

RESOLUTION AGREEMENT
Fox C-6 School District
OCR Docket Number 07-10-5001

The Fox C-6 School District (District), Arnold, Missouri, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve OCR Docket No. 07105001, a compliance review initiated by OCR, and ensure the District's compliance with: Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35.

OCR Docket No. 07105001 focused on whether the District discriminates on the basis of disability against students with food allergies and other health impairments such as diabetes. More specifically, the compliance review addressed whether the District provides individualized health plans to students with food allergies and other health impairments that do not comply with the requirements of Section 504 and Title II, thereby denying those students opportunities to participate in and benefit from the District's programs and activities that are equal to the opportunities afforded to students without disabilities. The District voluntarily agreed to resolve this compliance review prior to the conclusion of OCR's investigation. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District.

The District acknowledges its obligation to comply with Section 504 and Title II by evaluating any student who, because of a disability, needs or is believed to need special education or related services in a manner that is consistent with 34 C.F.R. § 104.35, including students with diabetes, food allergies, asthma, seizure disorders, attention-deficit hyperactivity disorder, and other health impairments.

The District agrees to take the following actions:

SECTION 504 MANUAL AND SECTION 504 PROCESS

As part of its ongoing efforts to comply with Section 504 and Title II, the District agrees to review and, as needed, amend its Section 504 Manual and Section 504 process to ensure that the Manual and process conform with the requirements set out in the Section 504 and Title II regulations, and are consistent with the Americans with Disabilities Act Amendments Act of 2008. As part of its review, the District agrees to specifically address items 1 through 9 below.

1. By September 4, 2018, the District will make the following revisions to the "Which students are covered?" section of the 504 procedures set out in its Section 504 Manual:
 - a) The Section 504 Manual currently states:

*Mental or physical impairments are broadly defined and include any physiological disorder or condition or any mental or psychological disorder, whether formally diagnosed or not. **However, an impairment, alone, is***

insufficient to qualify a student as Section 504 disabled. In addition, a medical diagnosis or the fact that a student takes medication is not controlling in determining whether that student has a 504 disability. The Office for Civil Rights, which is charged with the responsibility to enforce 504, has stated that finding a student 504 eligible solely on the basis of a diagnosis generally violates Section 504 [emphasis original].

The District will replace the language bolded above with the following¹:

The Americans with Disabilities Act (ADA) Amendments Act of 2008 emphasized that the definition of “disability” under Section 504 and Title II of the ADA should be interpreted broadly. The U.S. Department of Education’s Office for Civil Rights (OCR), which is charged with the responsibility to enforce Section 504, has stated that while there are no per se disabilities under Section 504, the nature of many impairments is such that in virtually every case, a determination in favor of finding a student with the impairment eligible under Section 504 should be made. For example, according to OCR, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, bipolar disorder, or autism qualifies as a student with a disability under Section 504.

b) The Section 504 Manual currently states:

Substantial limitation is not defined in Section 504 or the 2008 ADAAA [Americans with Disabilities Act Amendments Act of 2008]. In the 2008 ADAAA, Congress stated that the phrase “substantially limits” must be interpreted consistently with the findings and purposes of the 2008 Amendments. However, pursuant to the 2008 ADAAA, substantial limitation means less than “significantly restricted.”

The District will revise the last sentence quoted above to state:

Pursuant to the 2008 ADAAA, an impairment does not have to prevent or severely or significantly restrict a major life activity in order to be considered substantially limiting. Accordingly, substantially limited means less than “significantly restricted.”

c) The District will add to the Section 504 Manual at least two examples of how the determination of whether a student’s mental or physical impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures, and at least one of the two examples must apply to a student with asthma. (E.g., a student who uses an inhaler to manage her asthma would still qualify as an individual with a disability under Section 504 if, without the use of the inhaler, the

¹ See the OCR document *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools*, which is available on the OCR website at <http://www2.ed.gov/print/about/offices/list/ocr/docs/dcl-504faq-201109.html>.

asthma would substantially limit one or more of the student’s major life activities, including but not limited to, the major life activity of breathing.)

REPORTING REQUIREMENT: By December 3, 2018, the District will provide OCR a copy of its revised Section 504 Manual, in its entirety, to OCR for review and approval. OCR will endeavor to review and provide feedback to the District within 90 days of receiving the report from the District. In the event that OCR does not provide such feedback to the District within the 90-day time frame, and the District is therefore unable to implement other terms of this Agreement within specified times, there will be no adverse inference drawn against the District.

