

RESOLUTION AGREEMENT

Stockton U.S.D. #271

OCR Docket Number 07141015

The Stockton U.S.D. #271 (District), Stockton, Kansas, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve allegations of retaliation 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:

REVISION AND PUBLICATION OF NOTICE OF NONDISCRIMINATION

- 1) By **May 12, 2014**, the District will revise the District's combined notice of nondiscrimination in accordance with Section 504, Title II, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX); the Age Discrimination Act of 1975, 42 U.S.C. § 6101; Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d; and the Boy Scouts of America Equal Access Act (Boy Scouts Act), and the implementing regulations of these federal laws. The District may consult with OCR for technical assistance in revising the notice of nondiscrimination, and may refer to OCR's policy guidance entitled *Notice of Non-Discrimination*, including the sample combined notice of nondiscrimination,² and OCR's *Dear Colleague Letter* (April 4, 2011, page 6, pertaining to notices of nondiscrimination).³ The District shall provide OCR with a copy of the draft, revised notice **at least two weeks prior** to dissemination.
- 2) The revised notice of nondiscrimination must add the name or title, address, telephone number, and email address of the District employee(s) designated to coordinate efforts to comply with and carry out responsibilities under Title IX, Section 504, Title II,⁴ and the Age Act.⁵ If the District has not designated a coordinator(s) for each of these laws, it will do so as soon as possible, but no later than **May 12, 2014**.

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

² OCR's guidance entitled *Notice of Non-Discrimination* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

³ OCR's April 14, 2011 *Dear Colleague Letter* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

⁴ The designated coordinator requirement is applicable for public entities that employ 50 or more individuals under Title II.

⁵ While these federal laws explicitly require the designation of a compliance coordinator, OCR also recommends the designation of a compliance coordinator for Title VI and the Boy Scouts Act.

The District shall provide the designated Section 504 and Title II coordinator(s) with training opportunities during 2014, such as attendance at seminars and conferences, to expand her/his knowledge of the applicable federal anti-discrimination law(s) and regulations. By **February 1, 2015**, the District will provide OCR a list showing the training sessions the Section 504/Title II coordinator(s) attended, including the date, agenda, name and credentials for the person providing the training, and a copy of any materials provided to the coordinator(s).

- 3) The District will ensure that the District's notice of nondiscrimination is consistent in all publications, including the provision of consistent coordinator designations.
- 4) By **May 30, 2014**, the District will publish and prominently display its revised combined notice of nondiscrimination in an easily visible location, in student and employee hard-copy and online publications, including, but not limited to, the following publications:
 - a) announcements;
 - b) bulletins;
 - c) catalogs;
 - d) student and employee application forms;
 - e) board policies and grievance procedures for discrimination complaints;
 - f) student, parent and staff handbooks and student codes of conduct;
 - g) recruitment materials;
 - h) employee handbooks or materials; and
 - i) general publications.For publications such as student, parent, and staff handbooks, the notice should be placed at the beginning of each handbook in a section entitled *Notice of Nondiscrimination* or a similar title. If hard-copy publications will not be published until after July 1, 2014, the District will incorporate the revised notice in these hard-copy documents by the next publication date, but no later than **August 15, 2014**.
- 5) By **May 30, 2014**, the District will post the revised notice of nondiscrimination in a prominent location at each District school and the District's administrative office, and prominently display the notice on the homepage and each section of the District's website. The online notice of nondiscrimination shall contain a link to the District's anti-discrimination, anti-harassment, and anti-retaliation policies and grievance procedures, including grievance procedures to address discrimination based on disability.

REPORTING REQUIREMENT: By **June 13, 2014**, the District will provide to OCR the following for items a through d:

- a) copies of its revised notice of nondiscrimination;
- b) a current list of the hard-copy and online publications containing the revised notice of nondiscrimination;
- c) copies of the hard-copy publications with the revised notice of nondiscrimination;

- d) copies of photographs of the posted notice of nondiscrimination, including a description of the location of each posted notice in the District.
- e) By **no later than February 17, 2015**, the District will provide the information regarding the training provided to the 504/Title II coordinator(s) required by the second paragraph of item 2.

