

RESOLUTION AGREEMENT
Campbell County Schools, TN
OCR Complaint #04-18-1469

The U.S. Department of Education (Department), Office for Civil Rights (OCR) and Campbell County Schools (District), enter into this agreement to resolve the allegation(s) in 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 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, which prohibit discrimination on the basis of disability.

Prior to the completion of OCR's investigation, the District agreed to resolve the issue(s) of this investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to resolve the issue(s) of this investigation, the District agrees to take the following actions; all days refer to calendar days unless otherwise noted:

Voluntary Action Item 1 (Student-Focused Remedies):

- A. **(Informed Consent)** By **October 29, 2018**, the District will send the parent/guardian a letter explaining that, with her written consent, to be received by the District on or before **November 7, 2018**, (timely consent) the District will take the following actions within a reasonable time period, as required by Section 504:
1. It will schedule and conduct a full confidential psychological evaluation (psychological evaluation) of the Student by a school psychologist.
 2. After the completion of the psychological evaluation, it will assemble a multidisciplinary committee (committee) to conduct an individualized inquiry of the Student to determine if she is a qualified student with a behavior-related disability.
 3. The District will ensure that the committee will consist of individuals who are knowledgeable about the Student, the meaning of the information and documentation that the committee will evaluate, and the placement options.
 4. The District will permit the parent/guardian, as a committee member, to share information and/or documentation that she wants the committee to consider, by providing this information and/or documentation to the District before or during the meeting convened to conduct the individualized inquiry.
 5. If the committee determines that the student has a behavior-related disability, the District will have its behavior analyst conduct a functional behavioral assessment (FBA) of the student.
 6. After the completion of the FBA, the District will re-assemble the committee to determine the Student's educational placement and to determine whether and, if so, what compensatory services the Student may need due to missed instruction.
 7. The District will ensure that the committee will provide the parent/guardian with procedural safeguards regarding its determinations.

Reporting Requirements for 1A:

By **November 17, 2018**, the District will submit to OCR a copy of the letter (referenced in Voluntary Action Item 1, above) that it sent to the parent/guardian and either (a) a copy of either the parent/guardian's timely consent or (b) a statement explaining that the parent/guardian did not provide timely consent.

B. (Disability and Placement Determinations) Should the parent/guardian elect to provide timely consent, then the District shall complete its evaluation and determine eligibility and, as needed, placement **within 60 days** of receiving consent by following the below process:

1. After receiving timely consent, the District will provide its school psychologist with the following documents to be reviewed prior to the psychological evaluation:
 - i. the Student's complete academic/educational records, including all of the Student's grades and her full IEPs;
 - ii. the Student's complete disciplinary records, including but not limited to (a) the Student's 5th and 6th grade disciplinary referrals, (b) the Student's 5th grade Reading/Language Arts Teacher's handwritten notes regarding the Student's behaviors, (c) the Student's 6th grade Comprehensive Development Class Teacher's handwritten chart documenting the Student's problem behaviors, and (d) the Student's Social Worker's 2017-2018 typed notes regarding her interactions with the Student;
 - iii. the Student's 2015 full confidential psychological evaluation conducted by a school psychologist;
 - iv. all of the Student's medical records that are in the District's possession; and
 - v. recent written observations by the Student's current teachers regarding her behavior.
2. The District will have its school psychologist conduct a psychological evaluation of the Student; the evaluation will result in a report that (i) lists all records reviewed and assessments conducted, (ii) explains the assessment results, (iii) makes recommendations, as appropriate.
3. After the psychological evaluation is completed, the District will assemble a committee to conduct an evaluation to determine whether the Student has a behavior-related disability and provide the parent/guardian with procedural safeguards regarding its determination.
 - i. At a minimum, the committee will review the report from the school psychologist's psychological evaluation and all the records the District provided the school psychologist prior to his/her evaluation. The committee will also receive instructions indicating that pursuant to Section 504:
 1. A medical diagnosis does not automatically mean that a child is a student with a disability.
 2. A disability is an impairment that significantly impacts one or more major life activities.
 3. If viewed individually, multiple impairments may not rise to the

level of a disability; however, their aggregate impact may qualify as a disability.