2. During the 2014-15 and 2015-16 school years, in an effort to help identify students who might qualify as individuals with a disability under Section 504, the District had the nurse(s) in each District school compile a “Medically Flagged Student List,” on which the nurse(s) listed students at the school with certain types of medical conditions. The nurses used the same nine medical condition categories on their Medically Flagged Student List. As the District continues to use the Medically Flagged Student List as a mechanism for helping to identify students who may be eligible for services or protections under Section 504, it will, by September 4, 2018:
 - a) ensure that the categories used on the Medically Flagged Student List do not exclude students whose health condition is impacted by the ameliorative effects of mitigating measures other than ordinary eyeglasses or contact lenses (e.g., the District will change the category “asthmatics that are uncontrolled” to “students with asthma”);
 - b) ensure that the categories used on the Medically Flagged Student List do not exclude students with a health condition that is episodic or in remission if the health condition might substantially limit a major life activity when active; and
 - c) ensure that the Medically Flagged Student List encompasses students diagnosed with attention-deficit hyperactivity disorder, attention-deficit disorder, and cancer.

In addition, the District will develop written instructions for the Medically Flagged Student List for OCR’s review and approval that will: explain to District personnel the purpose of the List; state that the District has an obligation under Section 504 to conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related services, including students with qualifying health conditions; clearly state that nurses may include students on the Medically Flagged Student List with health conditions that fall outside of the specific categories outlined on the List; and state that a student should not be excluded from the Medically Flagged Student List because the student’s health condition is controlled or improved by the use of medication, prosthetics, medical equipment, hearing aids or cochlear implants, assistive technology, mobility devices, reasonable accommodations, or other mitigating measures. (The written instructions do not have to be included on the Medically Flagged Student List itself as long as the instructions are easily accessible to the individuals responsible for completing the List; the List may reference where the instructions are located.)

REPORTING REQUIREMENT: By October 1, 2018, the District will provide OCR documentation showing it has complied with item 2 of this Agreement.

REPORTING REQUIREMENT: By November 15, 2018, the District will provide OCR a copy of the Medically Flagged Student Lists completed by the school nurse(s), or other District personnel, in Fall 2018 (with the names of students included).

3. The District will require each school nurse to provide a copy of his or her Medically Flagged Student List to the 504 coordinator(s) for the nurse's school building, the District's nursing director, and the District 504 coordinator within six weeks of the beginning of the school year. The building-level 504 coordinators, nursing director, and District 504 coordinator will promptly review the Medically Flagged Student Lists they receive and follow up with a nurse about how his or her List was compiled if the List appears to be incomplete or to have been completed incorrectly.

REPORTING REQUIREMENT: By November 15, 2018, the District will provide OCR documentation showing it has satisfied item 3 of this Agreement. If a building-level 504 coordinator, the nursing director, and/or the District 504 coordinator followed up with a nurse about how the nurse's Medically Flagged Student List was compiled, the documentation will reflect specifically when the coordinator/nursing director followed up with the nurse, the response from the school nurse, and copies of written documents with any corrections or changes made as a result of the contact by the coordinator/nursing director.

4. During the 2014-15 and 2015-16 school years, in an attempt to help identify students eligible for a Section 504 evaluation, each District school had a team consisting of the school nurse(s), the building-level 504 coordinator(s), and a building administrator meet to discuss each student included on the nurse's Medically Flagged Student List and complete a "Child Find and Evaluation" form (Child Find form) for the school. As the District continues using the Child Find form, it will:
 - a) ensure that the form continues to document whether or not a student was referred for a Section 504 evaluation;
 - b) when a student included on the Child Find form is not referred for a Section 504 evaluation, ensure that the form documents the reason(s) the student was not referred; and
 - c) ensure the form does not state or imply that students who have an individualized healthcare plan (IHP) or other type of health plan developed by a nurse, physician, or other medical professional, such as an asthma action plan, seizure action plan, allergy action plan, or diabetes management plan, should not be referred for a Section 504 evaluation.

