

RESOLUTION AGREEMENT
Ewing Marion Kauffman School
OCR Docket Number 07161178

The Ewing Marion Kauffman School (School), Kansas City, Missouri, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the above-referenced discrimination complaint against the School 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 Complainant alleged that the School discriminated against the Student by not providing a free and appropriate public education and retaliated against the Complainant because she advocated for the Student. Before OCR completed its investigation, the School agreed to take the actions set out below. The School 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. While the School agrees to take the following actions, nothing contained in this Agreement shall be construed to constitute an admission on the part of the School to any of the allegations in this complaint:

I. RESOLUTION PROVISIONS

A. SECTION 504 PROCEDURES

1). The School will review, and as necessary revise, its Section 504 and Title II policies, procedures, and forms (School 504 Procedures) to ensure the procedures related to the identification, evaluation and placement of students with disabilities comply with the Section 504 implementing regulations at 34 C.F.R. §§104.31-36. The revised School 504 Procedures will be consistent with the legal standards under the Americans with Disabilities Amendments Act of 2008 (ADAAA). The School 504 Procedures shall include the following:

a) the expanded definitions of physical and mental impairments and major life activities in accordance with the ADAAA; that the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures; that an impairment substantially limiting one major life activity need not limit other major life activities in order to be considered a disability; and that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

b) the School's obligation to comply with Section 504 and Title II by evaluating any student who, because of a disability, needs or is believed to need special education or related services, including students with diabetes, food allergies, and or other health impairments, in a manner that is consistent with 34 C.F.R. § 104.35;

c) timeframes for the referral, evaluation, and placement of students with disabilities.

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

Reporting Requirement: Within 60 calendar days of signing this Agreement, the School shall provide OCR a copy of the proposed Section 504 policies and procedures 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 the School shall adopt, publish, and disseminate the OCR approved Section 504 and Title II policies and procedures using its standard methods for disseminating new information, policies, or procedures that impact the School’s student population (such as including the information on the School’s website and in student handbooks).

Reporting Requirement: Within 30 calendar days after taking action to appropriately publish and disseminate the Section 504 and Title II policies and procedures, the School will provide OCR with links to the information, if available in electronic format, or copies of publications.

B. DIABETES POLICY

The School shall review and, as appropriate, draft or revise the School’s *Diabetes Policy*² to include the following revisions or provisions:

- a) Language indicating each student with diabetes will be evaluated in accordance with the School’s OCR-approved Section 504 procedures and if found eligible, diabetes care services and accommodations will be specified in the Section 504/Title II plan, as well as any diabetes medical management plan.
- b) Language indicating the School will ensure that appropriate training is provided by qualified medical personnel to School staff who educate, serve, supervise, or transport students with diabetes, including, but not limited to, teachers, substitute teachers, aides, paraprofessionals, bus drivers and substitute bus drivers (if applicable), and staff supervising students on field trips or other off-campus locations, for the provision of necessary diabetic care and emergency medical services. In addition, the training shall occur in advance of educating, serving, supervising, or transporting students with disabilities. The School may incorporate the required training in this paragraph during School in-service trainings, and may consult with OCR about whether certain components of the training may be provided via web-based application or other effective means of delivery.

² For assistance in implementing a diabetes policy in the school setting, see the April 14, 2005 guidance letter to Chief State School Officers regarding providing services to students with diabetes (posted at <http://www2.ed.gov/about/offices/list/ocr/letters/chief-state-school-ofcers-2005.pdf>), and Helping the Student with Diabetes Succeed: A Guide for School Personnel (posted at http://ndep.nih.gov/media/NDEP61_SchoolGuide_4c_508.pdf).

