

Resolution Agreement
Sisseton School District 54-2
Docket # 07131188

The Sisseton School District #54-2 (District), Sisseton, South Dakota, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve this complaint that was filed under 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; 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.

The District agrees to take the following actions:

SECTION 504 PROCEDURES

1. By July 1, 2015, the District will develop administrative policies and procedures to ensure its compliance with the Section 504 regulations. The procedures will address how parents and District personnel may initiate an evaluation; how parents will be notified of 504 meetings; and when and how the District will provide parents with notice of its procedural safeguards. The District may consult OCR for technical assistance when developing its Section 504 procedures as required below. The policies and procedures will include the following:
 - a) The expanded definitions of physical and mental impairments and major life activities in accordance with the ADA Amendments Act of 2008;
 - 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: (i) 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; (ii) use of assistive technology; (iii) reasonable accommodations or auxiliary aids or services; or (iv) 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. An assurance the District will educate qualified students with a disability with students who are not disabled to the maximum extent appropriate to the needs of the students with a disability;
- d. In accordance with the requirements of 34 C.F.R. § 104.35(b), the District will conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The District's evaluation procedures will 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).
- e. The District, in interpreting evaluation data and in making placement decisions, will
 - 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;
 - and 3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- f. The District will establish procedures to ensure that students with a disability are reevaluated periodically. A reevaluation period consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement;

- g. The District will establish procedures for making manifestation determinations prior to imposing discipline which constitutes a significant change of placement on students with a disability. The procedures will address the District's obligations when it determines the behavior for which a student is being disciplined is a manifestation of that student's disability;
- h. The District will establish procedures to ensure that, when students with 504 plans transfer from building to building within the District, including from elementary to middle school to high school, all relevant information about the student's disability, evaluation and assessment history, and 504 plan(s) is provided to appropriate staff to ensure the continued provision of the student's free appropriate public education;
- i. The District will establish procedures to ensure that students that transfer into the District with a 504 plan from another school district will either be evaluated, or the 504 plan adopted within a reasonable time of transferring into the District. The period required by the IDEA for initial evaluation of transfer students is one means of meeting this requirement;
- j. The District will devise a plan to ensure that the Section 504 plans for qualified students with a disability are provided to appropriate staff, that staff implement the plans as written and document the implementation; and
- k. The District will revise its due process procedures to include notice, an opportunity to examine relevant records, an impartial hearing with opportunity for participation of the parent/guardian and representation by counsel and a review procedure.

REPORTING REQUIREMENT: By July 1, 2015, the District will provide OCR, for review and approval, a copy of its policies and procedures to ensure compliance with Section 504. OCR will respond within 30 days of the day OCR receives to the District's submission.

- 2. Within 30 days of receiving OCR's approval of the District's 504 policies and procedures, the District will publish the procedures in a readily accessible location on its website. The District will notify parents and students of the revised 504 policies and procedures and of how they may obtain a hard copy of them.

REPORTING REQUIREMENT: Within 30 days of publishing the new 504 policies and procedures, the District will provide OCR a link to the website location with the 504 policies and procedures and copies of the documents with the 504 policies and procedures.

TRAINING

3. Within 60 days of approval of the new Section 504 policies and procedures, the District will provide training (and annually thereafter) on the requirements of Section 504 and the District’s new Section 504 policies and procedures to the District’s Section 504 coordinator, all building administrators, and all instructional staff. OCR is available to provide technical assistance to the District.

REPORTING REQUIREMENT: Within 30 days of the completion of the training, the District will provide OCR documentation that the training described in item 3 above has been completed for the 2015-16 school year, including, the date(s) of the training; the name, title, and qualifications of the trainer; a copy of any materials used in the training; and a sign in sheet with the name and title of training participants. The District is not required to provide documentation of training in subsequent years unless specifically requested by OCR to do so.

INDIVIDUAL REMEDIES

4. By July 1, 2015, the District will convene the complainant’s son’s IEP team to consider whether compensatory education services are necessary to ensure the complainant’s son received a FAPE during the second semester of the 2012-13 school year. The IEP team will consider whether the complainant’s son requires compensatory education services as a result of xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx x, xxxxx through xxxxx x, xxxxx; xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xx through xxxxx xx, xxxxx; or as a result of failing to implement his IEP by not providing math assistance/instruction in the special education classroom in May 2013. If the IEP team determines compensatory education services are required for the provision of a FAPE to the complainant’s son, the IEP team will, within one week of its determination, identify the necessary compensatory education services and develop a written plan or schedule for providing those services; notify all staff responsible for providing the compensatory education services of their responsibility in writing; provide the compensatory education services according to the written plan or schedule; and document the provision of the compensatory education services to the complainant’s son. If the IEP team determines no compensatory education services are necessary for the provisions of a FAPE to the complainant’s son, the IEP team will identify the information considered in its decision and set forth the reasons for its decision in writing. The District will provide the Student’s parent/guardian notice of the procedural safeguards including the right to challenge the group’s determination through an impartial due process hearing.

REPORTING REQUIREMENT: Within 2 weeks of the decision whether compensatory and/or remedial services are needed, the District will submit to OCR documents supporting the group’s decision. The documentation submitted shall

include documentation showing the participants in the meeting, an explanation for decisions made, the information considered, and a description of and schedule for providing any compensatory and/or remedial services (if any) to the Student. OCR will review the documentation to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

When the District has provided all compensatory and/or remedial services the District will provide documentation to OCR of the dates, times and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).

5. Commencing the date the Agreement is signed, the District will implement the complainant's son's most recent 504 Plan, IEP and/or behavior plan, if any, documenting the implementation appropriately, until an updated 504 Plan, IEP and/or behavior plan is developed and implemented in accordance with the procedural requirements of Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36. Documentation will include a record of all minutes of special education instruction provided pursuant to the IEP. Documentation will also include each date on which the complainant's son's behavior plan is implemented; a description of the circumstances leading to implementation of the behavior plan; a description of how the behavior plan was implemented; and the names of all District personnel involved in each situation in which the behavior plan was implemented.

REPORTING REQUIREMENT: By July 1, 2015, the District will provide OCR with a copy of its documentation of the implementation of the complainant's son's 504 Plan, IEP and/or behavior plan for the second semester of the 2014-15 school year.

By July 1, 2015, the District will provide OCR with a copy of its documentation of the implementation of the complainant's son's 504 Plan, IEP and/or behavior plan first semester of the 2015-16 school year.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that it has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504 at 34 C.F.R. §§ 104.4(a) and (b)(1)(i)(ii)(iii)(iv) and (vii), 104.33, 104.34, 104.35, and 104.36 and the regulation implementing Title at 28 C.F.R. § 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. 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. §§ 104.4(a) and (b)(1)(i)(ii)(iii)(iv) and (vii), 104.33, 104.34, 104.35, and 104.36, and the regulation implementing Title at 28 C.F.R. § 35.130, which were at issue in this case.

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

/s/ Dr. Stephen Schulte, Superintendent

District's Representative/Title

Date