

RESOLUTION AGREEMENT

Mission Valley U.S.D. 330
OCR Docket Number 07XXXXXX

The Mission Valley U.S.D. #330 (District), Eskridge, Kansas, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve allegations 1, 2, and 3(a-c) of the above-referenced discrimination complaint 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:

REVISION AND PUBLICATION OF NOTICE OF NONDISCRIMINATION

- 1) The District shall 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 revised notice of nondiscrimination must include the name or title, address, telephone number (including any TTY or TDD number), and email address of the District employee designated to coordinate efforts to comply with and carry out responsibilities under Title IX, Section 504, Title II,⁴ and the Age Act.⁵ The District will ensure that the District's notice of nondiscrimination contains the protected category of age, references to the Age Discrimination Act of 1975 and the Boy Scouts Act, and is

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.

consistent in all publications, including the provision of consistent coordinator designations.

REPORTING REQUIREMENT: By **XXXXXX X, XXXX**, the District will provide to OCR a draft, revised combined notice of nondiscrimination in accordance with this Agreement for OCR's review and approval.

- 2) The District shall 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 **XXXXXX XX, XXXX**, the District will provide to OCR a link to the revised combined online notice of nondiscrimination with embedded links.

- 3) The District shall publish and prominently display the revised, OCR-approved 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.

REPORTING REQUIREMENT: By **XXXXXX XX, XXXX**, the District will provide to OCR a current list of the hard-copy and online publications containing the revised, OCR-approved combined notice of nondiscrimination, including copies of the hard-copy publications containing the revised notice.

- 4) The District shall provide the designated Section 504 and Title II coordinator with training opportunities during XXXX, such as attendance at seminars and conferences, to expand his/her knowledge of the applicable federal anti-discrimination law(s) and regulations.

REPORTING REQUIREMENT: By **XXXXXX XX, XXXX**, the District will provide to OCR a list showing the training sessions the Section 504/Title II coordinator attended, including the date, agenda, name and credentials for the person providing the training, and a copy of any training materials provided to the trainees.

SECTION 504 AND TITLE II POLICIES AND PROCEDURES

- 5) The District shall revise the District’s Section 504 and Title II policies, procedures, handbooks, forms, and notices to comply with Section 504 and Title II, including the Americans with Disabilities Act Amendments Act of 2008 (ADA Amendments Act),⁶ 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, handbooks, and notices shall include, but are not limited to:
- a) The expanded definitions of physical and mental impairments, major life activities, and major bodily functions, in accordance with the ADA Amendments Act, including the following.
 - 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.
 - 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.

⁶ 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).

- 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) The District shall include the name or title, address, telephone number, and email address of the District's designated Section 504 and Title II compliance coordinator.

- f) The District shall delete any language indicating that parents are not required members of Section 504 teams (see notice of Section 504 Committee Meeting).
- g) The District shall 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 the following revisions to the District’s procedural safeguards notice:
 - i) Delete “through the district’s grievance procedure” in item 12.
 - ii) Insert an anti-retaliation provision.
 - iii) Update OCR’s address.
 - iv) Update the District’s Section 504/Title II coordinator contact information.
 - v) Delete the document entitled “Complaint Procedure” from the District’s Section 504 forms and instead refer an individual to the District’s anti-discrimination policies and procedures, including procedure KN, for complaints of discrimination based on disability, in the District’s procedural rights notice.

REPORTING REQUIREMENT: By **XXXXXX XX, XXXX**, the District will provide to OCR copies of its draft revised Section 504 and Title II policies, procedures, and procedural safeguards notice for OCR’s review and approval.

ANTI-DISCRIMINATION POLICIES AND PROCEDURES

- 6) The District shall update its anti-discrimination and harassment policies and procedures to ensure that the District will adequately address and provide sufficient options for responding promptly and appropriately to reported incidents of discrimination and/or harassment. The anti-discrimination and harassment policies or procedures will include at a minimum:
 - a. A statement setting forth the District’s commitment to having a school environment free from all discrimination and/or harassment on the basis of race, color, national origin, sex, disability, or age. The statement must explain that the District prohibits discrimination and/or harassment in the District environment, including all academic, extra-curricular and District-sponsored activities whether on or off campus. The statement will encourage students to immediately report incidents of discrimination and/or harassment. The statement will emphasize that all employees, including faculty, staff, administrators, security officers and coaches are required to refrain from harassing students and are required to promptly report incidences of

harassment. The statement will specify that the District will investigate formal and informal complaints of discrimination and/or harassment.

