

Resolution Agreement
South Washington County Schools, Independent School District # 833
OCR Docket Number 05-13-1375

In order to resolve OCR case number 05-13-1375 and to ensure its compliance with 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, the South Washington County Schools, Independent School District # 833 (District) agrees to take the actions described below.

By entering into this Agreement, the District is not admitting any guilt or wrongdoing with respect to the allegations in the above-referenced case number. The District specifically denies any wrongdoing but agrees it is appropriate to review and update its policies and procedures from time to time in order to foster a welcoming and appropriate educational environment. In furtherance of this goal, and in the interest of resolving a disputed claim, the District agrees to take the following:

Anti-Disability Discrimination and Harassment Policies

1. July 1, 2015, the District shall amend its anti-discrimination policies and procedures¹ to include prohibitions against discrimination and harassment based on disability. The District will ensure that its notice of nondiscrimination complies with the regulatory requirements of Section 504, at 34 C.F.R. § 104.8, and Title II, and 28 C.F.R. § 35.106. The policies and procedures, as amended, shall ensure that the District responds promptly and appropriately to incidents of disability discrimination and/or harassment. The anti-disability discrimination and harassment policies, will include at a minimum:
 - A. A statement setting forth the District's commitment to having a school environment free from all discrimination and/or harassment on the basis of disability.² The statement must explain that the District prohibits disability discrimination and/or harassment in the District environment, including all academic, extra-curricular and District-sponsored activities whether off or on campus. The statement will encourage students to immediately report incidents of disability discrimination and/or harassment. The statement will emphasize that all employees, including faculty, staff, administrators, security officers and coaches are required to promptly report incidences of disability discrimination and/or harassment. The statement will specify that the District will investigate formal and informal complaints of disability discrimination and/or harassment.
 - B. Specific examples of the type of conduct and behavior that is prohibited by the policy, including examples of staff-to-student and student-to-student conduct.

¹ At a minimum the District will amend District Policy 514: Bullying Prohibition Policy, District Policy 521: Student Disability Nondiscrimination, and District Policy 525.1: Harassment and Violence.

² The District's anti-discrimination policies may include other protected bases.

- C. Identification of the kinds of activities and sites where prohibited conduct could occur.
- D. A notice that the procedures apply to complaints of disability discrimination and/or harassment raised by employees, students, or third parties;
- E. An explanation of how to report disability discrimination and/or harassment and/or file a complaint (formally or informally).
- F. A description of the District's informal and formal complaint procedures, including a complaint form, designated prompt timeframes for the District's investigation of a complaint and a requirement that written notice of the outcome be provided to the parties.
- G. Specific information as to the name or title and contact information (including office and email address and telephone number) for the Section 504 Coordinator and the District employee(s) responsible for receiving complaints and/or investigating reports of discrimination and/or harassment. This information shall include an alternate complaint recipient, in the event that the designated complainant recipient has a conflict of interest or is named as the accused in a complaint.
- H. A requirement that the designated District employee(s) document all reports of incidents of discrimination and/or harassment and that the District establish a protocol for recordkeeping.
- I. A recommendation that District staff who observe acts of disability discrimination and/or harassment intervene to stop the disability discrimination and/or harassment, unless circumstances would make such intervention dangerous.
- J. The interim and permanent steps the District will take to stop the disability discrimination and/or harassment, remedy the discrimination and/or harassment and prevent recurrence including examples of the range of possible disciplinary sanctions and remedies available to address the discriminatory effects on the complainant and others. The procedures will include specific discussions with the complainant about any necessary counseling, academic support or transcript modification, and the academic and/or extracurricular activities of the parties to determine if adjustments in schedules are necessary. The policy will explain that any adjustments made will be designed to minimize the burden on the complainant's educational program.
- K. The prohibition of actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of disability discrimination and/or harassment or the participation in proceedings applies to third parties as well as accused students.
- L. The counseling and other applicable resources, such as a school nurse in the event a student is injured or ill, which are available to students and witnesses.

M. Identification of the means the District will use to investigate allegations of disability discrimination and/or harassment, including but not limited to the following:

- i. The various steps the District will take to conduct adequate, reliable and impartial investigations of reported incidents, including review of statements obtained from either party, interviews with both parties, interviews with witnesses as appropriate, and review of relevant documentary evidence.
- ii. The District's standards for determining whether a hostile environment exists including a statement that evidence submitted in the investigation will be reviewed using a preponderance of the evidence standard; and
- iii. An assurance that the District will keep the complaint and investigation confidential to the extent possible.

REPORTING REQUIREMENT: By July 1, 2015, the District will submit to OCR for its review and approval its revised policies and procedures referenced in this item. OCR will notify the District of any required changes no later than 60 days after receiving the revised policies and procedures.

2. By July 15, 2015, the District shall examine its discipline code of conduct to determine whether it contains rules of behavior, offense categories, and disciplinary procedures to appropriately address violations of the District's anti-disability discrimination and harassment policies, as developed pursuant to Item 1. The District shall revise its discipline code of conduct to the extent necessary to ensure it contains such rules of behavior, offense categories, and disciplinary procedures.

REPORTING REQUIREMENT: By no later than 30 days after OCR's approval of the District's amended anti-disability discrimination and harassment policies, the District will submit to OCR for its review and approval a copy of the discipline code of conduct revised pursuant to Item 2.

3. Within 30 days of receipt of notice of OCR's final approval of the policies and procedures described in Items 1 and 2, the District will adopt, implement and publish the policies and procedures. Publication will include written notice of the anti-discrimination and harassment policy and procedures, including its formal and informal complaint procedures, to the school community, including students, parents, and administrators and staff. The District will make this notification through its website as well as by any other means of notification the District deems effective to ensure that the information is widely disseminated. As necessary, the District will also update its parent, student, and employee handbooks, as well as its website.

