

RESOLUTION AGREEMENT
Jefferson County Public Schools
OCR Case No. 03-19-1245

The U.S. Department Education, Office for Civil Rights (OCR) and Jefferson County Public Schools (the District) enter into this Voluntary Resolution Agreement (Agreement) to resolve the above-referenced complaint. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District.

The District assures OCR that it will take the following actions to ensure that it complies with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 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. Sections 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

Prior to the completion of OCR’s investigation, the District agreed to resolve the issues presented in this complaint pursuant to Section 302 of OCR’s Case Processing Manual. Accordingly, to resolve the issues under investigation, the District agrees to take the actions outlined below.

ACTION STEPS

Memorandum to School Administrators and Staff

1. The District recognizes its obligation under the regulation implementing Section 504, at 34 C.F.R. § 104.33, to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. In addition, the District recognizes its obligations under Section 504, at 34 C.F.R. § 104.33, to fully implement Section 504 Plans and Individualized Education Programs (IEPs) for students with disabilities.

Within 15 calendar days of the beginning of the 2020-2021 school year, the District will disseminate a memorandum (this memorandum can be sent electronically) to administrators, teachers and other personnel who provide instruction to students at the XXXXXXXXXXXXXXXXXXXXXXXX (School), reminding them of their obligation to: (1) provide a FAPE to each qualified student with a disability and specifically, implement the provisions in students’ Section 504 Plans and IEPs; (2) ensure that parents/guardians are given timely and written notice of Section 504 and IEP meetings; and (3) conduct special education and Section 504 evaluations and make placement determinations in an appropriate and timely manner and in accordance with the procedural requirements of Section 504 at §§ 104.35 and 104.36.

Reporting Requirement: Within fifteen (15) days of sending the memo to administrators, teachers and other personnel in the School who provide instruction to students, the District

will provide OCR with a copy of the memo and proof that it was distributed along with a list of recipients, by name or title.

Review of Teacher Attendance Records and Lapse in Educational Services, If Any

2. Within 90 work days of the beginning of the 2020-2021 school year, the District will conduct a review of absentee reports for special education teachers at the School from October 1, 2018 through the end of the 2018-19 school year to determine the number of days when a special education teacher was absent and the School was unable to secure an appropriately certified substitute teacher as determined by Kentucky statute to provide special education services. For each day identified by the review, the District will identify the special education student(s) who did not benefit from appropriate substitute teacher coverage.

Reporting Requirement: Within 14 days of completing Action Step 2, the District will provide OCR with a narrative summary of the review and include supporting information.

3. Within 90 days from the first day of the 2020-2021 school year of the completion of Action Step 2, the District will, for each special education student identified in Action Step 2, convene an Admissions and Release Committee (ARC), including the student's parent/guardian, to determine whether the student suffered an educational loss due to the District's failure to provide appropriate regular and/or special education or related aid and services to the student (FAPE) due to a lack of substitute teacher coverage when a special education teacher was absent. The District will conduct the meeting in accordance with the Section 504 procedural requirements of 34 C.F.R. § 104.35 (evaluation and placement) and § 104.36 (procedural safeguards). The District will ensure that accurate meeting minutes are kept in order to document this meeting, including documenting information considered from all sources and decisions made by the team.

If an educational loss is found, the group will develop a plan for providing timely compensatory and/or remedial services. If the District determines that no compensatory services will be provided, the District will provide to OCR a written explanation of the reasons for that determination, along with any supporting documentation.

The District will submit to OCR documentation regarding the decision whether to grant compensatory education or not 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, and OCR will notify the District when it has completed this review¹.

Reporting Requirement:

- a) Within 14 days of completing each ARC meeting required by Action Step 3, the District will submit the information to OCR. Once OCR has determined that the Section 504 procedural requirements were met in making the determination(s) under Action Step 3, OCR will notify the District and the District will take steps to implement the compensatory services and remedial measures, if any, agreed upon by the ARC team.
 - b) By September 30, 2021, the District will provide OCR written confirmation that the compensatory education services were provided, as agreed upon. This information may be provided individually upon completion for each student, or in summative form once all students have received it.
4. Within 30 school days from the start of the 2020-2021 school year, the School will develop a school-wide plan and will train all staff during their annual staff orientation on the procedure that will be implemented whenever a substitute teacher or a classroom teacher (other than the assigned teacher) is teaching or covering a class at the School. The procedure will stipulate that all substitute teachers and/or classroom teachers covering another class will be either provided with a copy of all applicable students' Individualized Educational Plans (IEP) and/or Section 504 plans or the provisions and/or services to be implemented in that particular class. The procedure will also indicate, how, when, and from whom the plans will be provided to the above-mentioned teachers and who to contact if there are questions about implementation of provisions and/or services.

Reporting Requirement: Within 14 days of the completion of Action Step 4, the District will submit to OCR a copy of the procedure referenced in Action Step 4 as well as documentation demonstrating that all educational staff and administrators at the School were notified and provided a copy of the procedure.

¹ Except in extraordinary circumstances, OCR does not typically substitute its judgment for the decisions made by an IEP or Section 504 team that is properly constituted and that takes appropriate actions in light of the requirements of due process. In the event that the IEP or Section 504 team proposes compensatory services or remedial actions *and* those actions are clearly insufficient to provide equitable relief to the Student, OCR will notify the District of its concerns, and the District will consider and respond to any feedback from OCR with respect to the proposed compensatory services or remedial measures.

Staff Training

5. Within 60 school days from the start of the 2020-2021 school year, the District will provide training² to all education staff and administrators at the School on Section 504. Specifically, the training will focus on the obligation to: provide a FAPE to each qualified student with a disability and specifically, implement the provisions in students' Section 504 Plans and Individualized Education Programs (IEP); ensure that parents/guardians are given timely and written notice of Section 504 and IEP meetings; and to conduct evaluations and make placement determinations in an appropriate and timely manner.

Reporting Requirement: Within 30 days of the completion of the training required by Action Step 5, the District will provide OCR a written description of the training provided; the attendance sheet(s) for the training; the name, title, and qualifications of the training source who provided the training; the method for the training (in person or online); and copies of any materials used during the training.

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 in this Agreement. Further, the District understands that during the monitoring of this Agreement, 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 of this Agreement. Upon completion of the obligations under this Agreement, OCR shall close and dismiss 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 sixty (60) calendar days to cure the alleged breach.

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

By: /s/
Superintendent or designee

Date: 7/29/2020

² This training may be provided in-person or remotely.