

**Resolution Agreement
Elm Creek Public Schools
Docket # 07131153**

The U.S. Department of Education, Office for Civil Rights (OCR), conducted a complaint investigation of the Elm Creek Public Schools (District), Elm Creek, Nebraska, pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District, as a recipient of Federal financial assistance and a public entity, is subject to the requirements of Section 504 and Title II.

The complainant alleged the District discriminated against her XX-year-old son on the basis of disability when it: 1) denied him a free appropriate public education by failing to evaluate him and provide him special education or Section 504 services in a timely manner during the 2012-13 school year; and 2) prevented him from participating in the District's 2013 graduation ceremonies despite his completing all degree requirements because he requested a modified schedule for the spring semester of the 2012-13 school year.

Before OCR completed its investigation, the District agreed to take the following actions:

NOTICE OF NONDISCRIMINATION

1. The District will revise its combined notice of nondiscrimination to ensure that it: 1) specifies the bases for nondiscrimination in its education programs and activities; and 2) identifies by name or title, address, and telephone number of the employee(s) responsible for coordinating the District's compliance efforts, particularly the employee(s) responsible for coordinating the District's compliance efforts under Section 504 and Title IX of the Education Amendments Act of 1972.¹

REPORTING REQUIREMENT: By November 10, 2013, the District will submit a copy of its revised *Notice of Nondiscrimination* to OCR for review and approval.

2. Within 60 calendar days of receiving written notification from OCR that the revised notice of nondiscrimination is acceptable, the District will include the approved nondiscrimination statement on its website and in new and reprinted District publications, including catalogs, student handbooks, announcements, bulletins, and application forms, that it makes available to District students, employees, and

¹ See <http://www2.ed.gov/about/offices/list/ocr/docs/nondis.html> for a sample notice of nondiscrimination that meets the minimum requirements of the regulations enforced by OCR.

applicants. The District will revise any publications that contain a notice of nondiscrimination so that they conform to the *Notice of Nondiscrimination* language as revised above and publish them in the District’s policy manual, student/parent handbooks and on the District’s website. OCR is available to provide technical assistance to the District upon request.²

REPORTING REQUIREMENT: By November 10, 2013, the District will provide OCR documentation showing it has complied with item and 2 of this Agreement. The District may provide OCR with links to on-line documents including the OCR approved *Notice of Nondiscrimination*.

SECTION 504 POLICIES, PROCEDURES, MANUALS AND FORMS AND DISSEMINATION

3. By November 23, 2013, 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),³ 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 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;

² OCR recognizes the variations among the regulations governing notice requirements and understands that schools may wish to use one statement to comply with all requirements of the regulations implementing Title VI, Title IX, Section 504, Title II, the Age Discrimination Act and the Boy Scouts Act.

³ 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. 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 November 23, 2013, 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.

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.

GRADUATION POLICIES AND PROCEDURES

4. By December 31, 2013, the District will revise its graduation policies and procedures to ensure that all students with disabilities are allowed to participate in graduation ceremonies to the same extent as nondisabled students. The graduation policies, at a minimum, must state that students with disabilities who have modified schedules may still participate in District graduation ceremonies provided they meet District graduation requirements or the requirements of their IEP or 504 plan and are not otherwise prohibited from participating for reasons not related to their disability.

REPORTING REQUIREMENT: By December 31, 2013, the District will submit its revised graduation procedures to OCR for its review and comment.

5. Within 60 calendar days of written notification from OCR that its revised graduation policies and procedures are consistent with Section 504/Title II requirements, the District will adopt and implement the procedures, publish the procedures in its student handbooks, and post the procedures on its website in a section accessible to students and parents.

REPORTING REQUIREMENT: The District will provide OCR documentation by December 31, 2013, showing it has complied with item 5 of this Agreement.