4. A student can have more than one disability.
 5. Section 504 defines disability more broadly than the Individuals with Disabilities Education Act (IDEA); a child who may not qualify as a student with a disability under IDEA may qualify under Section 504.
- ii. In making its determination as to whether the Student has a behavior-related disability, the committee will specifically address whether the Student's diagnosed conditions of ADHD and Disruptive Behavior Disorder (DBD), either standing alone, combined together, or in conjunction with her intellectual disability, rise to the level of a behavior disability, that is, whether they significantly impact one or more major life activities. The committee will reduce its decision and the rationale for the decision in writing.
 - iii. If the committee determines that the Student has a behavior-related disability, the District will provide its behavior analyst with the report from the psychological evaluation and all the records the District provided the committee to make its determination. The behavior analyst will review the documentation and conduct an FBA, which will be reduced to writing, list all documents reviewed, and make recommendations, as appropriate.
 - iv. After the completion of the FBA and after providing proper written notice to the Student's parent/guardian, the District will convene the committee to determine the Student's educational placement. In determining placement, the committee will review the FBA, discuss all available and relevant educational placement options and services, which may include the development of a behavior intervention plan (BIP), the provision of psychological services/supports, and/or any option, related aid or service the committee deems appropriate. The committee will reduce its decisions and the rationales for its decisions to writing. The committee will also provide the parent/guardian with procedural safeguards regarding its determination.

Reporting Requirements for 1B:

By **January 16, 2019**, if the parent/guardian elected to provide timely consent, then, the District will provide OCR with the following documentation:

1. A copy of the school psychologist's psychological evaluation of the Student.
2. A list (by name, title, and area(s) of knowledge) of all committee members.
3. A dated copy of the committee's meeting minutes showing (a) the committee conducted an individualized inquiry of the Student to determine if she is a qualified student with a behavior-related disability, (b) the documents reviewed by the committee, (c) the instructions given to the committee, and (d) an explanation of the committee's response to the question of whether the Student's diagnosed conditions of ADHD and DBD, either standing alone, combined

together, or in conjunction with her intellectual disability, rise to the level of a behavior disability, that is, whether they significantly impact one or more major life activities.

4. A copy of the procedural safeguards regarding the committee's disability determination.
 5. If the committee determines that the student has a behavior-related disability, then the District will provide OCR with the following documentation:
 - i. A copy of the behavior analyst's FBA of the Student.
 - ii. A dated copy of the committee's meeting minutes showing (a) the committee reviewed the FBA and discussed all available and relevant educational placement options and services in determining the Student's educational placement and (b) the committee's final decisions and rationales for its decisions.
 - iii. A copy of any 504 or IEP plan created or amended, reflecting any BIP, other educational placement decisions made by the committee.
 - iv. A copy of the procedural safeguards regarding the committee's educational placement determination.
- C. **(Compensatory Services)** By **January 6, 2019**, the District, after providing proper written notice to the Student's parent/guardian, will convene a group of knowledgeable persons, including the parent/guardian, to determine whether, and, if so, what compensatory education or other remedial services the Student requires for the time period the Student did not receive instruction (starting in the 2017-2018 school year through the present) due to formal suspensions as well as early dismissals and tardiness resulting from crying/refusing to enter the school building/ disruptive behavior. (In addition to examining the Student's attendance records, the committee will also consider information from the Student's parents and former principal in determining the number of days of missed instruction.) If so, within one week of its determination, and **prior to January 6, 2019**, the group will develop a plan for providing compensatory education or other remedial services deemed necessary, including who will provide the services, when the services will be provided, and the start and projected end dates of the services which will be provided at no cost to the parent/guardian and will become a part of the Student's IEP or Section 504 Plan. 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 for 1C:

By **January 16, 2019**, the District will submit to OCR **for review and approval** documentation showing implementation of 1C, above, including a copy of any meeting minutes, a copy of any plan developed for the Student, documentation of any input provided by the Student's parents and showing that procedural safeguards were provided to them, and any other documentation relevant to the determinations reached in accordance with Action Item 1C, above. Should the District determine that no compensatory education or other remedial services were necessary, the District will provide a written explanation of the reasons for that determination, along with any

supporting documentation. 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.

Within 10 days after all the compensatory or other remedial services have been provided pursuant to the plan, the District will provide documentation to OCR of the dates, times, and locations that the compensatory education or other remedial services were provided to the Student, including the name(s) and title(s) of the service provider(s).

