

RESOLUTION AGREEMENT  
Estelline School District #28-2  
OCR Docket Number 07131185

The Estelline School District #28-2 (District), Estelline, South Dakota, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the complainant's allegations in OCR Docket No. 07131185. The District, as a recipient of Federal financial assistance and a public entity, is subject to the requirements of: Title VI of the Civil Rights Act of 1964 (Title VI), 42 United States Code (U.S.C.) § 2000d, and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 100; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104; 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<sup>1</sup>; and Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681, and its implementing regulation at 34 C.F.R. Part 106.

The complainant alleged the District discriminated against her daughter on the bases of race and disability by giving all fifth grade students other than her daughter an academic award during a student awards ceremony held on or around May 17, 2013. The District voluntarily agreed to resolve the complaint prior to the conclusion of OCR's investigation into the complaint allegations. This Agreement does not constitute an admission by the District of any violation of Title VI, Section 504, Title II, Title IX, or any other law.

The District agrees to take all reasonable steps to ensure that students enrolled in the District are not subject to harassment on the basis of race, disability, or sex. To this end, the District will promptly investigate all incidents of racial harassment, disability harassment, and sexual harassment students of which it has notice and will take appropriate action to respond to harassment complaints, which may include disciplinary action against students and/or staff found to have committed such harassment. The District will take prompt and effective responsive action reasonably designed to end the harassment, prevent its recurrence, and, where appropriate, will take steps to remedy the effects of the harassment on the victim and the larger school community.

The District agrees to take the following actions:

### **NOTICE OF NONDISCRIMINATION & OCR CONTACT INFORMATION**

1. The District will ensure that its combined notice of nondiscrimination included in District publications, including but not limited to student handbooks: a) specifies the bases for nondiscrimination in its education programs and activities and includes a statement that the District provides equal access to the Boy Scouts and other

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<sup>1</sup> Because the District employs less than 50 individuals, it is not required to designate an individual to coordinate its efforts to comply with and carry out its responsibilities related to investigation of any complaint communicated to it alleging its noncompliance with Title II, or alleging any actions that would be prohibited by Title II, nor is it required to adopt and publish Title II grievance procedures. *See* 28 C.F.R. §§ 35.107(a) and (b).

designated youth groups; and b) identifies by name or title, address, and telephone number the employee(s) responsible for coordinating the District's nondiscrimination compliance efforts, particularly the employee(s) responsible for coordinating the District's compliance efforts under Section 504 and Title IX.<sup>2</sup>

REPORTING REQUIREMENT: By February 15, 2014, the District will include a notice of nondiscrimination that complies with item 1 of this Agreement in the electronic version of its 2013-14 Student Handbook posted on the District's website and will provide OCR the webpage address for the revised Student Handbook.

2. The District will replace the contact information for the Denver OCR Enforcement Office listed in its 2013-14 Student Handbook and future student handbooks with current contact information for the OCR Kansas City Enforcement Office.

Office for Civil Rights  
U.S. Department of Education  
One Petticoat Lane  
1010 Walnut Street, Suite 320  
Kansas City, MO 64106

Telephone: 816-268-0550  
FAX: 816-268-0599  
TDD: 877-521-2172  
Email: OCR.KansasCity@ed.gov

REPORTING REQUIREMENT: By February 15, 2014, the District will revise the electronic version of its 2013-14 Student Handbook posted on the District's website so it complies with item 2 of this Agreement, and will provide OCR the webpage address for the revised Student Handbook.

REPORTING REQUIREMENT: By September 15, 2014, the District will provide OCR a copy of its student handbook(s) for the 2014-15 school year. If the student handbook(s) is/are available on the District's website, the District may instead provide OCR the webpage address for the handbook(s).

