

Resolution Agreement
Rutherford County School District, TN
Docket # 04-14-1396

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation of the above-referenced complaint against the Rutherford County Public 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 prohibits 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 prohibit discrimination on the basis of disability in public elementary and secondary education systems. The District agreed to resolve the issues of this investigation by taking the following actions.

The District agrees to take all steps reasonably designed to ensure that students enrolled at XXXXX Elementary School (School) are not subject to a hostile environment, on the basis of disability, and that the District will promptly investigate all incidents and complaints of disability harassment. Harassing conduct may take many forms, including verbal acts and name calling; graphic and written statements, which may include use of cell phones or the internet; or other conduct that may be physically threatening, harmful or humiliating. The District will take prompt and effective responsive action reasonably designed to end the hostile environment, if one has been created, prevent its recurrence, and, where appropriate, take steps to remedy the effects of the hostile environment on the affected student(s). Accordingly, the District agrees to the following:

Section I: Student-Focused Remedies

1. **The District will immediately, but by no later than September 30, 2015**, notify the Student's parent/guardian, by letter sent via first class mail, certified mail, and by electronic mail at the most current addresses provided to the District that the District can evaluate the Student with respect to his eligibility and need for compensatory and/or remedial services and determine whether his receipt of a free appropriate public education (FAPE) was affected by any harassing incidents that occurred during the 2013-2014 school year. The notice provided to the parent/guardian will include a document to be returned to the District indicating whether or not they agree to an evaluation.

Reporting Requirements

Within 2 weeks of sending the correspondence and attempting phone contact, the District will provide OCR with a copy of the letter, email, and any other documents related to the invitation to evaluate, including the contact information used, the name of the person undertaking the contact, and any document reflecting the conversation that occurs as a result.

Within 2 weeks of certification or a statement from the Student's parent or guardian with respect to evaluating the Student, the District will submit to OCR documents establishing whether the Student will be evaluated, including a date for the evaluation, or whether the parent or guardian chose not to have the District evaluate the Student for the 2015-2016 school year.

2. **If the Student's parent or guardian consents to an evaluation,** the District will:
 - a) After providing proper written notice to the Student's parent/guardian, convene a group of persons knowledgeable about the Student, including the parent/guardian, evaluation data about the Student gathered from a variety of sources, and the placement options to determine whether the Student's receipt of FAPE was affected by denial of recess and interactions with his Teacher based upon his academic performance; **and**
 - b) After providing proper written notice to the Student's parent/guardian, convene a group of persons knowledgeable about the Student, as defined by Section 504, including the parent/guardian, to determine whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide an appropriate evaluation for regular and/or special education or related services from XXXX 2013 through XXXXXX X, 2014 and/or because of any impact of harassing incidents upon the Student's receipt of FAPE during the 2013-2014 school year. If so, within one week of its determination, the group will develop a plan for providing timely compensatory and/or remedial services with a completion date not to extend beyond 45 school days after the Student's re-enrollment. The District will provide the Student's parent/guardian notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

Reporting Requirements

Within 2 weeks of the evaluation conducted in accordance with Item 2(a), above, the District will submit to OCR documents regarding the evaluation conducted in accordance with Item 2(a), above, and documents supporting the IEP team's decision on compensatory and/or remedial services. The documentation submitted shall include documentation showing the participants in the meeting, an explanation of the decisions made, the information considered, and a description of and schedule for providing any compensatory and/or remedial services (if any) to the Student. OCR will, prior to approving the District's decision concerning compensatory and/or remedial services and plan for providing the proposed services, review the documentation 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.

Within 60 days of the Student's evaluation for compensatory services, the District will provide OCR with documents reflecting its plan for providing compensatory and/or remedial services to the Student, including a description of the service(s) to be

provided, the frequency and duration of the service(s), and the name(s) of the service provider(s).

Within 15 days of completing all compensatory and/or remedial service(s), the District will provide OCR with documents showing that all services have been completed.

3. **By October 30, 2015**, the District will develop and implement a plan to take steps to respond to the disability-based harassment and hostile environment of the Student, including steps to remedy its effects and prevent its recurrence, including offering the Student counseling or other appropriate services identified in consultation with the Student's parent/guardian to address any discriminatory effects he may have suffered as a result of the disability harassment. If the parent/guardian objects to the District's attempts to remedy the effects of the disability-based harassment, the District will secure the Complainant's objection in writing.

Reporting Requirement

Within 15 days of developing a plan to remedy the effects of the hostile environment of the Student, the District will provide OCR with documentation outlining the plan to remedy its effects and prevent its recurrence, and the name(s) and title(s) of the person(s) responsible for implementing the plan. If the parent/guardian objects to actions required in Item three, the District will be relieved of this requirement and, instead, will provide to OCR a copy of any written objection signed by the Complainant.