- b. Definitions with specific examples of the type of conduct and behavior that is prohibited by the policy, including examples of staff-to-student and student-to-student conduct.
- c. Identification of the kinds of activities and sites where prohibited conduct could occur.
- d. A notice that the procedures apply to complaints of discrimination and/or harassment raised by employees, students, or third parties.
- e. An explanation of how to report discrimination and/or harassment and/or file a complaint (formally or informally).
- f. A description of the District's informal and formal complaint procedures, including a Complaint Form, designated prompt timeframes for the District's investigation of a complaint and a requirement that written notice of the outcome be provided to the parties.
- g. The name or title and contact information (including office and email address and telephone number) for the District employee(s) responsible for receiving the Complaint Form and/or investigating reports of discrimination and/or harassment. This information shall include an alternate Coordinator, in the event that the designated Coordinator has a conflict of interest or is named as the accuser in a complaint.
- h. A requirement that the designated District employee(s) document all reports of incidents of discrimination and/or harassment and that the District establish a protocol for recordkeeping.
- i. A recommendation that District staff who observe acts of discrimination and/or harassment intervene to stop the discrimination and/or harassment, unless circumstances would make such intervention dangerous and a requirement that District staff report such incidents to the Coordinator.
- j. The interim and permanent steps the District will take to stop the discrimination and/or harassment, remedy the discrimination and/or harassment and prevent recurrence including examples of the range of possible disciplinary sanctions and remedies available to address the discriminatory effects on the complainant and others. The procedures will include specific discussions with the complainant about

any necessary counseling, academic support or transcript modification, and the academic and/or extracurricular activities of the parties to determine if adjustments in schedules are necessary. The procedures will explain that any adjustments made will be designed to minimize the burden on the complainant’s educational program.

- k. The prohibition of actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of harassment or the participation in proceedings applies to third parties as well as accused students.
- l. The medical and counseling resources that are available to students and witnesses.
- m. Identification of the means the District will use to investigate incidents of discrimination and/or harassment, including but not limited to the following:
 - i. The various steps the District will take to conduct adequate, reliable and impartial investigations of reported incidents, including review of statements obtained from either party, interviews with both parties, interviews with witnesses as appropriate, and review of relevant documentary evidence.
 - ii. The District’s standard of review for determining whether a hostile environment exists including a statement that evidence submitted in the investigation will be reviewed using a preponderance of the evidence standard.
 - iii. An assurance that the District will keep the complaint and investigation confidential to the extent possible.

REPORTING REQUIREMENT: By **XXXXXX XX, XXXX**, the District will provide to OCR copies of its draft revised anti-discrimination and anti-retaliation policies and procedures for OCR’s review and approval.

COMMUNICATION OF POLICIES AND GRIEVANCE PROCEDURES

- 7) The District shall communicate its revised anti-discrimination and anti-retaliation policies and grievance procedures, and the revised Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards (policies and grievance procedures), to all District administrators, board members, officials, and employees by:
 - a) Disseminating those revised policies and grievance procedures via the District’s electronic communications (email) system.
 - b) Including those revised policies and grievance procedures on the District’s website.

- c) Including those policies and grievance procedures in hard-copy student, parent, and staff handbooks in a section entitled *Nondiscrimination* or a similar title, beginning with the XXXX-XX academic year.

REPORTING REQUIREMENT: Within 30 calendar days of receiving OCR’s approval of the District’s revised policies and grievance procedures, the District will provide to OCR the following:

- a) A copy of the District’s email message and attachments distributing the revised anti-discrimination and anti-retaliation policies and grievance procedures, and the Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards via the District’s email system.
- b) A current list of the hard-copy and online publications that contain the revised anti-discrimination and anti-retaliation policies and grievance procedures, and the Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards.
- c) Copies of or links to the District publications with the revised anti-discrimination and anti-retaliation policies and procedures, and the Section 504 and Title II policies, procedures, forms, and notice of procedural safeguards.

[X---heading redacted---

- 8) [X---paragraph redacted---

[X---paragraph redacted---

INDIVIDUAL RELIEF

- 9) [X---paragraph redacted---X]

- 10) [X---paragraph redacted---X]

- 11) [X---paragraph redacted---X]

- 12) [X---paragraph redacted---X]

- 13) [X---paragraph redacted---X]

- 14) [X---paragraph redacted---X]

- 15) [X---paragraph redacted---X]

REPORTING REQUIREMENTS FOR ITEMS 10-15, ABOVE:

- a) [X---paragraph redacted---X]
- b) [X---paragraph redacted---X]
- c) [X---paragraph redacted---X]

TRAINING

16) 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 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) 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) 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 District.⁷
- d) An explanation of the legal standard for retaliation, what constitutes retaliation, and specific examples of retaliation, including, but not limited to, taking or threatening to take adverse action against a student, parents, or individuals affiliated with the student or parents.
- e) A discussion of the obligation of the District to provide accommodations or modifications listed on a student’s IEP or Section 504/Title II Plan, and that District staff should not attempt to dissuade a student from receiving those accommodations or modifications.

⁷ 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).

- f) A discussion and distribution to trainees of the District’s revised notice of nondiscrimination, and anti-discrimination and anti-retaliation policies and procedures, including the District’s grievance procedures for complaints of discrimination and how to file a complaint of discrimination.

REPORTING REQUIREMENT: By **XXXXXX XX, XXXX**, the District will provide training in accordance with the requirements of this Agreement. By **XXXXXX XX, XXXX**, the District will provide to OCR documentation showing it has completed the training. The documentation must identify the:

- a) Date, time, and location of the training.
 - b) 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) Name(s), title(s), and credentials of the individual(s) who conducted the training.
 - d) 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).
- 17) 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.
- 18) 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.
- 19) 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/ Braden Anshutz
Braden Anshutz, Superintendent of the District

X/XX/XXXX
Date