

**Resolution Agreement**  
**Flagler County School District (Florida)**  
**OCR Complaint # 04-19-1013**

The U.S. Department of Education (Department), Office for Civil Rights (OCR) and the Flagler County School District (District) enter into this resolution agreement (Agreement) to resolve the allegations in the above-referenced complaint. 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. Section 794, and its implementing regulation at 34 C.F.R. Part, 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.

Accordingly, to resolve the issues of this investigation, the District agrees to take the following actions:

**Policies and Procedures**

1. The District will review and revise its policies and procedures to ensure that students with disabilities are not treated differently from students without disabilities with respect to the length of the school day, unless a shortened school day is determined necessary to meet the individualized needs of a particular student with a disability consistent with Section 504 and Title II.<sup>1</sup> The District's review will include Section 14 of the District's 2018-2019 Transportation Handbook of Operations (Handbook) – *Exceptional Student Education (E.S.E.) Transportation*.
2. The District's revisions shall ensure that students with disabilities who receive specialized transportation services will not arrive to class later, or leave class earlier, than the start and end of instructional time for the District's general education program students.

**Reporting Provision:**

- a. By June 30, 2019, the District will provide OCR with documentation that confirms the District's implementation of the revised policies and procedures. The District will also provide OCR with a copy of the notice that it sent to all District employees, including contract staff, regarding the revised policies and procedures referenced in Item 1.

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<sup>1</sup> 34 C.F.R. § 104.4; 28 C.F.R. § 35.130.

3. The District will review the policies, procedures, and practices at each District school to ensure that students with disabilities are not treated differently from students without disabilities with respect to the use of backpacks at school, unless the policy, procedure, or practice is determined necessary to meet the individualized needs of a particular student with a disability, consistent with Section 504 and Title II.<sup>2</sup>
4. If the District identifies backpack policies or procedures that distinguish students with disabilities from students without disabilities, without a legitimate, non-discriminatory basis, the District shall revise its policies, procedures, or practices to ensure that students with disabilities are not treated differently from students without disabilities, unless the policy is determined necessary to meet the individualized needs of a particular student with a disability, consistent with Section 504 and Title II.

**Reporting Provision:**

- a. By June 30, 2019 the District will provide OCR with the following: 1) the District's review of its backpack policies to ensure compliance with Section 504 and Title II, as referenced in Item 3; 2) a summary of the District's revised backpack policies and procedures, if applicable; and, 3) a copy of the notice that the District sent to all employees, including contract staff, to notify them of the revised backpack policies, if applicable.

**Transportation Plan**

5. The District will develop a Transportation Plan to ensure that students with disabilities who use specialized transportation services are not treated differently from students without disabilities with respect to the length of the school day, unless a shortened school day is determined, based on an individualized assessment, necessary to meet the individualized needs of the student with a disability, consistent with Section 504 and Title II.
6. The Transportation Plan shall demonstrate that the District does not treat students with disabilities who receive specialized transportation differently than students without disabilities. The Transportation Plan must ensure that the buses for the students with disabilities who require specialized transportation do not arrive or depart the school grounds later or earlier than general education students, unless the student's individual IEP or Section 504 Plan requires an earlier arrival or departure time.

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<sup>2</sup> 34 C.F.R. § 104.4; 28 C.F.R. § 35.130.

**Reporting Provisions:**

- a. By July 1, 2019, the District will provide OCR with its revised Transportation Plan. The District will also provide OCR with a report demonstrating its implementation of the Transportation Plan. The report will include, at minimum, the specialized bus route for each District school and a list of all students with disabilities who leave class earlier than general education students.
- b. By October 6, 2019, the District will provide OCR with a report demonstrating its implementation of the Transportation Plan at each school.
- c. By January 4, 2020, the District will provide OCR with a report demonstrating its implementation of the Transportation Plan at each school.

**Training**

7. Within ninety (90) calendar days of the District's adoption of the policies and procedures described in Items 1 through 4 of this Agreement, the District will provide training to appropriate District employees and contract staff, including the special education teachers/staff, the District's Title II Coordinator and Section 504 Coordinator, building, and transportation administrators, regarding the policies and procedures, including the Transportation Plan, revised pursuant to this Agreement.