Section II: Climate Survey

4. **By February 1, 2016**, and annually thereafter, the District will conduct a "climate check" or series of climate checks with students at the School to assess the effectiveness of steps taken pursuant to this Agreement or otherwise by the School to ensure a campus free of disability harassment. This climate check may be accomplished through an age-appropriate written or electronic survey, provided that students receiving the survey also are notified of a contact person, such as a counselor, should they wish to discuss this issue in person. If this method is selected, the written survey must be provided to OCR for review and approval prior to its use. Information gathered during these climate checks will be used to develop proactive steps to be taken by the School to address any areas of concern identified by the climate check. Participation in the survey by students will be entirely voluntary, and the survey will be conducted in a manner consistent with applicable law.

Reporting Requirements:

By December 1, 2015, if the District chooses to conduct a climate check by issuing a survey, the District will provide OCR with a copy of a proposed survey for OCR's review and approval.

Within 60 days of approval from OCR or by February 1, 2016, whichever is later, the District will disseminate the climate check survey to the School's students.

By March 15, 2016, the District will provide documentation to OCR demonstrating that the School has conducted the climate check, an analysis of the information obtained by the climate check, and a description of the proactive steps to be taken by the School to ensure a campus free of disability harassment as well as other harassment prohibited by other laws OCR enforces.

Section III: Training

5. a) **By January 28, 2016**, the District will make administrators, faculty and staff at XXXXX Elementary School available for training by OCR¹ concerning Section 504 as it applies to disability harassment and other harassment prohibited under the laws that OCR enforces, including how to respond to student or parent complaints of harassment, where to refer such complaints, how to recognize disability harassment, examples of actions by employees that may be harassing based on disability, and the District's responsibility for such harassment when an employee engages in the harassing acts and duty to respond to such harassment. Annually, thereafter, the District will conduct similar in-service training for the School staff at the beginning of the school year.

b) **After OCR's approval of the District's grievance procedures pursuant to the Agreement in OCR Complaint #04-13-1038**, the District will conduct training of all District staff concerning the District's grievance procedure process for Section 504 complaints and the prohibition against retaliation at the beginning of the 2016-2017 school year. Annually thereafter, the District will conduct similar in-service training for the School staff.

Reporting Requirements:

a) **By February 15, 2016**, the District will provide OCR with the list of training attendees, including names and titles.

b) **Within 30 days of the annual training after OCR's approval of the District's grievance procedures pursuant to the Agreement in OCR Complaint #04-13-1038**, the District will provide OCR with the list of training attendees, including names and titles.

6. **By February 15, 2016**, the District will provide age-appropriate training² to all students at the School concerning disability harassment as well as other harassment prohibited under the laws that OCR enforces, including what constitutes harassment, and where and how to file a complaint. The District will also provide students with the name and contact

¹ This training can be coordinated with training provided pursuant to the Agreement in complaint #04-13-1038 if it is completed within 30 days of the date specified in this Agreement.

² This training can be coordinated with training provided pursuant to the Agreement in complaint #04-13-1038 if it is completed within 30 days of the date specified in this Agreement.

information of a District employee that the students may contact if they wish to confidentially discuss any concerns they have with possible harassment committed by another student or by a staff member. In addition, the training will cover the prohibition against retaliation. Annually thereafter, the District will conduct similar training for the School's students.

Reporting Requirement

By February 29, 2016, the District will provide OCR with documentation demonstrating that the training required by this item of the Agreement was provided. The documentation will include a list of the classes (grades) attending the training, a copy of the training materials used, and the name and title of the individual(s) providing the training.

Section IV: Record Keeping

7. **Beginning no later than September 15, 2015**, the District agrees to maintain records on all disability harassment complaints/grievances filed at the School. The District's records should include the complaint or grievance, including all written complaints and a summary of all unwritten reports of disability based harassing actions; the investigative findings; notices to the parties; the discipline imposed; the corrective actions taken to stop further disability harassment, and remedies provided to the student(s) subjected to the disability harassment.

Reporting Requirement

By December 30, 2015, the District will provide OCR with records pertaining to all disability harassment complaints/grievance for the 2015-2016 school year submitted through December 15, 2015.

By June 15, 2016, the District will provide OCR with records pertaining to all disability harassment complaints/grievance for the remainder of the 2015-2016 school year submitted December 15, 2015 through May 31, 2016.

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. §§ 104.4(a) & (b)(1)(i)-(iii), 104.7, 104.8, 104.33, 104.35, and 104.36, and the Title II implementing regulation at 28 C.F.R. §35.130 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 regulation implementing Section 504 at 34 C.F.R. §§ 104.4(a) & (b)(1)(i)-(iii), 104.7, 104.8, 104.33, 104.35, and 104.36, and the Title II implementing regulation at 28 C.F.R. §35.130, which were at issue in this investigation.

Rutherford County Schools Resolution Agreement
Complaint #04-14-1396

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. §104.61, incorporating 34 C.F.R. §§ 100.9, 100.10 by reference), 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.

This Resolution Agreement will become effective immediately upon the signature of the Superintendent or his/her designee below.

Superintendent or designee

9-17-15

Date