SECTION 504/TITLE II GRIEVANCE PROCEDURES

6. By November 23, 2013, the District will develop grievance procedures that provide for the prompt and equitable resolution of disability discrimination and harassment complaints by students. The grievance procedures (*Student 504 Grievance Procedures*) must, at a minimum:

- (a) provide an explanation of how to file a complaint under the procedures, including where and in what manner complaints can be filed;
- (b) provide for the adequate, reliable, and impartial investigation of complaints, including the opportunity for all parties involved to present witnesses and other evidence;
- (c) require records detailing the investigation; including notes of interviews, copies of documents reviewed, and other relevant information to be maintained;
- (d) set time frames for major stages of the complaint process;
- (e) require written notification to the parties of the outcome of the complaint investigation;
- (f) include an assurance that the District will keep the complaint and investigation confidential to the extent possible;
- (g) include an assurance that the District will take steps to prevent the recurrence of any discrimination and/or harassment, and to remedy the discriminatory effects of discrimination and/or harassment, of which it has notice; and
- (h) include the name or title, address, and telephone number of the employee(s) responsible for coordinating the District's nondiscrimination compliance efforts under Section 504/Title II.

REPORTING REQUIREMENT: By November 23, 2013, the District will submit its *Student 504 Grievance Procedures* to OCR for its review and comment.

7. Within 60 calendar days of written notification from OCR that its *Student 504 Grievance Procedures* are consistent with Section 504/Title II requirements, the District will adopt and implement the procedures, publish the procedures in its student handbooks, and post the procedures on its website in a section accessible to students and parents.

REPORTING REQUIREMENT: The District will provide OCR documentation by December 31, 2013, showing it has complied with item 7 of this Agreement. If the *Student 504 Grievance Procedures* are available on the District's website, the District may provide OCR with a link to the publication.

TRAINING OF DISTRICT STAFF

8. By December 31, 2013, the District will provide training regarding Section 504 and Title II compliance to School officials and staff, including but not limited to,

administrators or officials, teachers, paraprofessionals, counselors, process coordinators, nurses and any other individuals who may be involved in the identification, evaluation, and placement of students suspected of having disabilities. The training will be conducted by an individual(s) knowledgeable about the laws and issues pertaining to Section 504 and Title II. The District commits to providing training to staff regarding Section 504 and Title II on an annual basis. The District's training will include the following topics and activities:

- a) Information regarding the District's revised notice of nondiscrimination and revised and OCR approved Section 504 and Title II policies, procedures, manuals and forms.
- b) The District's requirement, pursuant to the Section 504 regulation at 34 C.F.R. § 104.33(a), to provide a FAPE to all qualified students with a disability in its jurisdiction and that the provision of a FAPE is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled students as adequately as the needs of non-disabled students are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.
- c) The District requirement pursuant to Section 504 at 34 C.F.R. § 104.37 to provide non-academic and extracurricular services, including athletics, transportation, recreational activities and non-curriculum field trips in such a manner as is necessary to afford all students with disabilities an equal opportunity for participation.
- d) The definition of a qualified individual with a disability as any person who has a physical or mental impairment which substantially limits one or more major life activities or has a record of or is regarded as having such an impairment. Examples of physical and mental impairments shall be discussed.
- e) The eligibility criteria under Section 504 and Title II (including information on the ADA Amendments Act that requires determination of whether an impairment substantially limits a major life activity to be made without regard to the ameliorative effects of mitigating measures), including examples of the circumstances and situations that obligate the District to conduct an evaluation under Section 504.
- f) The District's obligation pursuant to 34 C.F.R. § 104.3 (and under 28 C.F.R. § 35.104), to consider the full range of major life activities (including, but which are not limited to, academic performance and/or educational impact) of a qualified individual with a disability, when identifying and evaluating a student who needs or is believed to need regular or special education and related aids and services due to a disability under Section 504.