## **TITLE VI/SECTION 504 GRIEVANCE PROCEDURES**

3. The District will develop grievance procedures that provide for the prompt and equitable resolution of complaints made by or on behalf of students alleging discrimination, including harassment, on the basis of race, color, national origin, or

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<sup>2</sup> See <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html> for a sample notice of nondiscrimination that meets the minimum requirements of the regulations enforced by OCR. OCR is available to provide technical assistance upon request.

disability.<sup>3</sup> The grievance procedures (*Discrimination Grievance Procedures*) must include:

- (a) an explanation of how to file a complaint under the procedures, including where and in what manner complaints can be filed;
- (b) provisions for the adequate, reliable, and impartial investigation of complaints, including the opportunity for all parties involved to present witnesses and other evidence;
- (c) set time frames for major stages of the complaint process;
- (d) a requirement that written notification will be given to the parties of the outcome of the complaint investigation;
- (e) an assurance that the District will keep the complaint, name of the complainant, and investigation confidential to the extent possible;
- (f) a provision prohibiting retaliation against an individual who files a grievance or participates in a grievance; and
- (g) an assurance that the District will take steps reasonably calculated to prevent the recurrence of discrimination, with examples of the range of possible disciplinary sanctions, and to remedy the discriminatory effects of discrimination of which it has notice, with examples of the types of remedies available to victims.

**REPORTING REQUIREMENT:** By May 15, 2014, the District will submit its *Discrimination Grievance Procedures* to OCR for its review and comment.

4. Within 60 calendar days of receiving written approval from OCR that its *Discrimination Grievance Procedures* satisfy item 3 of this Agreement, the District will adopt and implement the procedures, post the procedures on its website in a section accessible to students and parents, and start including the approved procedures in new and reprinted copies of its student handbook(s).

**REPORTING REQUIREMENT:** Within 30 calendar days of posting its OCR-approved *Discrimination Grievance Procedures* on its website, the District will provide OCR the electronic address for the specific webpage on which the procedures are posted.

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<sup>3</sup> The grievance procedures the District develops for complainants alleging discrimination on the basis of race, color, national origin, or disability may be combined with its grievance procedures for complaints alleging sex and/or age discrimination. However, Title IX and its implementing regulation, and the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. § 6103, and its implementing regulation at 34 C.F.R. Part 110, may impose additional requirements for a recipient's grievance procedures beyond those items required under item 3 of this Agreement. OCR is available to provide technical assistance to the District regarding these requirements upon request.

REPORTING REQUIREMENT: By January 15, 2015 and May 31, 2015 (dates within four (4) weeks of the end of the first semester of the 2014-15 school year and end of the second semester of the 2014-15 school year), the District will provide OCR documentation demonstrating its implementation of its OCR-approved *Discrimination Grievance Procedures*. The documentation will include the following: a list with the names of the students, and individuals filing on behalf of students, who filed a complaint, or grievance, alleging discrimination or harassment on the basis of race or disability with the District during the first or second semester of the 2014-15 school year; a summary of the allegation(s) in each complaint; a description of the District's investigation into each complaint (including the name and title of the individual(s) who investigated the complaint); a copy or description of the District's determination regarding each complaint; and a copy of the District's correspondence informing the parties to each applicable complaint of its determination.

## **SEXUAL HARASSMENT POLICY/GRIEVANCE PROCEDURES**

5. The District will revise its *Sexual Harassment Policy* to ensure that it includes, at a minimum, the following:
  - (a) definitions of sexual harassment, including specific examples of prohibited conduct. The definitions and examples will make clear that the following (non-exhaustive) list of kinds of conduct may constitute sexual harassment: the use of sexual names and sexual language, whether spoken or written (including graffiti) and whether used by a student or an adult; any sexual touching of a student by an adult; nonconsensual sexual touching between students; inappropriate sexual touching between students (even if purportedly consensual); and sexual conduct that would also be considered criminal activity, such as sexual assault;
  - (b) a statement that the prohibition on sexual harassment applies to conduct by employees, students, and third parties;
  - (c) a statement that because students often experience the continuing effects of off-campus sexual harassment in the educational setting, the District will consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus;
  - (d) a requirement that staff who become aware of possible sexual harassment report the incident to the principal or vice principal at the relevant school site or the District's Title IX coordinator, and an explanation that such reports shall be treated as complaints under the District's sexual harassment grievance procedures described in item 6 of this Agreement;

