

Resolution Agreement
Clayton County School District, Georgia
OCR Complaint #04-15-1282

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation of the above-referenced complaint filed against the Clayton County School District (District), pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, 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 by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to the provisions of Section 504 and Title II. Accordingly, to ensure compliance with the above-referenced statutes and to resolve this complaint, the District voluntarily enters into this Resolution Agreement (Agreement).

The District agrees to take all steps reasonably designed to ensure that students enrolled in the District are not subjected to a hostile environment on the basis of disability, and the District will promptly investigate all incidents and complaints of 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). Additionally, the District agrees to take the following actions:

Student-Focused Remedies

1. **By August 31, 2016**, the Teacher will issue a written apology to the Student for the X incident (Incident) at X (School). In addition, the District will issue a letter to the Complainant offering to provide counseling services to the Student, through a qualified counselor who does not work at the School or the Student's current school but may be employed by the District, to remedy any effects of the Incident. If the Complainant accepts the counseling services, the District will immediately begin providing the services. The amount of counseling time will be determined by the counselor after meeting with the Student. If the counselor recommends any additional services for the Student, the District will follow up to ensure that such services are offered to the Student.

REPORTING REQUIREMENT:

By September 30, 2016, the District will provide OCR with:

- a. A copy of the written apology;
- b. A copy of the letter sent to the Complainant offering to provide counseling services;
- c. Documentation of the Complainant's response; and
- d. If counseling services are accepted by the Complainant, documentation demonstrating the provision of (or the schedule for providing) the counseling services and any applicable additional services recommended by the counselor.

2. **By August 31, 2016**, with appropriate notice to the Complainant, the District will convene a manifestation determination review (MDR) meeting with a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options, to determine whether the Student's behavior during the Incident was a manifestation of a disability. In addition, the District will review the Student's disciplinary record for the X school year and will conduct a manifestation determination as to all disciplinary incidents for which the Student received a sanction that resulted in out-of-school suspensions for more than 10 days in the aggregate during the X school year (which may include short-term suspensions that, in the aggregate, totaled more than 10 days). If the group determines that any of the Student's actions were a manifestation of a disability, the District will (a) expunge from the Student's record, the discipline imposed for any such actions; and (b) determine whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide appropriate regular and/or special education or related services during her suspension. 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 **December 31, 2016**. The District will provide the Complainant with notice of the procedural safeguards, including the right to challenge the group's determination through an impartial due process hearing.

REPORTING REQUIREMENTS:

By September 30, 2016, the District will provide OCR with:

- a. a copy of the notice sent to the Complainant informing her of the meeting, including the date on which the notice was sent;
- b. documentation showing the Complainant's response, if any, to the notice. If the Complainant chose not to participate in the meeting, the remaining reporting requirements listed below for this Item #2 will be considered inapplicable;
- c. *if applicable*, the names and job titles/positions of the members of the group who participated in the MDR meeting, a copy of all documents considered at the MDR meeting, and the MDR meeting minutes;
- d. *if applicable*, documents supporting the group's decision as to whether compensatory and/or remedial services are needed for the Student. The documentation submitted shall include an explanation for 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 and plan for providing the proposed services, review the documentation to ensure that the District has 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
- e. *if applicable*, documentation showing that the Student's disciplinary record has been updated and the Complainant has been notified.

By the deadline established by OCR upon its approval of the District's plan for providing compensatory and/or remedial services to the Student, if applicable, the District will provide OCR with:

- a. a copy of the notice sent to the Complainant offering compensatory and/or remedial services to the Student; and
 - b. documentation showing the dates, times, and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).
3. **By September 30, 2016,** the District will conduct an investigation to determine whether staff at the School have subjected the Student to other instances of harassment based on her disability, disability-related behaviors, or any perceived disability. The incidents to be investigated will include, but not be limited to:
- a. an alleged X incident in which a teacher approached the Student in the library, put her hand in the Student's face, and stated, "Nobody is talking to you;"
 - b. an alleged X incident in which a coach commented to the Student at the front entrance of the School, "[X – REMAINDER OF SENTENCE REDACTED]. X people like you make me talk like this;" and
 - c. any negative or insulting comments related to X made by School staff, including X employees, or any other actions taken for the purpose of upsetting the Student or triggering a defensive reaction from her.

The investigation will be conducted by a District-level administrator or staff person and will include interviews of students as well as staff reasonably believed to have knowledge concerning the alleged incidents. The Complainant will be provided the option of attending any interviews of the Student or, in the alternative, designating a District staff member whom the Student trusts to be present for any interview of the Student. Investigative steps will be documented and the investigation will be conducted in a manner that comports with applicable Section 504 and Title II standards. Upon completion of the investigation, the District will make findings and, if necessary, develop corrective actions to address any actions taken by District staff that contributed to the creation of a hostile environment for the Student at the School or in any District program or activity. The District will provide written notice of the outcome of the investigation to the Complainant and all other parties. Further, the District will ensure that the Student is not subjected to retaliation by District staff.

REPORTING REQUIREMENT:

By **October 14, 2016**, the District will provide OCR with documentation showing the completion of its investigation of the alleged incidents of harassment, its written notice of the outcome to all parties, and the implementation of any necessary corrective actions to remedy the effects of the alleged harassment on the Student.

Notice of Non-discrimination

4. By **October 31, 2016**, the District will review the notices of non-discrimination in each of its online and printed student/parent publications and, where necessary, revise the notices to clearly identify the Section 504 Coordinator(s), including his or her title, address, telephone number, and e-mail address.

REPORTING REQUIREMENT:

By **November 15, 2016**, the District will submit to OCR for review and approval a copy of its revised notices of non-discrimination, including a link to each relevant website.

