

Resolution Agreement
Minnesota Department of Education
OCR Docket Number 05-15-4043

In order to resolve OCR case number 05-13-2051 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. § 12132, and its implementing regulation, 28 C.F.R. Part 35, the Minnesota Department of Education (MDE) agrees to take the following actions:

Post-Secondary Options Program (PSEO)

1. By October 28, 2015, MDE will develop a policy, with associated procedures, for requests it receives for disability-related modifications to the eligibility requirements for participation in PSEO. In developing the policy and associated procedures, MDE will ensure their compliance with the requirements of Section 504 and Title II.
 - a. At a minimum, MDE will ensure the associated policies and procedures include:
 - i. A statement that, in reviewing requests for disability-related modifications to the PSEO eligibility requirements, MDE shall make reasonable modifications to its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless it can demonstrate that making the modification(s) would fundamentally alter the nature of the program;
 - ii. A statement providing notice that MDE may require individuals requesting a disability-related modification to follow reasonable procedures to request and document the need for the modification;
 - iii. A requirement that MDE engage in an interactive process with individual(s) requesting the disability-related modification;
 - iv. A requirement that, MDE's evaluation of requests for disability-related modification be based on an individualized assessment of the student's need for the requested modification; and
 - v. A requirement that written notification of MDE's decision be provided to the requester, including an explanation of the factors considered and determinations made, in support of MDE's decision.

REPORTING REQUIREMENT: By November 4, 2015 the MDE will submit to OCR for review and approval a copy of the above-referenced policies and procedures in accordance with Item 1.

- a. Within 15 days of receipt of notice of OCR's approval of the policy and procedures described in Item 1, MDE will adopt, implement and publish the policies and procedures. MDE will make this notification through its website as well as by any other means of notification MDE deems effective to ensure that the information is widely disseminated.

- b. MDE will also update its PSEO webpage so to specifically include notice of the newly-developed policy and procedures referenced in Item 1, and provide a hyperlink to the associated documents.
- c. Within 30 days of MDE's receipt of notice of OCR's approval of the policy and procedures described in Item 1, MDE will submit documentation to OCR demonstrating its compliance with Item 1.

Personnel Training

2. By November 24, 2015, MDE will provide effective training on the newly-developed policy and procedures referenced in Items 1 to all MDE personnel responsible for receiving and/or evaluating request for disability-related modifications to the PSEO eligibility requirements.

REPORTING REQUIREMENT: By December 1, 2015, MDE will provide OCR documentation of its compliance with Item 2. At a minimum, MDE's documentation shall include: (1) the date(s) of the training(s); (2) the topics covered during the training(s); (3) the name and credentials of the trainer(s); (4) the name and title of all MDE personnel who attended the training(s); and (5) a copy of the materials used in the training(s).

Student-Focused Relief

3. By November 24, 2015, MDE will, pursuant to the newly-created policy and procedures referenced in Item 1, engage in an interactive process to evaluate the Complainant's request for a disability-related modification to the PSEO eligibility requirements for Student A, and consider whether there are any other modifications that would allow Student A to participate in the Program. By the same date, MDE will inform the Complainant of its determination. If MDE determines modification of the eligibility requirements results in a fundamental alteration using a reasoned deliberation, including a diligent assessment of available options, MDE will inform the Complainant and OCR of the basis for its determination in that regard.

REPORTING REQUIREMENT: By December 1, 2015, MDE will provide OCR a report demonstrating its compliance with Item 3. Specifically, the report will include:

- a. A copy of the modification request determination for Student A, including an explanation of the factors considered by MDE in reaching its determination;
- b. A copy of all documentation relied upon by MDE in making its determination; and
- c. A copy of all correspondence with the Complainant regarding MDE's review of the modification request.

MDE understands that OCR will not close the monitoring of this Agreement until OCR determines that MDE 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 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.

MDE understands that by signing this Agreement, MDE agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDE understands that during the monitoring of this Agreement, if necessary, OCR may visit MDE, interview staff and request such additional reports or data as are necessary for OCR to determine whether MDE 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 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.

MDE 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 MDE written notice of the alleged breach and a sixty (60) calendar days to cure the alleged breach.

Approved and agreed to as designated by the Minnesota Department of Education:

For Minnesota Department of Education

Date