

RESOLUTION AGREEMENT

Potsdam Central School District Case No. 02-22-1033

In order to resolve Case No. 02-22-1033, the Potsdam Central School District assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35.

Action Item 1: Provision of Services and Remedial and/or Compensatory Services

- (a) By December 31, 2022, the District will coordinate with the Student's current home district [XXXXXXXX XXXXX XXXXXXXX XXXXXX XXXXXXXX (XXXSD)] to convene a meeting of a group of persons knowledgeable about the Student [such as the Committee on Preschool Special Education (CPSE)] to determine whether the Student requires any remedial and/or compensatory services for individual speech and occupational therapy that were required but not provided between September 3, 2021 through October 22, 2021, while he attended the District's XXXXXXXXXXXX XXXXXXXXXXXX program (the Program). If the group of knowledgeable persons determines that the Student requires remedial and/or compensatory services, the group will develop a plan for providing such services, with a completion date for providing the services not to extend beyond June 30, 2023. The District will coordinate with XXXSD and invite the Student's parent/legal guardian to attend this meeting and otherwise adhere to the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

- (b) By December 31, 2022, as detailed in the reporting requirements below, the District will either (i) provide documentation to OCR demonstrating that for school year 2021-2022, it provided speech/language therapy and/or occupational therapy in a separate location (e.g., "therapy room") to each student enrolled in the Program when required by the student's Section 504 Plan and/or Individualized Education Program (IEP); or (ii) for any student for whom the District cannot provide such documentation, convene a meeting of a group of persons knowledgeable about the student [such as the CPSE] to determine whether the student requires any remedial and/or compensatory services for speech/language therapy and/or occupational therapy in a separate location that should have been provided pursuant to the student's Section 504 Plan or IEP for school year 2021-2022. For any student for whom the group determines that remedial and/or compensatory services are required, the group will develop a plan for providing such services with a completion date for providing the services not to extend beyond June 30, 2023. The District will invite each student's parent/legal guardian to attend this meeting and otherwise adhere to the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

- (c) By January 31, 2023, as detailed in the reporting requirements below, the District will either (i) provide documentation to OCR demonstrating that for September 2022 through January 2023, it provided speech/language therapy and/or occupational therapy in a separate location (e.g., “therapy room”) to each student enrolled in the Program when required by the student’s Section 504 Plan and/or IEP; or (ii) for any student for whom the District cannot provide such documentation, convene a meeting of a group of persons knowledgeable about the student [such as the CPSE] to determine whether the student requires any remedial and/or compensatory services for speech/language therapy and/or occupational therapy in a separate location that should have been provided pursuant to the student’s Section 504 Plan or IEP for school year 2022-2023. For any student for whom the group determines that remedial and/or compensatory services are required, the group will develop a plan for providing such services with a completion date for providing the services not to extend beyond June 30, 2023. The District will invite each student’s parent/legal guardian to attend this meeting and otherwise adhere to the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.
- (d) By June 30, 2023, the District will provide information to OCR regarding students whom the District dismissed, removed, or terminated from the Program during school years 2021-2022 and 2022-2023.

Reporting Requirements:

- (a) By January 31, 2023, the District will submit to OCR: (a) a copy of the meeting minutes or similar documentation from the meeting conducted consistent with Action Item 1(a) above, including an explanation for all decisions made; (b) the plan for providing any remedial and/or compensatory services to the Student determined necessary; and (c) documentation demonstrating that the District provided notice of and invited the Student’s parent/legal guardian to the meeting. 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. §§ 104.34, 104.35 and 104.36, in making these determinations.
- (b) By July 15, 2023, the District will provide documentation to OCR of the dates, times, and locations that any remedial and/or compensatory services determined necessary were provided to the Student, and the name(s) of the service provider(s).
- (c) By February 28, 2023, for those students for whom the District asserts it provided the related aids and services of speech/language therapy and/or occupational therapy in a separate location (e.g., “therapy room”) as required by the student’s Section 504 Plan and/or IEP for school years 2021-2022 and 2022-2023, the District will provide documentation to OCR demonstrating that it provided such services. The documentation will include: a copy of each student’s Section 504 Plan or IEP; the name(s) and title(s) of the individual(s) responsible for providing the related service to each student; the location of the related service; and, where available, service logs.