In addition, the District will develop written instructions for the Child Find form for OCR's review and approval that will explain to District personnel the purpose of the form; state that

the District has an obligation under Section 504 to conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related services, including students with health conditions; state that the Child Find team must decide whether a student qualifies for a Section 504 evaluation without taking into account the ameliorative effects of mitigating measures such as medication, prosthetics, medical equipment, hearing aids or cochlear implants, assistive technology, mobility devices, and reasonable accommodations; and state that the definition of disability shall be construed in favor of broad coverage of students. The instructions will specify that if the Child Find team has reason to suspect a student has a disability under Section 504, it must refer the student for a Section 504 evaluation; the Child Find team does not need to determine, at the stage during which the Child Find form is completed, whether the student has an impairment that substantially limits a major life activity. In addition, the instructions will clarify that a student's health concern, or health condition, does not have to be confirmed by a doctor in order for the student to qualify for a Section 504 evaluation. (The written instructions do not have to be included on the Child Find form itself as long as they are easily accessible to the individuals responsible for completing the form; the form may reference where the instructions are located.)

REPORTING REQUIREMENT: By September 4, 2018, the District will provide OCR documentation showing it has satisfied item 4 of this Agreement.

REPORTING REQUIREMENT: By November 15, 2018, the District will provide OCR a copy of the Child Find form completed by the Child Find team, or other District personnel, at each District school during Fall 2018 (with specific student names and corresponding information included).

5. The District will require each building-level Child Find team to provide a copy of the initial Child Find form completed by the team to the District's nursing director and the District 504 coordinator by the end of the 6th full week of each school year. The nursing director and District 504 coordinator will promptly review the Child Find forms they receive and follow up with a Child Find team about how its Child Find form was compiled if the form appears to be incomplete or to have been completed incorrectly.

REPORTING REQUIREMENT: By December 3, 2018, the District will provide OCR documentation showing it has satisfied item 5 of this Agreement for the 2018-19 school year. If the nursing director and/or the District 504 coordinator followed up with a Child Find team about how the team's Child Find List was compiled, the documentation will reflect specifically when the coordinator/nursing director followed up with the nurse, include copies of notes, emails, and other correspondence from the building-level 504 coordinator, the nursing director, and/or the District 504 coordinator stating the reason for the contact, the response from the school nurse, and copies of written documents with what, if any, corrections or changes took place as a result of the contact by the coordinator/nursing director.

6. The District will draft language to include in its 504 Manual explaining the purpose of the Child Find form and how District personnel are to use the form. The draft language will also

specify that all District employees may identify students who may be Section 504 eligible and refer students for a Section 504 evaluation; the school nurses, building-level 504 coordinators, and building principals are not solely responsible for identifying students with health conditions who may qualify for a Section 504 evaluation.

REPORTING REQUIREMENT: By September 4, 2018, the District will provide OCR, for OCR's review and approval, the language it drafted to satisfy item 6 of this Agreement. OCR will endeavor to review and provide feedback to the District within 90 days of receiving the report from the District. In the event that OCR does not provide such feedback to the District within the 90-day time frame, and the District is therefore unable to implement other terms of this Agreement within specified times, there will be no adverse inference drawn against the District.

REPORTING REQUIREMENT: Within 45 calendar days of receiving OCR's approval of the language it developed to satisfy item 6 of this Agreement, the District will include the language in its 504 Manual and provide OCR a copy of the revised Manual.

7. By June 15, 2018, the District will draft written procedures or written guidelines clarifying the circumstances under which District schools are required to create a Section 504 file for a student, what Section 504-related forms and other documentation are to be maintained in the Section 504 file, and the minimum length of time the 504-related forms and other documentation are to remain in the Section 504 file.

REPORTING REQUIREMENT: By June 15, 2018, the District will provide OCR, for OCR's review and approval, the procedures or guidelines it drafted to satisfy item 7 of this Agreement. OCR will endeavor to review and provide feedback to the District within 90 days of receiving the report from the District. In the event that OCR does not provide such feedback to the District within the 90-day time frame, and the District is therefore unable to implement other terms of this Agreement within specified times, there will be no adverse inference drawn against the District.

REPORTING REQUIREMENT: Within 45 calendar days of receiving OCR's approval of the procedures/guidelines the District developed to satisfy item 7 of this Agreement, the District will adopt the procedures/guidelines, include them in the District's 504 Manual, disseminate the procedures/guidelines to all District administrators, Section 504 coordinators, school nurses, and teachers, and provide OCR documentation showing the procedures/guidelines were disseminated.

