

RESOLUTION AGREEMENT

Lynn Public Schools Compliance Review No. 01-10-5004

In order to resolve Compliance Review No. 01-10-5004, and without admitting or conceding any violation of Federal law with respect to the issues raised in this matter pursuant to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100 (Title VI); 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); and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 (Title II); the Lynn Public Schools (District) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below.

Action Item I:¹

By January 27, 2014, the District will complete a review and assessment of special education (SPED) student referral to, placement in and exit from the SPED alternative program at Fallon Elementary School and the SPED program at Fecteau-Leary Junior/Senior High School, a regular education alternative school (collectively identified hereinafter as the “alternative school SPED programs”) as part of its ongoing efforts to educate all SPED students with students who are not disabled to the maximum extent appropriate to the needs of the student with disabilities, or, in other words, in the least restrictive environment (LRE). Specifically, this review will carefully assess the possible root causes of any overrepresentation of Black students identified in the alternative school SPED programs. The District will form a committee chaired by its Compliance Officer to conduct the review and assessment and make recommendations. The District will ensure that the committee has expertise in addressing the overrepresentation of minorities – in this case, Black students – in special education. The District will provide the committee with all information identified by it as necessary to engage in the review and assessment. The committee’s assessment will include recommendations for specific actions. At a minimum, the committee will:

1. collect and evaluate data from student files regarding all referrals to the alternative school SPED programs, from the 2012-2013 school year to the present, including those that did not result in placement at either school. The data collected will include, but not be limited to, the following:

¹ OCR is amenable to the District’s continued provision of the requested information in a manner that uses current District systems or databases to reduce the burden in responding to the data request. For example, the District may submit requested information electronically, such as in the form of a Microsoft Excel spreadsheet where appropriate. Similarly, if other information is available online, the District may provide a website address or a link where OCR may access the information.

- a) the name/identification number, race, ethnicity, sex, age, disability, English Language Learner (ELL) status (if applicable), and grade level of each student referred to either of the alternative school SPED programs;
- b) the reason for the referral and a copy of the intake forms and supporting documentation;
- c) a description of all approaches that were attempted in order to address the student's disability(ies) at issue prior to referral to an alternative school SPED program, including a detailed narrative description, and documentation of, the pre-referral process, as applicable, prior to the student's SPED placement in a regular education setting;
- d) the date of the alternative school SPED program referral;
- e) the referring team member(s) or other referring person (by name and title);
- f) the school or other source from which the referral was made;
- g) evaluations and individualized education program (IEP) team meetings conducted in association with the referral to the alternative school SPED program, if any, including all relevant documentation;
- h) to the extent not provided above, the prior SPED and disciplinary history of the student;
- i) documentation that the student or her/his parent(s) or guardian(s) (hereinafter "parents") was given notice of their procedural safeguards regarding the alternative school SPED program referral, placement, and exit processes;
- j) a review of the District's alternative school SPED program enrollment data, including year-to-year trend data, specifically considering possible disproportionate representation of Black and other minority students and the causes; and
- k) a review and assessment of which methods undertaken by the District to date have been effective (or ineffective) for ensuring a return of alternative school SPED program students to a less restrictive setting as appropriate, and in a timely manner.

Reporting Requirements for Action Item I

To demonstrate its compliance with Action Item I of this Agreement, the District will submit the following information to OCR:

By February 10, 2014, the District will provide to OCR information showing that it has completed the review and assessment described in Action Item I above, along with the District's reason(s) for accepting or rejecting the recommendations therein, and a description of changes the District plans to make to implement the recommendations. By July 1, 2014, July 1, 2015, and July 1, 2016, the District will provide OCR with documentation of its implementation of the recommendations.

