

RESOLUTION AGREEMENT

Garnett U.S.D. #365

OCR Docket Number 07121260

The Garnett U.S.D. #365 (District), Garnett, Kansas, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve allegations of discrimination based on disability 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*.¹ 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:

SECTION 504 AND TITLE II POLICIES AND PROCEDURES

- 1) By **August 1, 2014**, the District will develop Section 504 and Title II policies, procedures, handbooks, and forms to comply with Section 504 and Title II, including the Americans with Disabilities Act Amendments Act of 2008 (ADA Amendments Act),² and the applicable federal regulations, including 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 District's Section 504 and Title II policies, procedures, and handbooks shall include, but are not limited to:
 - 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 and supplies; (2) use of assistive technology; (3) reasonable accommodations or

¹ OCR's *Case Processing Manual* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

² 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. The Act also amended Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. § 705).

- 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.
- 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.
 - 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. §§ 104.32, 104.33, and 104.34 [identification, free appropriate public education (FAPE), and educational setting]:
- i) The District shall annually undertake to identify and locate every qualified child with a disability residing in the District's jurisdiction who is not receiving a public education and take appropriate steps to notify children with disabilities and their parents or guardians of the District's duties under Section 504 and Title II. The District shall include a provision addressing Section 504 and Title II in the District's child find publications, including newspaper notices, letters, flyers, and brochures.
 - ii) 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.
 - iii) 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 with 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.

- iv) The District shall ensure that students with disabilities participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the student with a disability. 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 District, 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 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. 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.
 - (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.
- e) Specific procedures for conducting a thorough and appropriate functional behavioral assessment (FBA), when appropriate, and developing an effective positive behavior intervention plan (PBIP) based on information in the FBA, by qualified professionals and team members, including parents, who are knowledgeable about the student and the student's behaviors. These procedures shall include a systemic protocol to coordinate the implementation and continued application of the PBIP, including the designation of a staff member who is familiar with the student to coordinate the PBIP implementation with other special and general education staff, and to set behavior progress review meetings at appropriate and periodic intervals, depending on the needs and behaviors of the student. The procedures will include a proactive approach to student behavioral issues and will ensure the PBIP is revised by the team in a timely manner, if necessary, based on information obtained during the progress review meetings and via other sources.
 - f) The name or title, address, telephone number, and email address of the District's designated Section 504 and Title II compliance coordinator.
- 2) By **August 1, 2014**, the District will revise the District's Section 504/Title II procedural safeguards notice, and any related provisions in the District's Section 504/Title II policies, procedures, and forms, to comply with 34 C.F.R. § 104.36, including a review (or appeal) procedure in the notice of procedural safeguards, and the insertion of an anti-retaliation provision.
- 3) By **August 1, 2014**, the District will revise the District's anti-discrimination and anti-retaliation policies and grievance (or complaint) procedures pertaining to disability to provide for the prompt and equitable investigation and resolution of discrimination complaints based on disability,³ including the addition or revision of language to address the following:

³ OCR recommends a combined policy and grievance procedure for complaints of discrimination based on race, color, national origin, sex, disability, and age.

- a) A prompt, adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and provide evidence.
 - b) Acceptance of a verbal complaint (in addition to a written complaint).
 - c) Removal of the language indicating the investigation will be “informal.”
 - d) Removal of the 15-day timeframe to file a complaint of discrimination, harassment, or retaliation.
 - e) Written notice to the parties within a specified timeframe of the outcome or disposition of the grievance at each stage of the process (including the appeal).
 - f) The addition of the applicable designated coordinator, along with the coordinator’s name or title, address, and telephone number.
 - g) The removal of the coordinator’s name as the individual to file an appeal with in the grievance procedure.
 - h) The incorporation of the applicable grievance procedure requirements set forth in OCR’s *Dear Colleague Letter* (April 4, 2011).⁴
 - i) The addition of an anti-retaliation provision in the District’s anti-discrimination policies and grievance procedure.
- 4) The District will ensure the revised anti-discrimination and anti-retaliation policies and grievance procedures pertaining to disability are consistent in all publications, including the board policies.
 - 5) The District will provide OCR with a copy of the draft, revised policies, grievance procedures, and notice of procedural safeguard in the items, above, **at least two weeks prior** to adopting or disseminating them.

REPORTING REQUIREMENT: By **August 8, 2014**, the District will provide to OCR copies of its revised Section 504 and Title II policies, procedures, and procedural safeguards notice, and its revised anti-discrimination and anti-retaliation policies and grievance procedures pertaining to disability.