8. By June 1, 2018, the District will draft written procedures or written guidelines, clarifying what information and documentation must be included in a student's school nursing file for purposes of helping to identify students who may be eligible for a Section 504 evaluation and how long, at a minimum, the information/documentation is to be maintained in the school nursing file.

REPORTING REQUIREMENT: By June 15, 2018, the District will provide OCR, for OCR's review and approval, the procedures or guidelines it drafted to satisfy item 8 of

this Agreement. OCR will endeavor to review and provide feedback to the District within 90 days of receiving the report from the District. In the event that OCR does not provide such feedback to the District within the 90-day time frame, and the District is therefore unable to implement other terms of this Agreement within specified times, there will be no adverse inference drawn against the District.

REPORTING REQUIREMENT: Within 45 calendar days of receiving OCR’s approval of the procedures/guidelines the District developed to satisfy item 8 of this Agreement, the District will adopt the procedures/guidelines and disseminate them to the District’s nursing director and all school nurses, and provide OCR documentation showing the procedures/guidelines were disseminated.

9. By October 1, 2018, the District will review and revise its District-wide Section 504 forms to ensure that:
 - a) when a form lists multiple types of major life activities, it does not exclude major life activities specified in the Section 504 and Title II regulations or in the Americans with Disabilities Act Amendments Act of 2008, including but not limited to the major life of activity of breathing;
 - b) the forms do not state or imply that the phrase “substantially limits a major life activity,” as used when determining whether a student qualifies for Section 504 protections or services, means “prevents,” “severely limits” or “significantly restricts” a major life activity;
 - c) the forms do not state or imply that District personnel may consider mitigating measures used to ameliorate, or improve, a student’s mental or physical impairment (other than ordinary glasses or contact lenses) when determining whether a student is an individual with a disability under Section 504;
 - d) the forms do not state or imply that a student is automatically ineligible for Section 504 services or protections because the student has an Individualized Education Program (IEP), particularly when the IEP does not address the health condition, or impairment, that would make the student 504 eligible;
 - e) the forms state that the definition of disability shall be construed in favor of broad coverage of students;
 - f) the forms dealing with a student’s eligibility under Section 504 recognize that a student with a disability may be protected by Section 504 even if the student does not need

special education or related services, or a Section 504 plan, as a result of his or her disability²; and

- g) the forms do not state or imply that the District is relieved of its obligation to provide qualifying students a free appropriate public education under Section 504 (which may include the development of a Section 504 plan) because the student has an IHP or other type of health plan such as an asthma action plan, seizure action plan, or food allergy plan developed by a school nurse, physician, or other medical professional.

REPORTING REQUIREMENT: By October 15, 2018, the District will submit all of its District-wide Section 504 forms to OCR for its review and approval. OCR will endeavor to review and provide feedback to the District within 90 days of receiving the report from the District. In the event that OCR does not provide such feedback to the District within the 90-day time frame, and the District is therefore unable to implement other terms of this Agreement within specified times, there will be no adverse inference drawn against the District.

REPORTING REQUIREMENT: Within 60 calendar days of receiving OCR's approval of its District-wide Section 504 forms, the District will adopt the revised forms and incorporate them into its 504 Manual, disseminate the revised forms to all District administrators, teachers, and paraprofessionals, and provide OCR documentation showing the revised forms were disseminated.

SECTION 504 PROCEDURAL SAFEGUARDS

10. The District will update its Section 504 procedural safeguards to ensure that they:

- a) include the current name or job title, mailing address, and telephone number for the District Section 504 coordinator;
- b) contain the correct the address for the Kansas City OCR Office³; and
- c) provide parents, legal guardians, and eligible students a reasonable amount of time (at least 90 calendar days), from the date of the District's written notice of a proposed or refused action regarding the identification, evaluation, program, or placement of a student

² For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system, but the student does not need any special education or related services as a result of the disability: the student fully participates in her school's regular physical education program and in extracurricular sports, does not need help administering her medicine, and does not require any modifications to the school's policies, practices, or procedures. In this case, the District is not obligated to provide the student with any additional services, but the student is still a person with a disability under Section 504 and is protected by Section 504's general nondiscrimination prohibitions and Title II's statutory and regulatory requirements.

³ The address for the Kansas City OCR Office is: U.S. Department of Education, Office for Civil Rights, One Petticoat Lane, 1010 Walnut St., Suite 320, Kansas City, Missouri 64106. The telephone numbers for the Kansas City OCR Office are: (816) 268-0550 (voice) and (877) 521-2172 (telecommunications device for the deaf).

with a disability, to file a written request for an impartial Section 504 due process hearing to challenge the action.