Action Item II:

For implementation by no later than the second semester of the 2013-2014 school year, the District will, in addition to any actions resulting from the review and assessment and

recommendations described in Action Item I, above, take the following actions to address overrepresentation of Black students in the alternative school SPED programs:

1. Develop and distribute to staff guidelines on the types of information that are required to be maintained in students' cumulative and SPED files regarding pre-referral, referral, evaluation, and placement, as well as referral to, placement in and exit from an alternative school SPED program, to be reflected in, for example, a revision of the District's document, "A Primer for Educators: Maintaining Student Records and Meeting Confidentiality Requirements under [IDEA]," pp. 21-22 (the "Records Primer," current as of Fall 2013). Any information maintained will include, but not be limited to, the following:
 - a) detailed written descriptions of the information considered by the Student Study Team (SST) and IEP/Section 504 team (including, but not limited to, recent evaluations and any relevant academic, behavioral, disciplinary, or attendance data), the types of intervention(s) and placement(s) considered and chosen, and the reason(s) for the choice(s);
 - b) information demonstrating that the team(s) considered the student's progress in her/his current setting; and
 - c) documentation that the IEP team considered whether a student in SPED being educated outside the general education environment in a substantially separate placement, such as an alternative school SPED program, could be educated in a less restrictive environment with or without supplementary aids and services, consistent with the criteria set forth in Action Item II.3., below.

By January 27, 2014, the District will develop procedures to monitor these requirements periodically (at least annually) and to ensure that students' cumulative and SPED files contain all required information.

Reporting Requirements for Action Item II.1.

To demonstrate its compliance with Action Item II.1. of this Agreement, the District will submit the following information to OCR:

By February 10, 2014, the District will provide to OCR a copy of the staff guidelines for student file contents required by Action Item II.1. (for example, by revision, addendum, or footnotes to page 21 of the Records Primer), above, as well as a copy of the procedures it developed to monitor the content of student files in accordance with the guidelines. In the event that OCR has objections to any aspects of the guidelines or the District's procedures for implementing and monitoring them, the District agrees to work collaboratively in good faith with OCR to reasonably address such objections. By July 1, 2014, July 1, 2015, and July 1, 2016, the District will report to OCR on the results of its annual review of alternative school SPED program student files in accordance with the guidelines.

2. Implement an effective pre-referral program at all schools in the District. Specifically, the District will take steps to ensure that the activities described in its SST Handbook, updated as of fall 2013, are consistently implemented at all schools. The District will provide for documented parental involvement in the SST process, and will ensure annual recordkeeping and reporting requirements to allow effective monitoring of its implementation of the SST process at each school. The SST process will require the group to document, as reflected in the SST Handbook, the following:
 - a) supplementary aids and services attempted in the regular education environment and why these were chosen for the individual student;
 - b) a description of how these supplementary aids and services were implemented;
 - c) a statement regarding the length of time these supplementary aids and services were implemented; and
 - d) a statement regarding why education of the student in the regular education environment could not be achieved satisfactorily even with the use of these supplementary aids and services.

Reporting Requirements for Action Item II.2.

To demonstrate its compliance with Action Item II.2. of this Agreement, the District will submit the following information to OCR:

By July 1, 2014, July 1, 2015, and July 1, 2016, the District will provide OCR with copies of relevant portions of at least three randomly selected student files each from the elementary, middle and high school levels (for a total of at least nine files) documenting adherence to the SST process as described in Action Item II.2.

3. Outline and provide to relevant staff written criteria, consistent with the applicable requirements of the Section 504 regulation regarding the provision of a free appropriate public education (e.g., implementation of an IEP developed in accordance with the IDEA is one means of meeting these requirements), for determining, and documenting in writing through the IEP process, when a student with a disability does or does not need an alternative school SPED program placement. The criteria could include consideration of, among other things, the current nature and severity of the student's disability; the student's academic, social, behavioral, and emotional progress and current needs; whether the nature of the disability and the student's needs continue to be such that education in regular classes with the use of supplementary aids and services can or cannot be achieved satisfactorily; and the effects, both positive and negative, of a restrictive placement on the quality of education, services and social interactions that can be provided to the student.

Reporting Requirements for Action Item II.3.