Section 504 Grievance Procedures

5. By **October 31, 2016**, the District will, subject to OCR's review and approval, revise its "Complaints and Grievances" procedures to provide for the prompt and equitable resolution of complaints alleging disability discrimination, including disability harassment (Grievance Procedures). The Grievance Procedures will include, at a minimum, the following elements:
 - a. Notice to students, parents, and employees of the Grievance Procedures, including where complaints may be filed;
 - b. Application of the Grievance Procedures to complaints alleging disability discrimination, including disability harassment, carried out by employees, other students, or third parties;
 - c. Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
 - d. Designated and reasonably prompt timeframes for the major stages of the complaint process;
 - e. Written notice to the parties of the outcome of the complaint;
 - f. An assurance that the District will take appropriate steps to prevent the recurrence of any disability discrimination, including disability harassment, and to correct the discriminatory effects on the complainant and others, if appropriate; and
 - g. A prohibition against retaliation for any individual who files a complaint or participates in a complaint investigation.

REPORTING REQUIREMENT:

By **November 15, 2016**, the District will submit to OCR for review and approval a copy of its revised Grievance Procedures to ensure that they are consistent with the requirements of Section 504 and Title II.

6. **Within 45 days of receipt of OCR's notice of approval of the Grievance Procedures**, the District will implement and publish the Grievance Procedures and notify all parents and students that the Grievance Procedures have been revised. Publication will include all online and printed student handbooks, notices, and other relevant publications.

REPORTING REQUIREMENT:

Within 15 days of the above deadline for implementation, publication, and parent/student notification, the District will submit evidence to OCR confirming that the Grievance Procedures have been implemented and published. The District will also submit evidence demonstrating its compliance with the parent and student notification requirement by describing the manner and date(s) of dissemination and providing OCR with a copy of the notice(s) and a link to the District's website containing the notice(s).

Staff Training

7. **Within 45 days of receipt of OCR's notice of approval of the Grievance Procedures**, the District will initiate annual training of all faculty and staff at the District regarding the Grievance Procedures, the prohibition against disability harassment under Section 504 and Title II, and the District's obligation to respond to disability harassment, including each staff member's role/responsibility in the reporting of incidents of disability harassment and the investigation of the same. In addition, the training will address the District's obligation to determine whether harassment on any basis of a student receiving special education or related aids and services because of a disability has impacted the student's receipt of a free appropriate public education (FAPE).

REPORTING REQUIREMENT:

Within 15 days of the completion of the first annual training required under this Item #7, the District will provide documentation to OCR demonstrating that the District has conducted the required first annual training. The documentation shall include: (1) the date of the training session(s); (2) a list of the names and titles of District employees who participated in the training session(s); (3) a description of the presenter's background and qualifications with respect to knowledge of Section 504/Title II, the Grievance Procedures, and disability harassment; (4) a copy of the agenda and the training materials disseminated; and (5) certification that the materials were provided to any staff unable to attend the training due to an emergency or other excused absence.

Climate Survey

- 8a. **By October 31, 2016, and annually thereafter**, the District will conduct a “climate check” with students and staff at the School to assess the presence of and effects of disability harassment. This climate check may be accomplished through 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. Participation in the survey by students will be entirely voluntary, and the survey will be conducted in a manner consistent with applicable law.
- b. In conjunction with conducting a climate survey of students and staff at the School, the District will also review all complaints, grievances, or other reports of disability-based harassment at the School during the X and X school years, as well as the responses to those reports of harassment, and develop proactive steps for addressing any climate issues identified through that review.
- c. **By November 30, 2016**, the District will prepare a written analysis of the information gathered during the climate check and develop a written plan setting forth proactive steps to address any areas of concern identified by the climate check.
- d. **By January 1, 2017**, the District will implement the plan developed in accordance with Item #9(c) above.
- e. **By November 30, 2017**, the District will prepare a written analysis of the results of its second annual climate check conducted in (or before) October 2017, a written assessment of the effectiveness of the steps taken pursuant to the plan developed in Item #8(d) above based upon the results of the 2016 climate check, and a written plan setting forth the proactive steps developed by the District to address any climate issues identified in its second annual October 2017 climate check.

REPORTING REQUIREMENTS:

By September 30, 2016, if the District chooses to conduct a climate check by issuing a survey, the District will provide OCR with an advance copy of its proposed survey for OCR’s review and approval.

By November 30, 2016, the District will submit to OCR:

- i. Documentation demonstrating that the School has conducted the climate check;
- ii. A copy of all complaints, grievances, and other reports of disability-based harassment that it reviewed and a copy of all responses to these reports; and

- iii. The written analysis of the information obtained during the climate check and the plan setting forth the proactive steps developed by the District to address any climate issues identified in the above reviews.

By January 15, 2017, the District will provide OCR with documentation demonstrating that it has taken the proactive steps set forth in the plan.

By November 30, 2017, the District will provide OCR with a copy of the written analysis of the results of the second annual climate check conducted in (or before) October 2017, the assessment of the effectiveness of the steps taken pursuant to the plan developed based upon the results of the 2016 climate check referenced above, and a plan setting forth the proactive steps developed by the District to address any climate issues identified in the second annual October 2017 climate check.

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, 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 Section 504 implementing regulation at 34 C.F.R. §§ 104.4, 104.7, and 104.8 and the Title II implementing regulation at 28 C.F.R. § 35.130.

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 Section 504 implementing regulation at 34 C.F.R. §§ 104.4, 104.7, and 104.8 and the Title II implementing regulation at 28 C.F.R. § 35.130, 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 sixty (60) calendar days to cure the alleged breach.

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

Superintendent X
or Designee
Clayton County Public Schools, Georgia

Date