- c) A protocol for written notification of parents or guardians when medical supplies are becoming low, including how that written notification will occur, and receiving the medical and other supplies from parents/guardians, to avoid running out of medical supplies during the academic day.
- d) Language indicating the School will request in writing, at the beginning of the academic year, an emergency supply kits from parents or guardians of students with a Section 504 Plan or individualized education program (IEP) based upon a student having diabetes for use in the event of emergencies or disasters. The emergency kit shall contain enough supplies for at least 72 hours. The kits may include the following items, depending on what items on the list are appropriate for that student.
 - i) Blood glucose meter, testing strips, lancets, and batteries for the meter.
 - ii) Urine and/or blood ketone test strips and meter.
 - iii) Insulin, syringes, and/or insulin pens and supplies.
 - iv) Insulin pump and supplies, including syringes, pens and insulin in case of pump failure.
 - v) Other medications.
 - vi) Antiseptic wipes or wet wipes.
 - vii) Quick-acting source of glucose.
 - viii) Water
 - ix) Carbohydrate-containing snacks with protein
 - x) Hypoglycemia treatment supplies (enough for three episodes): quick-acting glucose and carbohydrate snacks with protein.
 - xi) Glucagon emergency kit.

Reporting Requirement: By December 16, 2016, the School will provide to OCR copies of its draft revised *Diabetes Policy* and the notice to parents required by item d above for OCR's review and approval.

C. COMMUNICATION OF THE DIABETES POLICY

The School shall within 30 days of receiving OCR approval of its revised *Diabetes Policy* communicate the policy to all School administrators, board members, officials, and employees by:

- a) Disseminating those revised policies and procedures via the School's electronic communications (email) system or other commonly used system of disseminating notices to staff. The School will ensure the revised policies and procedures are contained in the staff handbooks for the 2016-17 school year.
- b) Including the revised policies and procedures on the School's website and student/parent handbooks.

Reporting Requirement: Within 30 calendar days of receiving OCR’s approval of the School’s revised *Diabetes Policy*, the School will provide to OCR the following:

- a) A copy of the School’s email message and attachments distributing the revised *Diabetes Policy* via the School’s email system.
- b) Links to the School’s revised *Diabetes Policy* on the School’s website and in revised online student and parent handbooks.

D. NOTICE OF NONDISCRIMINATION

- 1) The School shall review and as appropriate revise its Notice of Nondiscrimination. The School shall submit to OCR for its 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 School 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*, that includes a sample combined notice of nondiscrimination.²

Reporting Requirement: Within 30 calendar days of the date this Agreement is executed the School will provide OCR with a copy of its notice of non-discrimination on the basis of disability for OCR’s review and approval.

- 2) The School shall publish and prominently display its OCR-approved notice of nondiscrimination 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 School administration building(s).

Reporting Requirement: Within 30 calendar days of the School receiving OCR’s approval of its notice of nondiscrimination, the School shall provide a current list of the posted, electronic (including online), and hard-copy publications containing the OCR-

⁴ OCR’s guidance entitled *Notice of Non-Discrimination* can be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

approved notice of nondiscrimination, with links to the electronic publications and copies of the hard-copy publications for OCR’s review and approval.

E. TRAINING

The School 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 School staff, including administrators, school nurses, teachers, paraprofessionals, counselors, the designated Section 504 compliance coordinator and investigator(s). The School also will provide training on diabetic and emergency care to those staff members as well as substitute teachers, substitute paraprofessionals, bus drivers, substitute bus drivers, and other School staff who teach, supervise, or provide services to School students with diabetes. 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) The identification of the School’s Section 504 and Title II coordinator, including required contact information, and an explanation of the responsibilities of the coordinator(s).
- b) 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 School.³
- c) A discussion and distribution to trainees of the School’s notice of nondiscrimination, and anti-discrimination policies and procedures, including, the School’s grievance procedures for complaints of discrimination and how to file a complaint of discrimination.
- d) A discussion of the elements of retaliation and the Section 504 and Title II prohibitions against retaliation.
- d) A discussion and distribution to trainees of the School’s revised *Diabetes Policy*, and an explanation that decisions regarding services to and emergency care for qualified students with disabilities must be made on an individualized basis, and parents or non-School employees (excluding emergency medical providers) cannot be required to provide necessary diabetic care or supervision to students with diabetes while they are attending school, including school field trips and activities.
- e) An explanation of what constitutes disability discrimination, and a review of proper Section 504 and Title II procedures, including procedures for:
 - i) evaluating and serving students with disabilities, including diabetes.
 - ii) properly implementing Section 504/Title II plans, including the provision of diabetic care and emergency diabetic care.