To demonstrate its compliance with Action Item II.3. of this Agreement, the District will submit the following information to OCR:

By February 10, 2014, the District will provide to OCR the written criteria described in Action Item II.3. In the event that OCR has objections to any aspects of the written criteria, the District agrees to work collaboratively in good faith with OCR to reasonably address such objections.

If any District publications, including online publications, require alteration to become consistent with the criteria developed as a result of Action Item II.3., above, the District will update the relevant publications as soon as possible, not to occur later than April 21, 2014. Inserts may be used in publications until re-printing.

4. During the 2013-2014 school year, and annually thereafter until the monitoring of this Agreement is closed:
 - a) in conjunction with the District-scheduled annual reviews by school-based IEP teams of each Black student placed in an alternative school SPED program, the Compliance Officer or other designee will review whether the placement teams documented their consideration of the criteria developed in accordance with Action Item II.3., above, in making determinations regarding continued placement in the alternative school SPED programs. If the Compliance Officer or other designee determines as a result of this review that the criteria were not considered (and/or proper documentation of such consideration does not exist), the placement team will immediately reconvene to do so, and as appropriate conduct a reevaluation of the student. A District-level administrator will oversee all reevaluations conducted under this item to ensure that teams consistently apply the District's eligibility criteria. The District will ensure that each of these students is placed in the regular education environment, unless it is demonstrated that the education of the student in the regular education environment cannot be satisfactorily achieved even with the use of supplementary aids and services. For any students who this review determines were incorrectly placed or retained in the alternative school SPED programs, the District will provide by the end of the 2013-2014 school year, and subsequent school years thereafter until the monitoring of this Agreement is closed, any compensatory and/or remedial services that the student's IEP team determines necessary; and
 - b) for students placed in the alternative school SPED programs, the placement teams will develop and carefully document criteria through written IEP goals and objectives to identify on an individual basis how a student may move from an alternative school SPED program placement to a less restrictive environment. Application of the criteria by the placement teams shall be carefully documented in IEP team meeting minutes. The Compliance Officer or other designee will review each student's file to ensure that all required information is maintained and is current and complete, consistent with the guidelines developed in accordance with Action Item II.1., above. Additionally, the District will ensure and document that parents are advised of their right to request a due process hearing if they disagree with the placement decision.

Reporting Requirements for Action Item II.4.

To demonstrate its compliance with Action Item II.4. of this Agreement, the District will submit the following information to OCR:

By July 1, 2014, July 1, 2015, and July 1, 2016, in adherence to Action Item II.4.a., above, the District will provide the following information to OCR:

- a) a list of all Black students who were enrolled in the alternative school SPED programs in the immediately preceding school year (i.e., the 2013-2014, 2014-2015, and 2015-2016 school years, respectively);*
- b) documentation supporting that during each of these students' District-scheduled annual reviews during the immediately preceding school year, the IEP team ensured that these students had a current evaluation on file and that the group followed the criteria developed in accordance with Action Item II.3., above, in determining the appropriate educational setting for the student;*
- c) if the District determined that a student did not have a current evaluation on file, documentation demonstrating that the District reevaluated the student in a timely manner;*
- d) if the student's IEP team determined following reevaluation that the student was not in the LRE, documentation demonstrating that the IEP team changed the student's placement to the LRE, as well as documentation that the District provided the student with compensatory and/or remedial services that the student's IEP team determined necessary, if applicable; and*
- e) documentation demonstrating that parents were advised of their right to request a due process hearing if they disagreed with the placement decision.*

By July 1, 2014, July 1, 2015, and July 1, 2016, the District will provide OCR with copies of relevant portions of at least three randomly selected IEPs each from the alternative school SPED program elementary, middle and high school levels (for a total of at least nine IEPs) documenting how a student may move from an alternative school SPED program placement to a less restrictive environment, as described in Action Item II.4.b. The District may indicate if any of this documentation is provided as part of the reporting for Action Item II.4.a., above.

