

**RESOLUTION AGREEMENT
BEATRICE PUBLIC SCHOOLS
DOCKET NUMBER 07081121**

The Beatrice Public Schools (District), Beatrice, Nebraska, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the above-referenced discrimination complaint against the District and to ensure compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and the implementing regulations of these federal laws.

The District is resolving this complaint during OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual*. Therefore, OCR has not made any findings of fact or law, or issued a final determination with respect to this complaint. The District agrees to take the following actions, but nothing contained in this Agreement shall be construed to constitute an admission on the part of the District to any of the allegations in this complaint:

I. GENERAL PROVISIONS

This Agreement resolves OCR Docket No. 07081121 and does not constitute an admission by the District of any violation of Section 504 or Title II, or any other law.

OCR agrees to discontinue its investigation of OCR Docket No. 07081121 based upon the District's commitment to take the actions specified in this Agreement which, when fully implemented, will resolve the allegations in OCR Docket No. 07081121.

In the event the District fails to implement any provision of this Agreement, OCR may resume its investigation of the complaint or take other appropriate measures within its authority to ensure compliance with Section 504 or Title II.

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 regulations implementing Section 504 or Title II.

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 regulations implementing Section 504 or Title II.

The District understands and acknowledges that OCR may initiate administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of 60 (sixty) calendar days to cure the alleged breach.

II. RESOLUTION PROVISIONS

SECTION 504 POLICIES, PROCEDURES, MANUALS AND FORMS AND DISSEMINATION

1. By **January 15, 2016**, the District will review its current Title II and Section 504 policies, procedures, manuals, and forms to ensure these comply with the Americans with Disabilities Amendments Act of 2008 (ADA Amendments Act),¹ Title II, and Section 504 regulations, including the Section 504 regulations at 34 C.F.R. §§ 104.31 through 104.35 regarding the identification, evaluation, and educational placement of students who, because of a disability, need or are believed to need special education or related services. The policy will specifically address students with health related concerns such as food allergies, asthma and diabetes and other physical or mental conditions which may impact major life activities and shall not require a waiver of liability to receive services at the location the student would otherwise attend pursuant to the District's established attendance zones. The District shall ensure its Section 504/Title II policies, procedures, manuals, and forms comport with the following:
 - (a) The expanded definitions of physical and mental impairments and major life activities in accordance with the ADA Amendments Act;
 - (b) The following language in accordance with the ADA Amendments Act:
 - i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: (1) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment or supplies; (2) use of assistive technology; (3) reasonable accommodations or auxiliary aids or services; or (4) learned behavioral or adaptive neurological modifications. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity;

¹ The definition of a qualified individual with a disability was amended by the ADA Amendments Act (P.L. 110-325), which became effective on January 1, 2009, and also amended Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. § 705).

- ii) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability;
 - iii) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
 - iv) The definition of disability shall be construed in favor of broad coverage of individuals under Section 504 and Title II, to the maximum extent permitted by the terms of those laws.
- (c) The following language in accordance with the Section 504 regulations at 34 C.F.R. §§ 104.33 and 104.34 (free appropriate public education (FAPE) and educational setting):
- i) The District shall provide a FAPE to each qualified student with a disability in the District's jurisdiction. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met, and complies with applicable federal regulations;
 - ii) The District shall educate, or shall provide for the education of, each qualified student with a disability in its jurisdiction with students without disabilities to the maximum extent appropriate to the needs of the student without a disability. The District shall place a student with a disability in the regular educational environment unless it is demonstrated by the District that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily;
 - iii) The District shall ensure that students with disabilities participate without disabilities in academic, nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the student with a disability. Academic activities include, but are not limited to, academic competitions and graduation ceremonies. Nonacademic and extracurricular services and activities include, but are not limited to, meals, recess periods, counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the School, referrals to agencies which provide assistance to students with disabilities, and employment of students.
- (d) The following language in accordance with the Section 504 regulation at 34 C.F.R. § 104.35 (evaluation and placement):
- i) The District shall conduct an evaluation at no expense to the parents of any student who, because of a disability, needs or is believed to need special education or related services, before taking any action with respect to the

initial placement of the student in regular or special education and any subsequent significant change in placement in accordance with the law. The District shall ensure that:

- 1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
 - 2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
 - 3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).
- ii) The District shall ensure the following actions are taken when interpreting evaluation data and making placement decisions:
- 1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
 - 2) Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
 - 3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. A parent(s) or guardian is a required participant if he or she is a person knowledgeable about the student;
 - 4) Ensure that the placement decision is made in a timely manner, and in the least restrictive environment in accordance with 34 C.F.R. § 104.34.
- iii) The District shall ensure that students with disabilities who have been provided special education or related services are periodically reevaluated.

REPORTING REQUIREMENT: By **January 31, 2016**, the District will provide OCR with a draft of its review of its Section 504/Title II policies, procedures, manuals, and forms, required in item 3 of this agreement. Prior to adoption of such documents by the District's Board, the District will send the documents to the OCR and the OCR will review and approve such or advise the District of required changes.

REPORTING REQUIREMENT: Within 4 weeks of receiving OCR's approval of its 504/Title II policies, procedures, manuals, and forms, the District will adopt and publish the revised 504/Title II policies, procedures, manuals and forms, including posting them on the District's website if other District policies are included on the District's website and provide OCR with documentation of its completion of this requirement. The District shall provide OCR with documentation evidencing the OCR approved 504/Title II policies, procedures, manuals, and forms have been adopted and published. The District may provide OCR with links to the information if it is available on the District's website.

/S/ Pat Nauroth

9-29-15

Superintendent
Beatrice Public Schools
Beatrice, Nebraska

Date