COMMUNICATION OF POLICIES AND GRIEVANCE PROCEDURES

⁴ OCR’s April 14, 2011 *Dear Colleague Letter* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

- 6) By **August 15, 2014**, the District will communicate its revised anti-discrimination policies and grievance procedures, and the Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards, to all District administrators, board members, officials, and employees by:
 - a) disseminating those policies and grievance procedures via the District’s electronic communications (email) system;
 - b) including those policies and grievance procedures on the District’s website, with an embedded link to those policies and procedures in the online notice of nondiscrimination; and
 - c) including those policies and grievance procedures online in the student, parent, and staff handbooks in a section entitled *Nondiscrimination* or a similar title, for the 2013-14 academic year handbooks. The District will provide separately a hard-copy of those revised policies and procedures to students within 30 days of adoption.
- 7) The District’s coordinator will maintain a current list of hard-copy and online publications that contain the revised notice and the anti-discrimination and anti-retaliation policies and grievance procedures. The coordinator also will review and evaluate, in a timely and ongoing manner, complaints and allegations of discrimination and take appropriate actions, as necessary, to prevent discrimination, harassment, and retaliation, including the provision of information and training to students, staff, and the public.

REPORTING REQUIREMENT: By **September 1, 2014**, the District will provide to OCR the following:

- a) a current list of the hard-copy and online publications that contain the revised notice of discrimination and the anti-discrimination, anti-harassment, and anti-retaliation policies and grievance procedures, either incorporated in the publication or as a supplement to the publication;
- b) copies of the hard-copy publications with the revised notice of nondiscrimination and a list of links to the online publications; and
- c) a description of the location of each posted notice in the District.

INDIVIDUAL RELIEF

- 8) X---paragraph redacted---X
- 9) X---paragraph redacted---X
- 10) X---paragraph redacted---X
- 11) X---paragraph redacted---X

REPORTING REQUIREMENT:

- a) X---paragraph redacted---X
- b) X---paragraph redacted---X
- c) X---paragraph redacted---X
- d) X---paragraph redacted---X

TRAINING

- 12) By **September 15, 2014**, the District will provide training on the subject of Section 504 and Title II compliance and the anti-discrimination, anti-harassment, and anti-retaliation requirements of those laws, to District officials and staff, including administrators, teachers, substitute teachers, paraprofessionals, substitute paraprofessionals, counselors, the designated Section 504 compliance coordinator and investigator(s), and other District staff who teach, supervise, or provide services to District students with disabilities. The training will be conducted by an individual(s) knowledgeable about the laws and issues pertaining to Section 504 and Title II compliance and the specific topics listed below. The training will include:

- a) A discussion and distribution to trainees of the District's revised Section 504 and Title II policies, procedures, and notice of procedural safeguards.
- b) A discussion of the general anti-discrimination provisions of Section 504 and Title II, including the prohibition against denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service of the District⁵ and the integration mandates⁶ of Section 504 and Title II.

⁵ See, 28 C.F.R. § 35.130(b)(1)(i), (ii) and (vii) (Title II) and 34 C.F.R. § 104.4(b)(1)(i), (ii) and (vii) (Section 504).

⁶ See, 34 C.F.R. § 104.4(b)(2) and 28 C.F.R. § 35.130(d).

- c) A discussion and distribution to trainees of the District’s revised anti-discrimination and anti-retaliation policies and procedures pertaining to disability, including the District’s grievance procedures for complaints of discrimination.
 - d) A training presentation to special education staff, including paraprofessionals and substitute staff, by an outside expert, pertaining to the proper development of FBAs and PBIPs, consistent implementation of PBIPs, periodic behavior progress review procedures, behavior management techniques, prevention techniques, and de-escalation techniques. This training presentation shall be provided by an outside, qualified, experienced behavioral specialist to District administrators and staff, including special education and general education teachers, service providers, and administrators, who are responsible for the proper development or supervision of FBAs and PBIPs.
 - e) A training presentation to special education staff, including paraprofessionals and substitute staff, by an outside expert, pertaining to applicable LRE standards and factors to consider by a multidisciplinary team prior to placement of students with disabilities and appropriate documentation of LRE considerations.
 - f) A training presentation to special education staff, including paraprofessionals and substitute staff, by an outside expert, pertaining to autism, including behavior management strategies and techniques and appropriate interactions and interventions for students with autism, and appropriate documentation of behaviors and the use of time-outs or chill time.
- 13) The District’s designated coordinator will maintain documentation of each training, including training during new employee orientations, in a centralized file in the District’s administrative office.

REPORTING REQUIREMENT: By **September 30, 2014**, the District will provide to OCR documentation showing it has completed the training, including any training for new employees hired during the monitoring of the Agreement. The documentation must identify:

- a) the date, time, and location of the training;
- b) the topics addressed at the training (the District may provide OCR an outline of the training and copy of the materials disseminated at the training);
- c) the name(s), title(s), and credentials of the individual(s) who conducted the training; and

- d) the name, title, and work location of each employee who attended the training (a sign-in sheet with the attendees' names, signatures, titles, and work locations is sufficient).
- 14) 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 and Title II, which were at issue in this case.
- 15) 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 and Title II, which were at issue in this case.
- 16) 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 60 (sixty) calendar days to cure the alleged breach.

The person(s) signing for the District represents that he is authorized to bind the District and to this Agreement.

For the District:

/s/ Don Blome
Don Blome, Superintendent of the District

7/9/2014
Date