**Reporting Provision:**

- a. Within thirty (30) days of completing the training referenced in Item 7, above, the District will submit a report to OCR describing the training provided.

**Remedial Measures - Special Transportation Report**

8. The District will conduct a review of all students with disabilities within the District who used special transportation services during the 2017-2018 and 2018-2019 school years to determine if the students received less *instructional time* than their general education peers, due to transportation schedules for buses used by students with disabilities.
9. For purposes of its review, the District shall calculate the *instructional time* using the 2017-2018 and 2018-2019 beginning and ending bell times as a basis for the instructional time provided to general education students. In addition, the District shall measure the potential loss of *instructional time* using a standard of five (5) minutes prior to the "Para's On Pad" time identified by the District for afternoon pick-up.
10. The District may consider whether the student has a different instructional time or hours set forth in his/her IEP and/or Section 504 Plan (i.e. as required by use of flex schedules at the District's high schools) and other information the District believes will affect the instructional time that is necessary for the student.

**Reporting Provisions:**

- a. By July 1, 2019, the District will provide OCR with its Special Transportation Report. The District's Special Transportation Report will document the results of the review as required by Items 8 through 10 of this Agreement. The District's Report will contain sufficient information to demonstrate that the District considered each of the factors described in Items 8 through 10, above, in determining the instructional time received by students with disabilities who use specialized transportation services as compared to students in general education classrooms.
- b. The Special Transportation Report will identify the students from each school who received less *instructional time* than their general education peers, due to transportation schedules for buses used by students with disabilities. The District may provide copies of student IEPs, Section 504 Plans, and/or other information to OCR to document why some individual students may receive or have received appropriate instructional time that reflects a shorter school day than the general bell schedule for the school.

**Compensatory Instructional Plans**

11. For any student identified as having received less instructional time than their general education peers due to transportation schedules for buses used by students with disabilities, the District will send a written notice to the parent(s) or guardian(s) of the identified students to offer the student the amount of instructional time the student did not receive due to transportation schedules for buses used by students with disabilities as compared to their general education peers during the 2017-2018 and 2018-2019 school years ("compensatory instructional time") and describe the method the District will use to provide the compensatory instructional time. The notice will allow the parent(s) or guardian(s) no less than thirty (30) days to respond to the District's offer of compensatory instructional time.
12. For all parent(s) or guardian(s) that timely respond to the District's offer of compensatory instructional time, the District will develop a *Compensatory Instructional Plan* that will include the following: 1) the District's calculation of the student's compensatory instructional time; 2) proposed dates and times of delivery for the compensatory instructional time; 3) the service provider type; and, 4) type of instructional services to be provided to the student during the compensatory instructional time.

**Reporting Provisions:**

- a. Within fifteen (15) calendar days of sending the notice(s) to the parent(s) or guardian(s), the District will provide OCR with documentation demonstrating that it sent the notice(s) to the parent(s) or guardian(s).

- b. The District will implement the Compensatory Instructional Plan within thirty (30) days of the date that each parent(s) or guardian(s) accepts the District's written offer of the *Compensatory Instruction Plan*.
- c. Within ninety (90) days of sending the notice(s) described in Item 12, the District will provide a report to OCR documenting its implementation of the Compensatory Instructional Plan(s). The report will include, at minimum, the following: 1) dates, times and locations that the compensatory instructional time was provided to each student; 2) name of each student, including current school of enrollment; 3) a description of the instruction provided to each student; and, 4) the name(s) and qualifications of the service providers. The report will also contain a list of the parent(s) and guardian(s) who declined the District's offer to provide additional instructional time to their student, including the contact information for the parent(s) and guardian(s), and the reason(s) provided by the parent(s) or guardian(s) for not accepting the additional instructional time.

The District understands that by signing this Agreement, it agrees to provide the foregoing 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 Section 504 at 34 C.F.R. §§ 104.4 and 104.33, and Title II at 28 C.F.R. § 34.130 which were at issue in this case. 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 and/or the applicable statute(s) and regulations. 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 representative below.

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Superintendent or Designee (Signature)

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Date

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Superintendent or Designee (Print)