

Resolution Agreement
New Hanover County Schools
OCR Complaint No. 11-13-1166

New Hanover Schools (the District) agrees to implement this resolution agreement to resolve Office for Civil Rights (OCR) Complaint No. 11-13-1166. This Agreement does not constitute an admission by the District of any violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (ADA Title II), or any other law, whether enforced by OCR or not.

1. The District will revise its policies and procedures, including all related forms, for implementing Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). Such revisions will include incorporation of changes to legal standards made by the ADA Amendments Act of 2008 and the corresponding changes to Section 504. The revisions will ensure that the implementation of the District's Response to Intervention (RTI) procedures will not unreasonably delay the identification, evaluation or placement of a student eligible to receive disability-related aids or services under Section 504. Once the procedures are finalized, the District will notify parents/guardians and District staff of the change to its policies and procedures and also let them know who to contact if they believe a student qualifies for special education or related aids and services under Section 504.

Reporting Requirements:

By **January 27, 2014**, the District will submit for OCR's review and approval a draft of its revised policies and procedures for implementing Section 504 and Title II. **Within 15 days of OCR's approval**, the District will provide OCR with a final version of its revised policies and procedures and documentation that the procedures have been disseminated, including on the District's website, and are available to students, parents/guardians, and relevant District personnel. The District will also provide OCR with verification and a copy of the notice or documentation regarding the content of the notice provided to parents/guardians, including those students identified in provision 4 below, and relevant District staff alerting them of the changes to its policies and procedures and naming the contact person to be notified if they believe a student qualifies for special education or related aids and services under Section 504. The District will identify the by category the relevant District staff to whom it provided this notice. The notice to parents under provision 1, excepting the parents of those students identified in provision 4 below, may be accomplished by a broadcast telephone recording to the telephone numbers of record for parents/guardians of students enrolled in the District using the Districts Alert Now parent notification system.

2. Provided that the Student remains enrolled in a District school, by **December 6, 2013**, the District will convene a team of knowledgeable persons, including a District staff member trained in Section 504 accommodations for Attention Deficit Hyperactivity Disorder, some of the Student's past and current teachers, and the Student's parents, to determine whether the student has a disability and qualifies for disability-related aids and services

under Section 504. If the team determines that the Student is Section 504 eligible, a plan will be developed within 5 working days by this 504 team. The Plan will encompass modifications that address the individualized educational needs of the Student. If the team determines that the Student is not Section 504 eligible, the Section 504 team will provide the Student's parents notification of their due process rights.

Reporting Requirements:

By **December 13, 2013**, the District will provide OCR with the evaluation, and all related documentation, including notification of due process rights, of whether the Student is eligible to receive disability-related aids and services pursuant to Section 504, along with any Section 504 Plan that is developed for the Student.

3. By **December 13, 2013**, if the District determines that the Student has a disability and is eligible for aids and services under Section 504, it will determine whether the Student is entitled to any compensatory educational and related services stemming from the District's alleged failure to timely and appropriately evaluate the Student from the beginning of the 2012-2013 school until the date of the evaluation listed in provision 2 of this Agreement. If the District determines that the Student is entitled to any compensatory education services, it will determine the amount of these services and will provide them. The District should take into account the following when determining the amount of any compensatory education or other services that will be provided to the Student:
 - a. the Student's Section 504 goals;
 - b. input, including any documentation, provided by the Student's parents;
 - c. the curriculum/educational program implemented in the Student's classroom for the 2012 academic year to the present; and
 - d. any communications between the Student's parents and the District regarding the educational effect on the Student and her educational needs including any effect on her current classes due to the alleged delay in her evaluation under Section 504.

Reporting Requirements:

By **December 13, 2013**, the District will provide OCR documentation regarding its decision as to whether the Student is entitled to compensatory education and related services, or other appropriate relief. If the District determines that the Student is entitled to such services, the District will provide OCR with a calculation of the number of hours of compensatory services it is required to provide the Student, and with a plan of action for providing those services.

By **March 1, 2014**, if the District determines that the Student is entitled to such services, the District will provide OCR with written confirmation that compensatory services are being provided to the Student according to the District's plan referenced in the paragraph above.

By **June 1, 2014**, the District will provide OCR with written confirmation that compensatory services have been fully provided to the Student, if the District determines that the Student is entitled to such services.

4. The District will conduct an administrative review of the circumstances involving each student currently enrolled in the District who falls within the categories listed below to determine whether there is a need to evaluate or re-evaluate the student's eligibility under Section 504 using the appropriate legal standards and the District's new policies and procedures. To the extent that evaluation or re-evaluation is warranted, it will be conducted consistent with the evaluation, placement, and procedural safeguard requirements of 34 C.F.R. §§ 104.32 - 104.36. If the evaluation or re-evaluation leads to a finding that a student is a qualified individual with a disability and entitled to special education or related aids and services under Section 504, the District will determine whether the provision of compensatory educational services or other appropriate relief is warranted. If compensatory services are warranted, the District will offer and provide compensatory educational services to affected students, as appropriate.

