriate administrators and staff members. The District will incorporate the training into its annual in-service training.

   REPORTING REQUIREMENT: Within 30 days from the date of OCR's approval of the trainer and training materials, the District will provide documentation that it has provided training to all appropriate administrators and staff members. The documentation will include sign-in sheets documenting that the District's administrators and staff members attended the training.

3. **ELL Instruction:** The District will ensure that primary providers of English Language Acquisition (ELA) instruction to English Language Learner (ELL) students in the Learning Lab, are certified teachers and/or administrators who are fully trained and qualified to deliver ELA instruction. *Fully trained and qualified* means that the teachers and administrators have the requisite endorsement or are actively seeking the requisite endorsement.

   REPORTING REQUIREMENT: Within 60 days from the date of this Agreement, the District will submit documentation establishing that its instruction of ELL students in the Learning Lab meets the requirements of Term 3.

4. **ELL Instruction**: The District will ensure that each paraprofessional, tutor, and assistant, who works with ELL students in the Learning Lab, is under the direct supervision of a certified teacher or administrator who is fully trained and qualified in the subject matter being taught and that each paraprofessional, tutor, and assistant who assists with ELA instruction for ELL students in the Learning Lab is under the direct supervision of a fully trained and qualified ELA teacher or fully trained and qualified administrator.

   REPORTING REQUIREMENT: Within 60 days from the date of this Agreement, the District will submit documentation establishing that its instruction of ELL students in the Learning Lab meets the requirements of Term 4.

5. **ELL Instruction**: The District will ensure that all students in the Learning Lab have access to the necessary ELA instruction. The District shall propose the amount of ELA instruction for ELL students in the Learning Lab, along with the educational basis for the proposed amount.

   REPORTING REQUIREMENT: Within 60 days from the date of this Agreement, the District will submit documentation establishing that its ELA instruction for students in the Learning Lab meets the requirements of Term 5.

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[1] All timeframes are expressed as calendar days.

6. **Report on ELL Instruction:** The District will submit a report regarding each ELL student in the Learning Lab for the 2012 – 2013[2] and 2013 – 2014 School Years with the following information:

   a. The name and qualifications of the primary provider of ELA instruction to the student.

   b. The name(s) of any paraprofessional, tutor, or assistant who worked with each ELL student.

   c. For each paraprofessional, tutor, or assistant listed for each ELL student, the name(s) of the qualified ELA teacher or administrator who directly supervised each paraprofessional, tutor, or assistant.

   d. State whether the ELL student received the necessary ELA instruction and provide the amount of weekly ELA instructional time each ELL student received.

   e. For any ELL student who did not receive the necessary ELA instruction from a qualified ELA teacher or administrator, the District will convene a team of persons knowledgeable about the student and ELA instruction, including providing the students' parents an opportunity provide input, to individually assess the amount of compensatory services, if any, for each ELL student and, if necessary, draft an action plan containing proposed compensatory services or remedial measures that will be offered or taken, the specific timelines for implementation, and the person(s) responsible for overseeing full and timely implementation. Should the District determine that no compensatory services are necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation, for OCR's review.

   REPORTING REQUIREMENT: Within 60 days from the date of this Agreement, the District will submit documentation that meets the requirements of Term 6. For any proposed compensatory services or remedial measures, the District will submit its proposed compensatory services or remedial measures to OCR for review.

7. **Report regarding pregnant students:** The District will submit a report regarding each pregnant student in the Learning Lab for the 2012 – 2013 and 2013 – 2014 School Years with the following information:

   a. A statement regarding whether the pregnant student was counseled or directed to become a Learning Lab student because of her pregnancy.

   b. For any pregnant student who was counseled or directed to become a Learning Lab student because of her pregnancy, the District will convene a team of persons knowledgeable about the student, including providing the students' parents an

[2] During the 2012 – 2013 School Year, the Learning Lab may have been referred to with some other designation, such as the "alternative room." Reference to the Learning Lab in Items 6, 7, and 8 includes other designations that may have been used.

opportunity to provide feedback, to individually assess the amount of compensatory services, if any, that would be appropriate for the student and, if necessary, draft an action plan containing proposed compensatory services or remedial measures that will be offered or taken, the specific timelines for implementation, and the person(s) responsible for overseeing full and timely implementation. Should the District determine that no compensatory services are necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation, for OCR's review. The requirements of this sub-section only apply if a pregnant student was counseled or directed into the Learning Lab because of pregnancy.

REPORTING REQUIREMENT: Within 60 days from the date of this Agreement, the District will submit documentation that meets the requirements of Term 7. For any proposed compensatory services or remedial measures, the District will submit its proposed compensatory services or remedial measures to OCR for review.