5. On an annual basis, the District will collect and review the District's alternative school SPED program enrollment data, including year-to-year trend data (e.g., showing an increase or decrease in percentage enrollment of students based on race or ethnicity), specifically considering possible disproportionate representation of Black students and the causes. Using this data, and other information gathered during the implementation of this Agreement, the District will annually assess the effectiveness of its SPED pre-referral, referral, evaluation, and placement processes, as well as referral to, placement in and exit from the alternative school SPED programs, to ensure it is making appropriate determinations and addressing the overrepresentation of Black students in the alternative school SPED programs. Based on this annual assessment, the District shall make changes to its processes, including but not limited to further modification to referral,

placement and exit criteria and other criteria, procedures, and practices, as well as additional supports for students (such as behavioral intervention programs) and relevant staff (such as supplemental training, supervision and/or mentoring).

Reporting Requirements for Action Item II.5.

To demonstrate its compliance with Action Item II.5. of this Agreement, the District will submit the following information to OCR:

By July 1, 2014, July 1, 2015, and July 1, 2016, the District will submit the annual data collected in accordance with Action Item II.5., above, as well as documentation of any changes made to its processes and the results.

6. The District will train appropriate staff on the following matters, consistent with the terms of this Agreement:
 - a) the year-to-year enrollment data trends for the alternative school SPED programs, by race and ethnicity, including comparisons to the rates at other schools in the District and the overall District rate;
 - b) the District's pre-referral intervention/SST process;
 - c) the requirement and strategies for ensuring timely evaluations;
 - d) the requirements of the District's SPED data management and file maintenance systems; specifically, the District will provide a mandatory professional development and discussion forum to school site administrators and their designees regarding the usability of its electronic database for enrollment data, both district-wide and at each school, including its alternative school SPED programs. The purpose of the professional development and discussion forum will be to ensure that staff users of the data know how to review the information in a timely manner and in a manner that reveals, where applicable, disproportions in race, ethnicity and other protected categories, to serve as a basis for timely corrective action;
 - e) how to access the information described in Action Item II.3, above, in addition to that described in Action Item II.6.d., above, relevant for referring students for placement in the alternative school SPED programs and for exit from these schools to a less restrictive setting;
 - f) guidance for any District/school personnel responsible for conducting any assessments or evaluations as part of the alternative school SPED program placement and exit process in the implementation of any additional, revised or modified criteria per Action Item II.3., above;
 - g) a description of the District's ongoing communications, including with regard to any program improvements, with students and parents of students with disabilities placed in the alternative school SPED programs and for providing parents with information about the District's SST and SPED identification, evaluation and placement processes; and
 - h) providing updates on current, peer-reviewed educational research on the interaction of student racial and ethnic differences with SPED referral, evaluation, and placement processes, including staff expectations for student performance, as well as best

practices for providing support services to SPED students in both regular education and alternative settings.

The mandatory training will be provided by the District's Compliance Officer or other designee to all relevant SPED staff, senior administrators, school-based principals and assistant principals, school counselors, school adjustment counselors, clinical directors, school social workers, nurses and other staff, including teachers, involved in the referral to and placement of students in the alternative school SPED programs, as well as exit therefrom. The District's Compliance Officer or other designee will provide this training annually thereafter until the monitoring of this Agreement is closed, including on any newly developed District criteria, procedures, or practices resulting from this Agreement. New staff members who arrive after the annual training has been provided will receive the training as soon as possible, and in any case by no later than the start of the third quarter of the school year.

Reporting Requirements for Action Item II.6.

To demonstrate its compliance with Action Item II.6. of this Agreement, the District will submit the following information to OCR:

No later than February 10, 2014, the District will submit to OCR for review a description of the training program developed by the District in accordance with Action Item II.6., above. By July 1, 2014, July 1, 2015, and July 1, 2016, the District will provide documentation to OCR of the training required by Action Item II.6., above, including: (a) the name(s) and title(s) of the individuals who conducted the training; (b) a list of the individuals who attended the training and their positions; (c) the date(s) the training was conducted and the location(s); and (d) copies of any training materials disseminated. This documentation will include training of staff members that occurred after the regular annual training, as described in Action Item II.6, above.