- (d) By February 28, 2023, for those students for whom the District is unable to submit documentation pursuant to Reporting Requirement (c) demonstrating that it provided the related aids and services of speech/language therapy and/or occupational therapy in a separate location (e.g., “therapy room”) as required by the student’s Section 504 Plan and/or IEP for school years 2021-2022 and 2022-2023, the District will submit to OCR: (a) a copy of the meeting minutes or similar documentation from each meeting conducted consistent with Action Items 1(b) or 1(c) above, including (a) a discussion regarding the related aids and services that were required by the student’s Section 504 Plan and/or IEP for which documentation was not submitted pursuant to Reporting Requirement (c); (b) an explanation for decisions made; (c) the plan for providing to each student any remedial and/or compensatory services determined necessary; and, (d) documentation demonstrating that the District provided notice of and invited each student’s parent/legal guardian to the meeting. 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. §§ 104.34, 104.35 and 104.36, in making these determinations.
- (e) By July 15, 2023, for any student determined to require remedial and/or compensatory services pursuant to Reporting Requirement (d), the District will provide documentation to OCR of the dates, times, and locations that these services were provided to each student, and the name(s) of the service provider(s).
- (f) By July 15, 2023, the District will provide to OCR a list of students by name whom the District dismissed, removed, or terminated from the Program during school years 2021-2022 and 2022-2023. For each student, the District will provide: (i) the date on which the student was dismissed, removed, or terminated from the Program; (ii) an explanation for the decision to dismiss, remove, or terminate the student from the Program, including any applicable District/Program policies and/or procedures relied upon in making the decision; (iii) the name(s) and job title(s) of the District/Program staff member(s) responsible for making the decision to dismiss, remove, or terminate the student from the Program; (iv) whether the student has a disability; (v) whether the student and/or someone acting on the student’s behalf engaged in a protected activity;¹ and (vi) copies of all related documentation, including correspondence between District staff and the student’s parent/legal guardian and/or among District/Program staff regarding the student’s dismissal, removal, or termination from the Program, all relevant policies or procedures, emails, memoranda, reports, notes, logs, forms, and/or meeting minutes.

¹ A protected activity involves making a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing under the regulations enforced by OCR or similar activities, such as advocating for rights guaranteed by OCR’s regulations. OCR enforces federal laws and regulations that prohibit discrimination on the bases of race, color, national origin, disability, sex, and age. OCR is also responsible for enforcing the Boy Scouts of America Equal Access Act.

Action Item 2: Training

- (a) By January 31, 2023, the District will provide training to all Program/School staff and administrators, including related service providers, regarding the requirements of Section 504, at 34 C.F.R. §104.38, including that the Program may not, on the basis of disability, exclude qualified individuals with disabilities from the program or activity; and must take into account the needs of such persons in determining the aid, benefits, or services to be provided.
- (b) By January 31, 2023, the District will also ensure that all Program/School staff and administrators, including the CPSE Chairperson, the Program/School principal, and the teachers and related service providers receive training regarding the District’s obligations under Section 504, including the District’s obligation to conduct an evaluation of a student with a disability prior to making a significant change in a student’s placement, documenting the provision of related aids and services in the implementation of a Section 504 plan and/or an IEP, and the prohibition regarding retaliation pursuant to Section 504 and Title II. At a minimum, the training will cover the District’s obligation to convene a group of persons knowledgeable prior to making a significant change in a student’s placement, including decisions regarding provision of related aids and services for a student; and to provide an assurance that students are not subjected to retaliation or excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District’s programs.

Reporting Requirement: By February 28, 2023, the District will submit documentation to OCR demonstrating that the District provided trainings in accordance with Action Item 2 above, including the name(s) and credentials of the trainer(s); the date(s) of the training(s); a short summary of the material covered; copies of any training materials distributed; and proof of attendance by relevant District/School staff.

By signing this Agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, 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 and obligations of this Agreement. The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has demonstrated compliance with all the terms of this Agreement and is in compliance with Section 504, and its implementing regulation at 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 District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the District's representative below.

11/18/22
Date

/s/
Joann Chambers
Superintendent of Schools
Potsdam Central School District