REPORTING REQUIREMENT: By September 4, 2018, the District will submit its revised Section 504 procedural safeguards to OCR for its review and approval. OCR will endeavor to review and provide feedback to the District within 90 days of receiving the report from the District. In the event that OCR does not provide such feedback to the District within the 90-day time frame, and the District is therefore unable to implement other terms of this Agreement within specified times, there will be no adverse inference drawn against the District.

REPORTING REQUIREMENT: Within 60 calendar days of receiving OCR's approval of the revised Section 504 procedural safeguards, the District will adopt the procedural safeguards and incorporate them into its 504 Manual.

SECTION 504 TRAINING FOR DISTRICT STAFF AND ADMINISTRATORS

11. By October 1, 2018, the District will provide specialized training to its nursing director and District Section 504 coordinator/Title II coordinator regarding the District's 504 Manual, including the revisions to the 504 Manual required by this Agreement, the changes to the District's Medically Flagged Student List and Child Find form required by this Agreement, and the written procedures or guidelines required by this Agreement regarding the development and maintenance of student Section 504 files and nursing files.
12. The District will provide annual training to all of its school nurses and counselors/building-level 504 coordinators for two school years (2018-19 and 2019-20 school years) regarding Section 504 and the Section 504 process used in the District. The training must address the following:
 - a) the District's obligation to comply with Section 504 and Title II by evaluating any student who, because of a disability, needs or is believed to need special education or related services, including students with diabetes, food allergies, and other health impairments, in a manner that is consistent with 34 C.F.R. § 104.35;
 - b) the District's obligation to ensure that students with disabilities are given an equal opportunity as students without disabilities to participate in nonacademic and extracurricular services and activities provided by the District, including but not limited to counseling services, athletics, transportation, health services, recreational activities, and school-sponsored special interest groups and clubs;
 - c) the 504 process set out in the District's 504 Manual;
 - d) the role of the school nurses, counselors, and other District staff and administrators in helping to identify students with health conditions who may qualify for a Section 504 evaluation;

- e) when to create a Section 504 file for a student, what Section 504-related forms and other documentation are to be maintained in the Section 504 file, and the minimum length of time the 504-related forms and other documentation are to remain in the Section 504 file;
 - f) what information and documentation must be included in a student's school nursing file for purposes of helping to identify students who may be eligible for a Section 504 evaluation and how long, at a minimum, the information/documentation is to be maintained in the school nursing file;
 - g) if the District plans to continue using the Medically Flagged Student List, the changes to the List required by this Agreement and how the List is to be compiled and used at each school;
 - h) if the District plans to continue using the Child Find form, the revisions to the form required by this Agreement and how the Child Find form is to be filled out and used at each school;
 - i) what mitigating measures are and the role of mitigating measures in determining whether to refer a student for a Section 504 evaluation;
 - j) how the determination of whether a student is 504 eligible, or has a mental or physical impairment that substantially limits a major life activity, must be made without regard to the ameliorative effects of mitigating measures, including examples of how mitigating measures apply when determining the 504 eligibility of students with asthma, food allergies, epilepsy, and/or attention-deficit hyperactivity disorder; and
 - k) who in the District to contact with questions regarding Section 504 and the District's 504 process.
13. The District will provide training by October 31, 2018, to all of its administrators and staff responsible for processing complaints made by or on behalf of students alleging disability discrimination, including disability harassment. In the event that a new administrator or responsible staff person is hired or promoted into such a position after October 1 during the 2018-19 school year, or during the 2019-20 school year, the District will ensure that such new administrator or responsible staff receive the training within 45 calendar days of assuming their position. The training will be conducted by an individual with appropriate expertise on the issue. At a minimum, the training will address the following:
- a) Section 504's and Title II's prohibition against discrimination on the basis of disability, including disability harassment;
 - b) the District's obligation to ensure that students with disabilities are given an equal opportunity as students without disabilities to participate in nonacademic and extracurricular services and activities provided by the District, including but not limited to counseling services, athletics, transportation, health services, recreational activities, and school-sponsored special interest groups and clubs;

- c) what District employees should do if a student complains of disability discrimination by another student, a District employee, or a third party;
- d) what District employees should do if they witness disability discrimination against a student by another student, a District employee, or a third party;
- e) the District’s process for investigating and resolving disability discrimination complaints; and
- f) Section 504’s and Title II’s prohibition on retaliating against students or others because they filed a disability discrimination complaint or participated in a disability discrimination complaint investigation.

