

**Resolution Agreement**  
**Docket # 07161013**  
**Clay Center U.S.D. #379**

The Clay Center U.S.D #379 (District) submits this Agreement to the U.S. Department of Education, Office for Civil Rights (OCR) to resolve OCR Docket No. 07161013. The District submits this Agreement to ensure its compliance with Section 504 of the Rehabilitation (Section 504) 29 United States Code (U.S.C.) § 794, and its implementing regulation at 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 at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and by public entities for Title II complaints. OCR has not made any finding that the District is in violation of Section 504/Title II as it relates to this complaint, nor is this an admission of liability on the part of the District. Rather, the District voluntarily agrees to take the actions in this Agreement to ensure equitable treatment of students in compliance with Section 504/Title II.

**I. RESOLUTION PROVISIONS**

The District agrees to take the following actions:

1. The District shall review, and if necessary, revise its Section 504 and Title II policies and procedures related to the identification, evaluation, placement, and discipline of students with disabilities to ensure compliance with the regulations implementing Section 504, specifically 34 C.F.R. § 104.33, 34 C.F.R. § 104.35 and 34 C.F.R. § 104.36; and with the Americans with Disabilities Act Amendments Act of 2008 (ADA Amendments Act) which broadened the definition of a qualified individual with a disability. OCR is available to provide technical assistance to the District upon request.

**Reporting Requirement: Within 30 calendar days of signing this Agreement**, the District shall provide OCR a copy of the proposed Section 504 policies and procedures related to students with disabilities for OCR's review and approval.

2. **Within 30 calendar days of receiving OCR's approval** of its proposed Section 504 and Title II policies and procedures developed pursuant to item 1 of the Agreement, the District shall adopt, publish, and disseminate the OCR approved 504 and Title II policies and procedures using its standard methods for disseminating new information, policies, or procedures that impact the District's student population (such as including the information on the District's website and in student handbooks).

**Reporting Requirement: Within 30 calendar days after taking action** to appropriately publish and disseminate the policies and procedures developed pursuant to item 1 of this Agreement, the District will provide OCR with links to the information, if available in electronic format, or copies of publications including the approved policies and procedures related to the identification, evaluation and placement of students with disabilities, which demonstrate completion of item 2 for OCR's review and approval.

3. The District shall submit for OCR review and approval a notice of non-discrimination on the basis of disability which meets the requirements of Section 504 and its implementing regulation at 34 C.F.R. § 104.8, and Title II and its implementing regulation at 28 C.F.R. § 35.106. The District may consult with OCR for technical assistance in drafting or revising its notice of nondiscrimination, and may refer to OCR's policy guidance entitled *Notice of Non-Discrimination*, including the sample combined notice of nondiscrimination.<sup>1</sup>

**REPORTING REQUIREMENT: Within 30 calendar days** of the date this Agreement is executed the District will provide OCR with a copy of its notice of non-discrimination on the basis of disability for OCR's review and approval.

4. The District shall publish and prominently display its OCR-approved notice of nondiscrimination on the basis of disability in an easily visible location in electronic and printed publications for general distribution, including, but not limited to, the following publications: a) bulletins; b) announcements (excluding unforeseeable announcements such as inclement weather notices); c) catalogs; d) student, faculty, and employee handbooks and/or manuals; e) board policies and grievance procedures for discrimination complaints; and f) student codes of conduct. For publications such as student, employee, and faculty handbooks, the notice should be placed at the beginning of each handbook in a section entitled Notice of Nondiscrimination or a similar title, with a reference in the index or table of contents. The revised notice also shall be prominently posted in an easily visible location in the District administration building(s).

**REPORTING REQUIREMENT: Within 30 calendar days** of the District receiving OCR's approval of its notice of nondiscrimination on the basis of disability, the District shall provide to OCR a current list of the posted, electronic (including online), and hard-copy publications containing the OCR-approved notice of nondiscrimination on the basis of disability, with links to the electronic publications and copies of the hard-copy publications for OCR's review and approval. For any District hard-copy publications that will not be revised until the 2016-17 school year, the District will at the same time provide OCR with a list of such publications, and copies of those revised hard-copy publications will be provided to OCR no later than **September 1, 2016**.

5. The District shall provide training to all administrators, staff and employees who provide educational services to students with disabilities or make decisions regarding the provision of educational services to students with disabilities, regarding the rights and procedural requirements outlined in Section 504, Title II, and the regulations implementing those laws. The District may consult with OCR for technical assistance regarding Section 504 and Title II and the regulations implementing those laws.

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<sup>1</sup> OCR's guidance entitled *Notice of Non-Discrimination* can be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

**REPORTING REQUIREMENT: By no later than September 1, 2016**, the District shall provide OCR with documentation showing that the District provided training to its staff and employees on the rights and procedural requirements outlined in Section 504 for OCR’s review and approval. The documentation should include the names of attendees, the dates of attendance, the names and qualifications of the training presenters, the titles of the training presentations.

6. The District shall revise its Student Code of Conduct to establish clearly defined violations and categories of violations. The revised code should outline the sanctions that will be applied for each violation or category of violations. If a particular behavior is subject to multiple levels of sanction, the code should list and/or provide guiding examples of mitigating and aggravating factors that are considered by the District when deciding to impose different sanctions for similar offenses. The revised code should explain whether a student who repeatedly violates the code of conduct will be subjected to more severe sanctions.