7. Develop an informational program, to be incorporated into the District's other planned parent meetings as appropriate (e.g, Parent Advisory Council meetings), which will:
 - a) explain in an easily understood manner, consistent with the terms of this Agreement, the District's efforts to educate all of its SPED students in the LRE. The program will provide parents (as well as students who are no longer minors or otherwise subject to a guardianship) the opportunity for discussion regarding SPED student referral to, placement in and exit from the alternative school SPED programs, including any issues in connection with equal opportunity. The District will also identify other parent education necessary (e.g., how to support a student's success) for the successful implementation of the Agreement. The District will ensure that the informational program is offered in such a manner as to ensure the maximum possible participation by parents. This may include offering the program at multiple times in various locations and will include providing access to parents who are unable to attend the program to the materials developed by the District in association with the program. These materials will be made available on the building level. This will also

- include offering the program and the program materials in languages other than English as necessary for English language learners and parents with limited English proficiency;
- b) include District officials involved in SPED student referral to, placement in, and exit from the alternative school SPED programs (e.g., administrators, teachers, behavior specialists, and guidance counselors) in any meetings with parents as part of this program;
 - c) provide timely information about the District's recent actions consistent with this Agreement, including a written summary of the results of its review and assessment described in Action Item I;
 - d) maintain a record of any parent meeting(s) in order that the information collected can be considered by the District when assessing and modifying its criteria, procedures, and practices under this Agreement;
 - e) emphasize the District's commitment to ensuring placement of SPED students that is consistent with Title VI, Section 504 and Title II;
 - f) advise parents of their procedural safeguards in connection with any SPED identification, evaluation or placement action taken or proposed by the District;
 - g) include but not be limited to detailed explanations of the criteria for referral to, placement in, and exit from the alternative school SPED programs; and
 - h) advise the parents who they may contact if they have any concerns about the manner in which the District's alternative school SPED program procedures and practices are being implemented or if they otherwise need assistance in addressing SPED student referral to, placement in, or exit from these schools.

Reporting Requirements for Action Item II.7.

To demonstrate its compliance with Action Item II.7. of this Agreement, the District will submit the following information to OCR:

No later than February 10, 2014, the District will submit to OCR for review a description of the informational program developed by the District in accordance with Action Item II.7., above, including any translated materials. By July 1, 2014, July 1, 2015, and July 1, 2016, the District will provide OCR with the (a) the name(s) and title(s) of the individuals who conducted any parent meetings as part of the informational program; (b) a list of the parents who attended the meetings if known (or, in the alternative, an estimate of how many parents attended); (c) the date(s) the meeting(s) was conducted and the location(s); and (d) copies of any program materials disseminated.

Consistent with OCR's practice concerning resolution agreements, the District understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement in compliance with the regulation implementing Title VI, at 34 C.F.R. §§ 100.3(a) and (b); the regulation implementing Section 504 at 34 C.F.R. Section §§ 104.33 - 36; and the regulation implementing Title II, at 28 C.F.R. §§ 35.103 and 35.130, which were at issue in this Compliance Review. Prior to the conclusion of OCR's monitoring, the District will provide documentation establishing that any disparities relating to the placement of Black students at the alternative school SPED programs are not the result of discrimination

prohibited by Title VI, Section 504, Title II or their implementing regulations. The District also 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 personnel 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 in compliance with the regulation implementing Title VI at 34 C.F.R. §§ 100.3(a) and (b); the regulation implementing Section 504 at 34 C.F.R. §§ 104.33 - 36; and the regulation implementing Title II at 28 C.F.R. §§ 35.103 and 35.130, which were at issue in this Compliance Review. 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 sixty (60) calendar days to cure the alleged breach.

December 10, 2013
Date

/s/

Dr. Catherine C. Latham (or designee)
Superintendent of Schools
Lynn Public Schools