- (e) a statement that incidents of sexual harassment will be investigated and resolved pursuant to the sexual harassment grievance procedures described in item 6 of this Agreement; and
  - (f) a statement prohibiting retaliation against an individual who complains of sexual harassment and/or participates in the District’s sexual harassment complaint process.
6. The District will revise the complaint procedures, or grievance procedures, (*Sexual Harassment Grievance Procedures*) set out in section D of its *Sexual Harassment Policy* to ensure that the procedures provide an easily accessible system for the prompt and equitable resolution of complaints alleging sexual harassment. At a minimum, the *Sexual Harassment Grievance Procedures* will:
- (a) state that the procedures apply to complaints alleging sexual harassment, as described in the District’s *Sexual Harassment Policy*, by employees, students, and third parties;
  - (b) provide instructions on how to initiate a complaint under the procedures, such as by orally reporting allegations of sexual harassment to specifically identified staff at the District level (e.g., the Title IX coordinator) or site level (e.g., principal/vice principal), or by submitting a letter or written form describing the allegations of sexual harassment at the site level or to the District;
  - (c) describe the District’s obligation to:
    - 1. identify, investigate, and document incidents and alleged incidents of possible sexual harassment, including information that comes to the attention of school or District staff without a formal complaint;
    - 2. provide for the adequate, reliable, and impartial investigation of all complaints of sexual harassment within a reasonably prompt timeframe, including the opportunity for parties to present witnesses and other evidence. The *Sexual Harassment Grievance Procedures* will clarify when complaints will be handled at the school site level and when they will be handled at the District level, and clarify the specific roles of school staff and law enforcement in the investigation. The District will assign school site administrators or staff with appropriate knowledge and experience with responsibility for conducting the investigation. The designated individual(s) will interview all relevant witnesses, including the alleged harasser, the student allegedly harassed, and others with knowledge of the incident, and will document all interviews. The investigation will determine, based on a preponderance of the evidence: whether the alleged harassment did or did not occur; the identity of the student who engaged in the harassment; and the harm to the student subject to the harassment, if any. The designated individual(s) will document the investigative findings and the

specific steps (s)he/they took in conducting the investigation and reaching conclusions;

3. take interim measures during the investigation to ensure the safety of the reporting student and the larger school community, to address any ongoing harassment and to prevent retaliation against the reporting student;
4. determine the remedial action necessary to address and resolve an incident, including, as appropriate, the provision of educational resources and counseling for the individual harassed and the harasser, other steps to address any impact on the individual harassed, witnesses, and the broader student body, and any other necessary steps to protect the individual subject to the harassment and witnesses from retaliation, as well as other steps reasonably calculated to prevent future occurrences of harassment, including discipline of the harasser;
5. provide written notice to the complaining party of the findings of the investigation and the corrective action taken;
6. maintain on-going contact with the individual harassed throughout the investigation;
7. contact the individual harassed within a reasonable period of time following conclusion of the investigation to assess whether there has been ongoing harassment or retaliation, and to determine whether additional supportive measures are needed;
8. maintain all documentation of the complaint investigation and any corrective actions taken in a system that allows the Title IX coordinator or others to track incidents by school site and throughout the District;
9. refer the matter to law enforcement authorities, where appropriate;
10. follow the *Sexual Harassment Grievance Procedures* regardless of whether the alleged harassment is also being investigated by another agency, unless the fact finding process would impede a law enforcement investigation; in such cases the District will implement appropriate interim steps to provide for the safety of the victim and the school community and the avoidance of retaliation; the District will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering portion of its proceeding; and
11. inform relevant members of the school community if the circumstances of an incident of sexual harassment suggests a threat to others; this may include, for example, notifying parents and employees if a student is sexually assaulted on

the way home from school, or notifying employees of areas where harassment occurs.