REPORTING REQUIREMENT: Within thirty (30) calendar days from the completion of the training sessions required by items 11, 12, and 13 of the Agreement, the District will provide OCR documentation showing it has completed the training. The documentation must identify and include:

- a) the name, title, and credentials of the individual(s) who conducted the training;
- b) the date, time, and location of the training;
- c) the topics addressed at the training;
- d) a copy of any materials distributed at the training; and
- e) one or more sign-in sheets with the name and title of each individual who participated in the training.

For the training of new administrators and responsible staff required by item 13 of the Agreement, the District only needs to submit documentation to OCR of applicable training sessions that take place during the 2018-19 and 2019-20 school years.

STUDENT-CENTERED REMEDIES

14. By September 17, 2018, the District will send a notice to the parent(s)/legal guardian(s)⁴ of each District student through the U.S. Postal Service (U.S. mail), or by email, explaining the District’s obligation to conduct a Section 504 evaluation of any student who, because of disability, needs or is believed to need special education or related services. The notice will include the definition of a student with a disability under Section 504, explain that the District may not take the ameliorative effects of mitigating measures into account when determining whether a student is eligible for Section 504 services or protections and that that the definition of disability will be construed in favor of broad coverage of students, inform parents how they may request a Section 504 evaluation of their child, and provide the name

⁴ For the remainder of this Agreement, the term “parent” will include legal guardians.

and contact information for the District 504 coordinator and/or building-level 504 coordinator(s) the parents may contact for additional information. The notice will further state the District's obligation to provide nonacademic and extracurricular services and activities, including but not limited to counseling services, athletics, transportation, health services, recreational activities, and school-sponsored special interest groups and clubs, in such a manner as is necessary to afford students with disabilities an equal opportunity to participate in such services and activities as students without disabilities. The notice will specify that parents who believe their child is being denied an equal opportunity to participate in nonacademic and extracurricular services, or is otherwise being discriminated against on the basis of disability, may file a complaint, or grievance, with the District. District personnel will document in writing all contacts, inquiries, and grievances they receive from parents as a result of the notice.

REPORTING REQUIREMENT: By October 1, 2018, the District will provide OCR documentation showing it has sent the notice required by item 14 of this Agreement. The District may satisfy this requirement by providing OCR a copy of at least one notice sent to the parent of a student at each District school and informing OCR in writing of the total number of notices sent by U.S. mail and the total number sent by email.

REPORTING REQUIREMENT: By December 17, 2018, the District will provide OCR copies of the documentation from District personnel for all contacts, inquiries, and grievances received from parents as a result of the notice.

15. By September 17, 2018, the superintendent, or the District 504 coordinator, will send a written memorandum to all District administrators, counselors, nurses, teachers, and paraprofessionals explaining the District's obligation to conduct a Section 504 evaluation of any student who, because of a disability, needs or is believed to need special education or related services. The memorandum will include the definition of a student with a disability under Section 504, explain that the District may not take the ameliorative effects of mitigating measures into account when determining whether a student is eligible for Section 504 services or protections and that the definition of disability shall be construed in favor of broad coverage of students, state that all District personnel may refer a student for a Section 504 evaluation, and provide the name and contact information for the District 504 coordinator and building-level 504 coordinators District personnel may contact for additional information or to obtain the District form they may use to refer a student for a Section 504 evaluation.

In addition, the memorandum will ask District personnel to promptly notify the District 504 coordinator of all students who were not evaluated for Section 504 eligibility during the 2016-17 school year (and did not already have a Section 504 plan during that school year), or during the 2017-18 school year to date (and did not already have a Section 504 plan), because their mental or physical impairment was improved or addressed by the use of mitigating measures other than ordinary glasses or contact lenses, such as medication. The District 504 coordinator, or the coordinator's designee(s), will contact the parent of each identified student to obtain additional information about the student's impairment, and will refer each of the identified students for a Section 504 evaluation. The District 504

coordinator, or the coordinator's designee(s), will also contact the parents of Students 1-42 identified in Exhibit A provided by OCR, if the students are still enrolled in the District, to obtain additional information about each student's impairment, and, if appropriate, will then refer each student for a Section 504 evaluation.