8. **Report regarding students with disabilities who have an** Individualized Education Program (IEP) **or Section 504 Plan:** The District will submit a report regarding each student with an IEP or Section 504 Plan in the Learning Lab for the 2012 – 2013 and 2013 – 2014 School Years with the following information:

   a. A statement regarding whether the student was placed in Learning Lab through IEP Team or Section 504 Team process in accordance with 34 C.F.R. §§ 104.33-36.

   b. A copy of each of the student's IEPs or Section 504 Plans in effect during the 2012 – 2013 and 2013 – 2014 School Years.

   c. If a student was placed in the Learning Lab without the prior determination by the IEP Team or Section 504 Team that the Learning Lab was the appropriate placement in accordance with 34 C.F.R. §§ 104.33-36, then the District will convene a team of persons knowledgeable about the Student, the evaluation data, and the placement options including providing the students' parents an opportunity to provide feedback, to individually assess the amount of compensatory services, if any, that would be appropriate for the student and, if necessary, draft an action plan containing proposed compensatory services or remedial measures that will be offered or taken, the specific timelines for implementation, and the person(s) responsible for overseeing full and timely implementation. The District will provide the students' parents with a meaningful opportunity to provide input into these determinations, notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree. The requirements of this sub-section only apply if a student with a disability was placed in the Learning Lab without the prior determination by the IEP Team or Section 504 Team that the Learning Lab was the appropriate placement.

REPORTING REQUIREMENT 8: Within 60 days of this Agreement, the District will submit to OCR documentation showing implementation of Term 8, including a copy of any

meeting minutes, a copy of any plan developed for a student, documentation of any input provided by the student's parents and showing that procedural safeguards were provided to them, and any other documentation relevant to the determinations reached in accordance with Term 8. Should the District determine that no compensatory education or other remedial services were necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.33, 104.34, 104.35 and 104.36, in making these determinations.

9. **Compensatory Services:** The District will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures. After the proposed compensatory services or remedial measures are accepted, the District will provide or begin providing the compensatory services or take the remedial measures.

   REPORTING REQUIREMENT: Within 45 days from the date of OCR's acceptance of the proposed compensatory services or remedial measures, the District will provide documentation that it has provided or is in the process of providing the compensatory services or remedial measures. For compensatory services and remedial measures that will occur over time, the District must submit documentation regarding the specific timelines for implementation, the person(s) responsible for overseeing full and timely implementation, and supporting documentation establishing that the compensatory services and remedial measures are being provided as specified. The case will remain in monitoring until all compensatory services and remedial measures have been provided in full.

10. **Learning Lab Criteria:** The District will submit a draft document listing the criteria District administrators and staff will use when determining student admission to the Learning Lab.

    The criteria shall make clear that a pregnant student is not required to participate in the Learning Lab or other special instructional program or class because she is pregnant; anything other than pregnant students' completely voluntary participation in the Learning Lab would violate Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. Districts may implement special instructional programs or classes for a pregnant student, but participation must be completely voluntary on the part of the student, and the programs and classes must be comparable to those offered other students. *See "Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972,"* U.S. Dept. of Ed., OCR, June 2013.

    The criteria shall make clear that a student with a disability will be placed in the Learning Lab only if the student's Section 504 Plan Team or IEP Team determines that the Learning Lab is an appropriate placement for the student. *See* 34 C.F.R. § 104.35. Assignment to the Learning Lab will not be the only placement option for students with disabilities with "verified emotional problems" or any other impairment. When making a placement determination for a student with a disability, the Team must keep in mind Section 504's requirement that districts shall ensure that persons with disabilities participate with

nondisabled persons to the maximum extent appropriate to the needs of the student with a disability. *See* 34 C.F.R. § 104.34.

REPORTING REQUIREMENT: Within 60 days from the date of this Agreement, the District shall submit draft criteria that District administrators and staff will use when determining student admission to the Learning Lab.

11. **Learning Lab Criteria:** The District will consider and respond to any feedback from OCR with respect to the draft criteria that District administrators and staff will use when determining student admission to the Learning Lab. After obtaining OCR's approval of the draft criteria, the District will distribute the criteria to all administrators, staff, students, parents, and guardians and place the criteria on the websites of the District's middle and high schools.

    REPORTING REQUIREMENT: Within 30 days from the date of OCR's approval of the Learning Lab admission criteria, the District will submit documentation that it has distributed the Learning Lab admission criteria to all administrators, staff, students, parents, and guardians and placed the criteria on the websites of the District's middle and high schools.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title VI, Title IX, Section 504, and Title II, which were at issue in this case.

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 the Agreement, if necessary, OCR may visit the District, interview District employees, 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 regulations implementing Title VI, Title IX, Section 504, and Title II, which were at issue in this case.

When OCR determines that the District has fulfilled all of the terms of this Agreement, OCR will close Case Number 08-13-1259 and will send a letter to the District stating that Case Number 08-13-1259 is closed.

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. Sections 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 60 calendar days to cure the alleged breach.

The person signing for the District represents that he is authorized to bind the District to this Agreement. This Agreement becomes effective the date of the signature below.

For Burlington School District RE-6J:

Tom Satterly
Superintendent

2-3-2014
Date