Voluntary Action Item 2 (Revision of 504 Policies, Procedures, and Forms):

- A. By **January 21, 2019**, the District will adopt and publish revised Section 504 policies, procedures, and associated forms regarding the identification, evaluation, and placement of students, who because of disability, need or are believed to need special education and/or related aids and services. The revised Section 504 policies, procedures, and associated forms will indicate:
1. The District's obligation under Section 504 to identify and locate school aged children with disabilities in the District who are not receiving a public education.
 2. The District will make reasonable efforts (e.g., newspaper notices, notices in handbooks and newsletters, posted notices, etc.) to inform interested persons of its Section 504 responsibilities.
 3. Parents/ guardians and District employees can make a referral.
 4. A disability as an impairment that substantially limits one or more major life activities.
 5. The 504 Team is a multidisciplinary committee gathered to evaluate the student and will include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
 6. The 504 Team will draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.
 7. Reasonable timeframes for the major stages of the process (i.e., how long after a referral will an eligibility meeting be held and how long after an eligibility determination will a placement decision be made.)
 8. Parents/guardians have procedural safeguards which include notice, an opportunity to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.
 9. The 504 Team will periodically re-evaluate students with disabilities as conditions warrant, and will always re-evaluate them prior to any significant change in placement. A significant change in placement would entail a

significant change in the type or amount of services being provided, including the termination or substantial reduction in services, significantly altering the number of hours a child is in regular education, or disciplinary exclusions (suspensions and expulsions) that involve removals of more than 10 consecutive school days or a series of suspensions that are each of 10 days or fewer in duration but total more than ten days in the aggregate. Prior to a removal of more than 10 days, the 504 Team will conduct a manifestation determination, to determine whether the conduct in question was a manifestation of the student's disability. If the 504 Team determines the misbehavior is related to the student's disability, the District may not exclude the student for more than ten days but may take other measures, such as considering whether the student's current placement is appropriate, consistent with its evaluation and placement procedures. If the 504 Team determines the behavior is not related to the student's disability, the District may discipline student to the same extent it would discipline a nondisabled student.

10. Utilize sequential pagination.

Reporting Requirements for 2A:

By **December 21, 2018**, the District will submit to OCR for its review and approval, its 504 policies, procedures, and associated forms that have been revised to reflect Voluntary Action Item 2.A.1-10, above.

Within 30 days of OCR's approval, the District will adopt the revised 504 policies, procedures, and associated forms, publish them in a prominent place on the District's website, and provide OCR with evidence of the same.

Voluntary Action Item 3 (Section 504 Training):

A. By **March 21, 2019**, the District will provide training to the administrators and teachers at the Student's current and former schools regarding the District's identification, evaluation, and placement obligations under Section 504. Thereafter, the District will conduct annual, districtwide training regarding the same. Particular emphasis will be place on participants learning:

1. the revised Section 504 policies, procedures, and associated forms.
2. to identify situations which would reasonably warrant an initial evaluation or re-evaluation for a behavior-related disability, an FBA, and/or a BIP, such as a student with a disability presenting a pattern of behaviors that are verbally and physically aggressive (including but not limited to threats to kill others and incidents involving actions by a school resource officer); disruptive; defiant; and/or atypical for non-disabled peers of the same age and grade level.)
3. for manifestation determination purposes, an early, involuntary dismissal due to behavior constitutes a suspension - even if no formal referral or suspension documentation is completed.
4. the importance of keeping accurate attendance records to reflect behavior–

related involuntary dismissals and tardiness.

5. during the school day, it is the responsibility of the District and not parents/guardians to manage the behavior of students with disabilities.

Reporting Requirements for 3A:

By **April 1, 2019**, the District will submit documentation to OCR showing that the administrators and teachers at the Student’s current and former schools received training in accordance with Action Item 3. The documentation will include (1) a typed list (by name and title) of all teachers and administrators at the Student’s current and former schools; (2) all dated training attendance sheets showing attendees’ signatures next to their typed or legibly written names; (3) a description of the presenter’s background and qualifications with respect to knowledge of Section 504 and Title II; and (4) a copy of the agenda and the training materials disseminated evidencing that the training covered 3.A.1-5, above.

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. §§104.32 -33, and 104.35-36 and the Title II implementing regulation at 28 C.F.R. §§ 35.130, which were either raised by the complaint allegation(s) or arose as concerns during the investigation of this complaint. 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 Resolution 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 60 days to cure the alleged breach.

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

Signature of Director of Schools (or Designee)

(Date)

Printed Name of Director of Schools (or Designee)