

Resolution Agreement
Marietta City School District, GA
Docket # 04-13-1294

The U.S. Department of Education, Office for Civil Rights (OCR), initiated the above-referenced investigation of the Marietta City School District (District), pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in all programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability in public elementary and secondary education systems. Prior to the completion of OCR's investigation, the District asked to resolve the complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM).

This resolution has been entered into voluntarily and does not constitute a finding or admission that the District is not in compliance with Section 504 or Title II and/or the implementing regulations. Accordingly, to ensure compliance with Section 504 and Title II and the implementing regulations and to resolve the issues of this investigation, the District voluntarily agrees to take the following actions.

Section 504 Policy and Procedures

1. **By April 15, 2014**, the District will revise, and submit to OCR for approval, its Section 504 policy and/or procedures to:
 - a. include a statement clarifying: i) that the District is responsible for conducting and paying for all required evaluations, including any necessary medical examinations, the District will use to make eligibility determinations under Section 504 and ii) the District will not require that parents/guardians submit documentation with a diagnosis of a disability before the District will evaluate a student pursuant to Section 504;
 - b. ensure that if parents/guardians have requested an evaluation under Section 504, the District will not delay the evaluation process if it has reason to believe or suspect that the student, because of a disability, may need special education or related services. If the District uses its RTI process, the District interventions may occur concurrently with the evaluation. If the District disagrees with the need for an evaluation, the District will inform the parents/guardians of the reasons for the disagreement and the District will provide the parents/guardians with the appropriate notice of procedural safeguard rights;

- c. ensure that it draws upon a variety of sources in interpreting evaluation data and in making placement decisions. The District will ensure that learning is not the only major life activity considered when determining whether a student has a disability under Section 504 or whether a Section 504 plan will be developed for a student;
- d. delete the provision of the 504 policy and/or procedures that states “if the team finds that the student is a child with a disability under Section 504 and the identified disability is determined to have a negative impact on the student’s academic progress, the team will develop a Section 504 plan;” and replace with the following language: “if the team finds that the student has a disability under Section 504 and because of the disability, needs special education or related services, the team will develop a Section 504 plan”;
- e. ensure that, in determining whether a student has a disability, it follows the expanded Americans with Disabilities Act Amendments Act of 2008 interpretation of “disability”;
- f. ensure that if a student is identified as having a disability under Section 504, the student’s 504 team will determine whether the student needs related services as well as whether the student needs educational services; and
- g. ensure that if a student is identified as having a disability but is found to not need special education or related services under Section 504, the District will consider whether the student is entitled to a reasonable modification of District policies, practices or procedures.

REPORTING REQUIREMENT: By April 15, 2014, the District will submit to OCR, for review and approval, a copy of its revised Section 504 policy and/or procedures in accordance with Item #1 above.

2. **By May 30, 2014**, or immediately upon receipt of OCR’s notice of approval of the District’s revised Section 504 policy and/or procedures developed pursuant to Item #1 above, whichever is later, the District will begin implementation of the OCR-approved policies and procedures.

REPORTING REQUIREMENT: By June 15, 2014, or within 30 days of OCR’s notice of approval of the revised policy and/or procedures developed pursuant to Item #1 above, whichever is later, the District will provide a statement demonstrating that implementation of the newly developed policy and/or procedures has been initiated consistent with Item #2 above.

3. **By August 11, 2014**, the District will publish the revised policy and/or procedures developed pursuant to Item #1 above, in the District’s Section 504 Manual and on the websites of the District and individual schools within the District, as appropriate, and any other publications that contain the District’s Section 504 policy and/or procedures.

REPORTING REQUIREMENT: By August 18, 2014, or within 30 days of OCR’s notice of approval of the revised policy and/or procedures developed pursuant to Item #1 above, whichever is later, the District will provide a statement demonstrating publication of the newly developed policy and/or procedures has been initiated consistent with Item #3 above. The District will also provide OCR with copies of all the publications and links to all websites where the revised policy and/or procedures appear.