The District will review the circumstances of currently enrolled students who, since the beginning of the 2011-2012 school year:

- a. Were referred for evaluation and determined not eligible under Section 504; or
- b. Requested a Section 504 evaluation, but were not referred for a Section 504 evaluation because the student was involved in the RTI process for more than 60 days.

Reporting Requirements:

By **April 1, 2014**, the District will provide verification of its compliance with provision 4 above, including a list of students who were reviewed, the school that performed the review, the date the students were first referred for evaluation under Section 504, dates of any subsequent referrals and/or evaluations, and whether the students were found eligible for services. For each student the District determined to evaluate or re-evaluate, the District will provide documentation evidencing that the evaluation or re-evaluation was conducted (*e.g.*, copies of forms, meeting notes, etc.). Where the District determines that evaluation or re-evaluation is not warranted, the District will provide a brief narrative explaining and supporting its decision.

By **April 1, 2014**, for any student evaluated or re-evaluated pursuant to this provision who was found to be a qualified individual with a disability and entitled to special education or related aids and services under Section 504, the District will provide documentation of its findings as to whether the provision of compensatory educational services (*e.g.*, copies of meeting notes) or other appropriate relief is warranted and, if so, documentation that the District offered the services to the parents/guardians of affected students and any response received.

For all parents/guardians, if any, who accept the District's offer of compensatory services, by **August 15, 2014**, the District will provide documentation that it provided the services, or made the compensatory services available.

5. The District will provide training to relevant District personnel, including all administrators responsible for supervising the 504 referral, eligibility, and development of Section 504 plans about the procedural requirements of Section 504 in identification, evaluation, and placement and the District's revised procedures for meeting these requirements. The training will address, at a minimum, the District's responsibility to and its process for identifying and timely evaluating students believed to need special education or other disability related services under Section 504, the changes to legal standards made by the ADA Amendments Act of 2008 and the corresponding changes to Section 504, and how the District's procedures for implementing the ADA and Section 504 have been revised consistent with the new legal standards. The training will also address the requirements of 34 CFR 104.36 regarding procedural safeguards. Initial training will take place for administrators by **December 10, 2013** and for teachers and other relevant support staff by **February 14, 2014**.

Reporting Requirement:

By **December 17, 2013**, the District will provide for OCR's review and comment a copy of the training materials prepared, including the name(s) and title(s) of the trainer(s) and any handouts or presentations developed.

Within 20 days of OCR's approval the District will submit to OCR the date of supplemental training, if required based on OCR's review, and the sign-in sheets indicating the names and titles of participants.

6. By **February 14, 2014**, District administrators trained pursuant to paragraph 5 above will train school staff responsible for identifying students who may be eligible for special education or related services and developing students' Section 504 plans. This training will encompass the elements detailed in provision 5.

Reporting Requirement:

By **February 21, 2014**, the District will submit to OCR documentation that the District has complied with provision 6, including dates of the trainings, materials used/disseminated, and the sign-in sheets indicating names and titles of participants.

7. The District will ensure that it has appropriately developed procedural safeguards that comply with 34 CFR 104.36. The District will ensure that it has appropriate methods for notifying appropriate parents and guardians, particularly those affected by this agreement, of these procedures.

Reporting Requirement:

By **December 17, 2013**, the District will provide for OCR’s review and comment its proposed system of procedural safeguards consistent with provision 7 above. **Within 15 days of OCR’s approval**, the District will incorporate OCR’s comments and finalize its revised policies and procedures to the extent that OCR’s proposed changes are required by law. The District will also provide OCR with a final version of its revised system of procedural safeguards and documentation that the procedures have been disseminated, and are otherwise made available, to students, parents/guardians, and District personnel, via a link on the District’s special education web-site, and that a copy was provided to parents/guardians/students who are the subject of the administrative review conducted pursuant to provision 4 above.

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 compliance with the regulation implementing Section 504, at 34 C.F.R. Sections 104.4, 104.33, 104.35, and 104.36 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 this Agreement, if necessary, OCR may visit the District, with proper notice to 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 compliance with the regulation implementing Section 504, at 34 C.F.R. Sections 104.4, 104.33, 104.35 and 104.36, which were at issue in this case.

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. §§ 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.

 /S/
 Dr. Tim Markley, Superintendent
 New Hanover County Schools

 12/5/2014
 Date