**REPORTING REQUIREMENT: Within 60 calendar days** of the date this Agreement is executed, the District shall submit its revised Student Code of Conduct for OCR’s review and approval.

7. **Within 30 calendar days of receiving OCR’s approval** of its revised Student Code of Conduct developed pursuant to item 6 of the Agreement, the District shall adopt, publish, and disseminate the OCR approved revised Student Code of Conduct using its standard methods for disseminating new information, policies, or procedures that impact the District’s student population (such as including the information on the District’s website and in student handbooks).

**REPORTING REQUIREMENT: Within 30 calendar days** of the District receiving OCR’s approval of its revised Student Code of Conduct, the District shall provide to OCR a current list of the posted, electronic (including online), and hard-copy publications containing the OCR-approved Student Code of Conduct, with links to the electronic publications and copies of the hard-copy publications. For any District hard-copy publications that will not be revised until the 2016-17 school year, the District will at the same time provide OCR with a list of such publications, and copies of those revised hard-copy publications will be provided to OCR no later than **September 1, 2016**.

### **Individual Remedy**

8. Within two weeks of the date of this Agreement the District will, after consultation with the complainant, initiate an evaluation of the Student pursuant to 34 C.F.R. § 104.35. The District will advise the complainant, in writing, of the date of the meeting, and give the complainant at least ten (10) calendar days to provide any information she would like the District to consider. The evaluation will be conducted within sixty (60) days of the date of this Agreement. In accordance with Section 504 34 C.F.R. §104.35 (c) the District shall: (1) draw upon information from a variety of sources, (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 child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with the implementing regulation at 34 C.F.R. § 104.34. The regulation at 34 CFR 104.34 requires that disabled students be placed with their non-disabled peers to the maximum extent appropriate and addresses non-academic settings. The District will determine whether the Student is a qualified student with a disability and, if so, prepare an appropriate Section 504 plan reflecting the special education or related services necessary to ensure the Student receives a free appropriate public education (FAPE). The District will provide the Complainant notice of the procedural safeguards including the right to challenge the group's determination through an impartial due process hearing.

**REPORTING REQUIREMENT: Within one week** of the completion of the evaluation required by above, the District will submit to OCR documents supporting the team's decisions regarding eligibility for special education or related services pursuant to Section 504 for OCR's review and approval. 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 educational and/or remedial services (if any) to the Student. OCR will review and approve the documentation provided by the District to ensure that the District met the procedural requirements of the regulations implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

9. If the Student is deemed eligible for services under Section 504, the District will conduct a Function Behavior Assessment (FBA) and determine the appropriateness of a Behavior Intervention Plan (BIP) for the Student.

**REPORTING REQUIREMENT: Within one week** of the completion of the FBA required by paragraph 9 above, the District will submit to OCR, a copy of the BIP and documents supporting the team's decisions regarding the appropriateness of a BIP for OCR's review and approval. The documentation submitted shall include documentation showing the participants in the meeting, an explanation for decisions made, the information considered.

10. **Within 30 days from the date of this Agreement**, the District will convene a Section 504 team of persons knowledgeable about the Student to determine whether the Student's actions during the 2015-16 school year, were caused by or had a direct and substantial relationship to (i.e. manifestation of) a disability other than the disability identified in the Student's IEP dated February 11, 2015 and whether the Student is entitled to compensatory educational services for any educational loss the Student suffered for the period of time during which the Student was not provided a program of regular or special education and related aids and services designed to meet the Student's individual educational needs.
11. If conduct is deemed to be a manifestation of the Student's disability, the District will determine appropriate compensatory education, and return the Student to the regular education setting. If the Section 504 team determines compensatory educational and/or remedial services are required for the provision of a FAPE to the Student, the Section 504

team will identify the necessary compensatory 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 services according to the written plan or schedule; and document the provision of the compensatory educational services to the Student. If the Section 504 team determines no compensatory educational services are necessary for the provisions of a FAPE to the Student, the Section 504 team will identify the information considered in its decision and set forth the reasons for its decision in writing. The District will provide the complainant written notice of the procedural safeguards including the right to challenge the group's decision through an impartial due process hearing.

**REPORTING REQUIREMENT:** Within one week of the completion of the manifestation determination required by paragraphs 10 and 11 above, the District will submit to OCR documents supporting the team's decisions regarding eligibility for compensatory education for OCR's review and approval. 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 educational 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 regulations implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

**REPORTING REQUIREMENT:** When the District has provided all compensatory educational and/or remedial services required by the plan/schedule referenced above, 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) for OCR's review and approval.

## **II. GENERAL PROVISIONS**

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 regulation implementing Section 504 of the Rehabilitation Act, at 34 CFR §§104.34, 104.36 and 104.36 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 and that all actions taken to comply with the requirements of the Agreement are subject to OCR's review and approval. 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 of the Rehabilitation Act, at 34 CFR §§104.34, 104.36 and 104.36 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 sixty (60) calendar days to cure the alleged breach.

For Clay Center USD #379

/s/ Michael Folks  
Michael Folks, Superintendent

4/25/2016  
Date