- g) The District's system of procedural safeguards under Section 504/Title II, including what it includes, and when and how the system of procedural safeguards is implemented (*e.g.*, when the School's procedural safeguards document should be provided to parents/guardians).
- h) The District's obligation to ensure students with disabilities are not discriminated against or harassed on the basis of their disabilities. The training will address the District's obligation to conduct prompt and thorough investigations when it receives allegations of unlawful disability discrimination and harassment and the prohibition against retaliation.

REPORTING REQUIREMENT: By January 31, 2014, the District will provide OCR documentation showing it has completed the training described above for the 2012-2013 school year. The documentation must identify the following: (a) the date, time and location of the training; (b) the topics addressed at the training(s) (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 school administrator or employee who attended the training (a sign-in sheet with the attendees' names, titles, and work locations is sufficient). OCR is available to provide technical assistance and training to the District upon the District's request.

For any subsequent annual Section 504/Title II trainings, the District need not provide evidence to OCR that it has provided the annual training contemplated pursuant to this agreement unless documentation is requested by OCR.

INDIVIDUAL REMEDIES

- 9. By November 10, 2013, the District agrees to notify the complainant's son by certified United States mail that he has the opportunity to participate in the District's May 2014 graduation ceremony, or an alternative graduation recognition ceremony that is mutually agreeable to the complainant, the complainant's son, and the District. The District will provide the date, time, and location of the District's May 2014 graduation ceremony in the letter to the complainant's son and will inform him that he will have the same opportunity to purchase a cap, gown, and other ceremony-related items as other students. The District may include a request in the letter that the complainant's son has 60 calendar days from the date of the letter to notify the District in writing that he plans to participate in the May 2014 graduation ceremony or the alternative ceremony agreed to by the complainant, the complainant's son, and the District.

REPORTING REQUIREMENT: Within 90 days of the date the District mails the certified letter to the complainant's son, the District will provide OCR with copies of the certified letter(s) to the complainant's son and any other correspondence with the

complainant or her son regarding his participation in the District's May 2014 graduation ceremony or alternative ceremony.

REPORTING REQUIREMENT: If the complainant's son opts to participate in the May 2014 graduation ceremony or an alternative ceremony, then within 30 days of the date of the May 2014 graduation ceremony or alternative ceremony, the District will provide documentation confirming the complainant's son's participation. If the complainant's son chooses not to participate in a ceremony or does not respond to the District's letter within 60 days of the date of the District's letter, the District will provide a signed letter from the superintendent certifying the complainant's son either chose not to participate or did not respond to the District's letter.

10. By November 10, 2013, the District agrees to notify the complainant's son in by United States certified mail that he may request the opportunity to meet with the District's guidance counselor for a one-to-one session for the purpose of reviewing college and technical school options and to obtain assistance with completing application forms for college admission, scholarships and financial aid. The District may include a request in the letter that the complainant's son has 60 calendar days from the date of the letter to contact the District superintendent to schedule the advising session with the guidance counselor.

REPORTING REQUIREMENT: Within 90 days of the date of the District's certified letter to the complainant's son, the District's superintendent will provide OCR with copies of the District's letter and any correspondence with the complainant's son or complainant regarding the proposed advising session.

REPORTING REQUIREMENT: If the complainant's son opts to meet with the guidance counselor, then within 30 days of the date of the meeting with the guidance counselor, the District will notify OCR in writing of the date of the advising session and will provide an agenda from the session describing the assistance provided to the complainant's son. If the complainant's son informs the District he does not wish to schedule an advising session or does not respond to the District's letter within 60 calendar days of the date of the District's letter, the District will provide a signed letter from the superintendent certifying the complainant's son either chose not to participate or did not respond to the District's letter.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. Part 104, and Title II, at 28 C.F.R. Part 35, 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. 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. Part 104, and Title II, at 28 C.F.R. Part 35, 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.

/s/ Dean Tickle
Dean Tickle, Superintendent
Elm Creek Public Schools

October 18, 2013
Date