REPORTING REQUIREMENT: By October 31, 2015, the District shall provide OCR with a report demonstrating implementation of Item 3. In particular, the District will provide copies of publications showing the revised documents, copies of any handbooks revised, and the location on the District's website where the policies and procedures may be found.

Special Education Evaluation

4. By August 1, 2015, the District shall amend as needed the current policies, procedures and practices with respect to the identification (including duration of interventions and pre-referrals), evaluation, and placement of students who need or are believed to need special education or related services. The review will ensure that:
 - a. Consistent with the requirements of Section 504 at 34 C.F.R. § 104.35, the District promptly evaluates or re-evaluates students who, due to disability, need are believed to need special education or related services, or students whose need for special education or related services may have changed, to determine the student's current need for such services.
 - b. The District has a system of procedural safeguards in place that complies with Section 504 at 34 C.F.R. § 104.36, which is responsive to requests made by, or on behalf of a student to establish or revise an existing individualized education plan (IEP) or Section 504 plan, or to evaluate or re-evaluate a student to determine the student's current needs for special education or related services.

REPORTING REQUIREMENTS: By August 1, 2015, the District will submit to OCR for review and approval a copy of its amended policies, procedures and practices with respect to the Item 4.

5. Within 30 calendar days of the District's receipt of written notification of OCR's approval of the amended policies, procedures and practices reference in Item 4, the District will adopt and implement the amended policies, procedures and practices. Additionally, the District will post the newly-adopted policies, procedures and practices on its website. The District will distribute the notice of procedural safeguards to parents and guardians of students at least once annually, upon request for an evaluation, and upon request by a parent or guardian. The procedures will also be published in the parent/student handbook for the 2016-2017 school year.
6. Within 60 days of the date the District adopts and implements the amended policies, procedures and practices as required in Item 5, the District will send written notice and provide adequate, effective annual training to all School administrators, counselors and other staff responsible for the identification, evaluation and placement of students who, due to disability, are believed to need special education or related services, or students whose need for such services may have changes on the amended policies, procedures and practices referenced in Item 4 and the requirements of Section 504 regulations at 34 C.F.R. § 104.32 and 104.35. The notice and annual training will remind administrators and staff of their continuing obligation to stake steps to ensure that any student who, because of a disability, is identified, evaluated or re-evaluated in accordance with District policy and procedures whenever they receive information indicating that the student's need for special education or related services may have changed or that regular education interventions are not successful

REPORTING REQUIREMENT: By December 31, 2015, the District will submit a report to OCR with supporting documentation demonstrating that the training referenced in Item 6 of the Agreement has been provided. The District will also provide the name, title and credentials of the trainer, a copy of the materials used in the training and a copy of the sign-in sheet depicting the names and job titles of the training attendees.

Student Focused Remedies

7. By no later than April 30, 2015, the District will send a certified letter to the Complainant inviting the Complainant and her daughter (Student) to attend a Section 504 meeting for the purpose of determining whether and to what extent the Student requires compensatory educational or related services, including but not limited to academic tutoring and counseling services, as a result of the fact she was not evaluated during the spring 2013 semester to determine her need for special education and direct or indirect related services. The District will provide the Complainant notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing. If the Complainant accepts the invitation, the Section 504 meeting shall be convened at a mutually agreeable location, date and time, but no later than May 31, 2015. The Section 504 meeting shall be conducted in compliance with the Section 504 regulations at 34 C.F.R. §§ 104.34, 104.35 and 104.36.
 - a. If the meeting attendees determine that compensatory educational or related services are required, the District shall notify the Complainant in writing of that determination, and shall offer to begin providing the compensatory services immediately after the determination. The District shall complete the provision of compensatory services prior to October 31, 2015.
 - b. Should the attendees determine that compensatory educational or related services are not required, the District shall provide the Complainant with documentation supporting the determination, including factors it considered in drawing this conclusion, the educational justification for the conclusion, and advise her of procedural safeguards, as set forth in the Section 504 regulation at 34 C.F.R. §104.36.
 - c. In the event the Complainant and/or Student declines to meet with District representatives or fails to respond to the District's invitation to attend the meeting within ten calendar days, the District will have no further obligation under Item 7.

REPORTING REQUIREMENT: By July 31, 2015, the District will submit to OCR supporting documentation demonstrating its implementation of Item 7 of the Agreement. Specifically, the District will provide OCR a copy of the certified letter inviting the Complainant and the Student to a Section 504 meeting, any written response to the offer from the Complainant and if no written response is provided, a brief narrative statement describing the Complainant's response to the offer, all materials summarizing the meeting with the Student and the Complainant, including a list of attendees, an explanation for the decisions made, and a description of and schedule for providing compensatory and/or remedial services to the Student, if applicable. 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 104.26, in making these determinations.

If appropriate, by November 30, 2015, the District will provide to OCR documentation of the dates, times and locations that compensatory and/or remedial services were provided, and the name(s) of the service provider(s).

The District understands that OCR will not close the monitoring of this Agreement until such time that OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504 of the Rehabilitation Act of 1973 at 34 C.F.R. §§ 104.4, 104.7, 104.8 and 104.33-104.36 and the regulation implementing Title II of the Americans with Disabilities Act of 1990 at 28 C.F.R. §§ 35.130, which were at issue in this case.

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 regulation implementing Section 504 of the Rehabilitation Act of 1973 at 34 C.F.R. §§ 104.4, 104.7, 104.8 and 104.33-104.36, and the regulation implementing Title II of the Americans with Disabilities Act of 1990 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 a minimum of sixty (60) calendar days to cure the alleged breach.

Dr. Keith Jacobus
Superintendent
South Washington County Schools

Date