Training on Revised Section 504 Policy and Procedures

4. **By August 11, 2014**, and annually thereafter, the District will provide mandatory in-service training to all District and School/XXXXXX Section 504/Title II and Special Education Coordinators and Liaisons (hereinafter “Administrative Staff”) and teachers regarding the Section 504 and Title II standards for evaluation of students who need or are believed to need special education or related services because of a disability and the revised policy and/or procedures developed in accordance with Item #1 above to ensure the Administrative staff and teachers are aware of their obligations with regard to evaluation and placement of students with disabilities. The training will also specify the Section 504/Title II standards regarding the definition of a disability and evaluation of students.

REPORTING REQUIREMENT: By September 15, 2014, the District will provide OCR with a report confirming the completion of the trainings required under Item #4 above. The report will include: (i) the date of each training session; (ii) a list of names and titles of the District and School employees who participated in each training session; (iii) the title and experience of the trainer; and (iv) copies of the agenda and training materials disseminated at the training session.

Student-Focused Remedies

5. **By March 14, 2014**, the District will refund the parent of the Student any pre-paid tuition for periods during which the Student was not enrolled at the School/XXXXXX and any pre-paid lunch fees that were not used. Additionally, the District will purge the Student’s record regarding his involuntary withdrawal from the school on February 8, 2013, due to poor behavior.

REPORTING REQUIREMENT: By April 30, 2014, the District will submit documentation to OCR showing implementation of Item #5 above, including verification of payment to the parent and evidence showing that the reason for the Student’s involuntary withdrawal has been purged from the file.

6. If the Student returns to the District, the District will evaluate the Student with applicable parental consent for special education or related services, in compliance with the provisions of the regulation implementing Section 504 at 34 C.F.R. Sections 104.33 through 104.36 within 60 calendar days of his return.

REPORTING REQUIREMENT: a) By April 30, 2014, the District will provide OCR written notice of the Student's enrollment status and if the student has re-enrolled in the District, the District will provide OCR a copy of all documents related to evaluation and placement, if applicable, of the Student, including evaluation materials, a copy of any eligibility determination, minutes of all Section 504 or Individualized Education Program (IEP) team meetings, all Section 504 plans or IEPs developed to meet the Student's needs and if applicable, documentation demonstrating that the Student's plan has been implemented. b) **By December 31, 2014**, if the Student has not re-enrolled as of the report date referenced above (April 30, 2014), the District will provide OCR with an updated written notice of the Student's enrollment status, and if the Student has re-enrolled in the District, the District will provide OCR a copy of all documents related to evaluation and placement, if applicable, of the Student, including evaluation materials, a copy of any eligibility determination, minutes of all Section 504 or IEP team meetings, all Section 504 plans or IEPs developed to meet the Student's needs and if applicable, documentation demonstrating that the Student's plan has been implemented.

Notice of Nondiscrimination

7. **By March 30, 2014**, the District will revise for OCR's approval, its notice of nondiscrimination to include contact information for persons designated to handle inquiries regarding the District's nondiscrimination policies as required by the Age Discrimination Act of 1975 (Age Act). Upon OCR's approval, the revised notice of nondiscrimination will be placed in all District publications containing general information about the District, including student and employee handbooks, announcements, bulletins, catalogs, application forms, the websites of the District and individual schools within the District (individual schools) and other documents that it makes available to students, parents, employees, and other interested persons.

REPORTING REQUIREMENT: By August 15, 2014, the District will submit to OCR, for review and approval, a copy of its revised notice of nondiscrimination for Section 504 policy and/or procedures (notice) in accordance with Item #7 above. Within 30 days of OCR's approval of the revised notice, the District will provide a copy of the publications containing the notice of nondiscrimination revised in accordance with Item #7 above and documentation demonstrating that the District has disseminated such publications. The District will also provide OCR with links to the District's and the individual schools' webpages that set forth the revised notice.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. 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 and is in compliance with the regulations implementing Section 504 at 34 C.F.R. §§ 104.33 through 104.36, Title II and its implementing regulation at 28 C.F.R. § 35.130, and the regulations implementing Age Act at 34 C.F.R. § 110.25, which were at issue in this investigation.

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 Section 504 at 34 C.F.R. §§ 104.33 through 104.36, Title II and its implementing regulation at 28 C.F.R. § 35.130, and the regulations implementing the Age Act at 34 C.F.R. § 110.25.

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/

March 7, 2014

Superintendent or Designee

Date