SECTION 504 AND TITLE II POLICIES AND PROCEDURES

- 6) 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), 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 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; 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. §§ 104.32 and 104.34 [identification, free appropriate public education, and educational setting (FAPE)]:
- 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; and
 - 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; 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; and
 - 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) language indicating the District will not take, or threaten to take, adverse action, including restricting classroom observations or restricting communication between school employees and a parent, guardian, student, or other individual, because that individual asserted his/her rights or engaged in any protected activity with respect to an individual's disability, perceived disability, or a FAPE, including special education and related services.

- 7) By **August 1, 2014**, the District will ensure that the District's Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards comply with the Section 504 regulation at 34 C.F.R. § 104.36 regarding a system of procedural safeguards. The District's Section 504/Title II policies, procedures, forms, and notice of procedural safeguards shall include the name or title, address, telephone number, and email address of the District's designated Section 504 and Title II compliance coordinator(s).

- 8) By **August 1, 2014**, the District will ensure that the District's anti-discrimination policies and procedures, and the District's Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards, contain an anti-retaliation provision.

- 9) The District will provide OCR with a copy of the draft, revised policies, procedures, forms, and notice of procedural safeguards required by item 8 of this agreement **at least two weeks prior** to adopting or disseminating them.

REPORTING REQUIREMENT: By **September 30, 2014**, the District will provide to OCR the following:

- a) copies of its revised Section 504 and Title II policies, procedures, forms, and procedural safeguards notice; and

- b) a current list of the hard-copy and online publications that contain the revised anti-discrimination policies and procedures, and revised Section 504/Title II policies, procedures, forms, and notice of procedural safeguards.

COMMUNICATION OF POLICIES AND PROCEDURES

- 10) By **August 15, 2014**, the District will communicate its revised anti-discrimination and 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; and
- c) including those policies and grievance procedures in applicable board policies and in the student and parent (if available) handbooks beginning in the 2014-15 academic year.

11) The District’s coordinator(s) will maintain a current list of hard-copy and online publications that contain the revised notice and the applicable policies and procedures. The coordinator(s) 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, parents, and staff.

REPORTING REQUIREMENT: By **September 30, 2014**, the District will provide to OCR a copy of the email notifying District employees of the revised anti-discrimination policies and procedures and the revised Section 504 and Title II policies, procedures, forms, and procedural safeguards notice.

INDIVIDUAL RELIEF

- 12) X---paragraph redacted---X.
- 13) X---paragraph redacted---X.

REPORTING REQUIREMENT: The District will copy the OCR investigator on the letter sent to the complainant and her husband.

TRAINING

- 14) By **September 15, 2014**, the District will provide training on the subject of Section 504 and Title II compliance and the anti-discrimination and anti-retaliation requirements of those laws, to District officials and staff, including but not limited to, administrators (including the superintendent), teachers, substitute teachers, staff, paraprofessionals, counselors, and the designated compliance coordinator(s) and investigator(s). The training will be conducted by an individual(s) knowledgeable about the laws and issues pertaining to disability discrimination and retaliation, and in particular Section 504 and Title II. The training will include:
 - a) a discussion and distribution to trainees of the District’s revised notice of nondiscrimination, revised anti-discrimination and anti-retaliation policies and procedures, and the revised Section 504 and Title II policies, procedures, and procedural safeguards notice;

- b) the identification of the District's Section 504 and Title II coordinator(s), including contact information, and an explanation of the responsibilities of the coordinator(s);
- c) an explanation of the legal standard for retaliation, what constitutes retaliation, and specific examples of retaliation, including, but not limited to, restricting communication between parents, guardians, or students and school staff, restricting classroom observations, and taking or threatening to take other adverse action; and
- d) a thorough review of the District's grievance procedure for handling complaints of disability discrimination, harassment, and retaliation, including an explanation that complaints can be made verbally or in writing, the District's responsibility to promptly investigate all complaints of disability discrimination, including retaliation, who is responsible for investigating those complaints, a detailed discussion of the specific investigative steps and timeframes, and the District's obligation to take timely, effective action to address discrimination and retaliation and to prevent its reoccurrence.

15) The District's designated coordinators 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 OCR documentation showing it has completed the training required in this 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; the name and title of each employee who attended the training (a sign-in sheet with the attendees' names, signatures, work locations, and titles is sufficient); and
- d) the District is not required to submit documentation of subsequent training unless OCR requests that information.

16) 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.

17) 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.

18) 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 calendar days to cure the alleged breach.

The person signing for the District represents that he or she is authorized to bind the District to this Agreement.

/s/ Allaire Homburg
Allaire Homburg, Superintendent of the District

4/14/14
Date