REPORTING REQUIREMENT: By October 1, 2018, the District will provide OCR a copy of the memorandum it issued to satisfy item 15 of this Agreement and state in writing how and when the memorandum was disseminated.

REPORTING REQUIREMENT: By December 17, 2018, the District will provide OCR a list of all students District personnel identified for the District 504 coordinator as individuals who were not evaluated for Section 504 eligibility during the 2016-17 school year or 2017-18 school year because their impairment was improved or addressed by the use of mitigating measures. The list will include each student's current grade level, the school the student attended during the applicable school year, the school the student currently attends, and identification of the student's impairment or health condition. In addition, the District will provide OCR a copy of the 504 evaluation referral the 504 coordinator, or the coordinator's designee, completed to satisfy item 15 of this Agreement.

16. For each student identified through the District's implementation of item 15 of this Agreement as a student who, because of a health-related condition, needs or is believed to need special education or related services but who was not evaluated for Section 504 eligibility, the District will determine whether the student qualifies as a student with a disability under Section 504. If so, the District will also determine whether the student is entitled to compensatory services or remedial measures (e.g., adjustment of the student's course grades, alterations to the student's official attendance records, or another appropriate remedy) as a result of the District's failure to evaluate the student's eligibility for Section 504 services during the 2016-17 and/or 2017-18 school year. Both determinations will be made by a multidisciplinary team that includes individuals knowledgeable about the student at issue, the meaning of evaluation data, and applicable placement options in a manner consistent with 34 C.F.R. § 104.35. The District will provide parents with a copy of the District's procedural safeguards.

REPORTING REQUIREMENT: By February 1, 2019, the District will provide OCR documentation showing it has satisfied item 16 of this Agreement. The documentation will include the names and job titles of the team members who participated in making the eligibility and compensatory service/remedial measures determinations, and the basis for each determination.

REPORTING REQUIREMENT: For each student found eligible for compensatory services or remedial measures under item 16 of this Agreement, the District will provide OCR a Compensatory Services/Remedial Measures Plan developed for the student, and will identify when the services/remedial measures were provided and by whom, and how the District notified the student's parent about the compensatory services/remedial measures.

17. By February 1, 2019, the District will provide OCR a copy of all of the referrals it received during the first semester of the 2018-19 school year for a Section 504 evaluation of a student, including referrals from parents and staff referrals, and a summary of the outcome of each referral (*e.g.*, whether the student was evaluated, found to be 504 eligible, granted a Section 504 plan, etc.). For students who were evaluated and found ineligible under Section 504, the District will also provide OCR a copy of its eligibility determination for each student (a completed 504 Eligibility Determination Form or other documentation showing the eligibility determination, when it was made, and who participated in making the determination). For students who were evaluated, found eligible under Section 504, and given a 504 plan, the District will also provide OCR a copy of each student's 504 plan.
18. By September 17, 2018, the superintendent, or the District 504 coordinator, will send a written memorandum to all District staff, including but not limited to administrators, counselors, nurses, teachers, paraprofessionals, athletic coaches, assistant coaches, extracurricular advisors, and sponsors of school clubs and activities, explaining the District's obligation to provide nonacademic and extracurricular services and activities, including but not limited to counseling services, athletics, transportation, health services, recreational activities, and school-sponsored special interest groups and clubs, in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities as students without disabilities.⁵

REPORTING REQUIREMENT: By October 1, 2018, the District will provide OCR a copy of the memorandum it issued to satisfy item 18 of this Agreement and state in writing how and when the memorandum was disseminated.

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 regulation implementing Section 504 at 34 C.F.R. §§ 104.3(j), and 104.35 through 104.37; and the regulation implementing Title II at 28 C.F.R. §§ 35.104 and 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 in accordance with the reporting requirements of this Agreement and that all actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. 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 regulation implementing Section 504 at 34 C.F.R. §§ 104.3(j), 104.35 through 104.37; and the regulation implementing Title II at 28 C.F.R. §§ 35.104 and 35.130, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this

⁵ The District may satisfy items 15 and 18 of this Agreement by issuing one comprehensive memorandum that includes the required information to all identified staff.

Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including 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.

/s/ Dr. Jim Wipke
Dr. Jim Wipke, Superintendent
Fox C-6 School District

3/08/18
Date