- (d) provide for an alternate confidential procedure to be implemented in instances where the complaining party does not wish to identify herself/himself to the alleged harasser. The *Sexual Harassment Grievance Procedures* will make clear that confidentiality may only be maintained to the extent it does not compromise the integrity of the equitable and impartial investigation;
- (e) include a statement that Title IX prohibits retaliation against an individual who files a complaint under Title IX or participates in a complaint investigation;
- (f) provide for a system of regular, real-time reporting to the Title IX coordinator and/or senior-level District administrators regarding complaints or incidents of possible sexual harassment; and
- (g) specify that, in the event of a sexual assault, the principal of the school site will immediately inform the District's Title IX coordinator, so that the District may ensure that it provides an appropriate response to the incident consistent with the *Sexual Harassment Grievance Procedures*, and law enforcement. The procedures will also set forth a process to ensure that the victim is safe (this may include, for example, creating a safety plan and designating an individual at the site level to act as the student's support person during the investigation).

REPORTING REQUIREMENT: By May 15, 2014, the District will submit its revised *Sexual Harassment Policy*, including its revised *Sexual Harassment Grievance Procedures*, to OCR for its review and comment.

REPORTING REQUIREMENT: Within 60 calendar days of receiving written approval from OCR that its revised *Sexual Harassment Policy*, including its revised *Sexual Harassment Grievance Procedures*, satisfy items 5 and 6 of this Agreement, the District will adopt and implement the approved policy and procedures, disseminate the policy and procedures to District staff and administrators, post the policy and procedures on its website in a section accessible to students and parents, and start including the policy and procedures in new and reprinted copies of its student handbook(s).

REPORTING REQUIREMENT: Within 30 calendar days of posting its OCR-approved *Sexual Harassment Policy* on its website, the District will provide OCR the electronic address for the specific webpage on which the policy is posted.

## STUDENT AWARDS

7. If the District issues end-of-year academic awards to students at Delzer Elementary School, it will ensure that the awards do not discriminate against students on the basis

of race, disability, or sex.<sup>4</sup> The District will maintain documentation of the specific awards issued (including, but not limited to, student honor roll awards) and award recipients for a minimum of two calendar years from the date of issuance.

**REPORTING REQUIREMENT:** By June 30, 2014, the District will provide OCR documentation showing all of the end-of-year academic awards issued to fourth, fifth, and sixth grade Delzer Elementary School students during the 2013-14 school year, including its student honor roll recipients. The documentation will include the first and last name and the race of the recipient(s) of each award, and will also identify which award recipients are students with a disability who have a Section 504 Plan or Individualized Education Program (IEP).

### **EMPLOYEE TRAINING REGARDING TITLE VI, SECTION 504 & TITLE IX**

8. By September 15, 2014, the District will provide training regarding Title VI, Section 504, and Title IX to all teachers at Delzer Elementary School. At a minimum, the training must address:
  - (a) Title VI's, Section 504's, and Title IX's prohibitions against discrimination, including harassment, on the bases of race/national origin, disability, and sex, respectively;
  - (b) what District employees should do if a student or parent complains of race/national origin, disability, or sex discrimination by a District student, employee, or third party;
  - (c) Title VI's, Section 504's, and Title IX's prohibitions on retaliating against a student or other individual who files a complaint alleging discrimination on the basis of race/national origin, disability, or sex, and prohibition on retaliating against a student or other individual who participates in a Title VI, Section 504, or Title IX complaint investigation; and
  - (d) who to contact with questions about the District's process for addressing complaints made by or on behalf of students alleging race/national origin discrimination, disability discrimination, or sex discrimination.

**REPORTING REQUIREMENT:** The District will provide OCR documentation by September 30, 2014, showing it has provided the training session required by item 8 of this Agreement. The documentation must include:

- (a) the date, time, and location of the training;

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<sup>4</sup> The District advised OCR in December 2013 that it has discontinued the end-of-year academic award ceremony it previously held at Delzer Elementary School.