³ 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 of training requirements for School staff who educate, serve, supervise, or transport students with diabetes, including but not limited to, nurses, teachers, substitute teachers, aides, paraprofessionals, substitute paraprofessionals, bus drivers and substitute bus drivers, and staff supervising students on field trips or other off-campus locations, for the diabetic care and emergency care of students with diabetes.

Reporting Requirement: By January 31, 2017, the School will provide training in accordance with the requirements of this Agreement. By **February 15, 2017**, the School 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 School 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).

F. INDIVIDUAL REMEDY

1) The School will send to the Complainant, by certified mail, a written invitation to re-enroll the Student in the School by no later than the first day of the 2017-18 school year. The notice shall inform the Complainant of the School's re-enrollment timeline for the 2017-18 school year, and inform the Complainant that she must accept the invitation to re-enroll the Student by the end of the School's re-enrollment period. The notice shall inform the Complainant that should the Student reenroll, the School will convene a Section 504 team to determine the appropriate placement of the Student, and to determine whether the Student is entitled to compensatory education. In addition, the School will provide information to the Complainant regarding School staff's obligations under state law as mandatory reporters, including the conduct or observations that could trigger that obligation.

Reporting Requirement: Within 10 days of signing this Agreement, the School will provide OCR with a copy of the certified letter to the Complainant and the information regarding School staff's responsibility as mandatory reporters and shall provide a copy of this information to OCR for review and approval.

2) Within 10 days of the Student reenrolling in the School at the School's invitation, the School will also notify the Complainant by certified letter of its intent, upon receipt of written parent/legal guardian consent, to conduct an evaluation of the Student to determine the Student's eligibility to receive services as a student with a disability, including under Section 504, and

request consent to conduct the evaluation. The School will enclose a consent form for parent/guardian signature with the letter as well as a copy of the School's procedural safeguards that meet the requirements of 34 C.F.R. § 104.36.

Reporting Requirement: **Within 5 days** of mailing the Complainant in compliance with Item F2 above, the school will provide OCR with a copy of the certified letter, consent form, and procedural safeguards.

3) Within 20 days of the Student's reenrollment, the School will invite the Complainant in writing, by certified mail, to participate in a meeting to discuss School personnel's obligation as mandatory reporters under state law. If the Complainant accepts the School's invitation, the School will work with the Complainant to have the meeting take place within 10 days of the Complainant's acceptance of the invitation.

Reporting Requirement: **Within 45 days** of mailing the written invitation to Complainant to discuss School personnel's obligation as mandatory reporters under state law, the School will provide OCR with documentation of the Complainant's response (if any) to the invitation and, if the Complainant accepted the written invitation, notes from its meeting with the Complainant.

Reporting Requirement: **Within 10 days** of the last day of each semester of the 2016-17 and 2017-18 school years, the School will notify OCR in writing if the Student has reenrolled in the School during that term.

4) Within 40 days of receiving the Complainant's consent to evaluate the Student, the School will conduct the evaluation and make the eligibility and placement determinations in accordance with the procedural requirements of Section 504 at 34 C.F.R. §§ 104.3(j) and (l), 104.33, 104.34, and 104.35. The School will consider information from outside medical or counseling providers, as well as other relevant information including, but not limited to, data from behavioral scales or assessment instruments, teacher observations, grades, discipline records, and information related to the Student's diagnosis of Type I diabetes mellitus. The evaluation will include assessment and evaluation data as well as all other relevant information from the Student's educational records. Based on the evaluation, the Student's multi-disciplinary team will determine whether the Student has an impairment(s) which substantially limits one or more of his major life activities pursuant to Section 504, and if so, the multi-disciplinary team will determine an appropriate educational placement for the Student, and draft and implement an IEP or Section 504 plan setting forth the Student's educational placement and the services he is to receive.

In addition, the Student's multidisciplinary team will determine whether the Student had an impairment which substantially limited one or more of his major life activities at any time during the 2015-16 school year through the date of his withdrawal from the School, for which he did not receive special education or related services. If the Student's multi-disciplinary team determines the Student had an impairment which substantially limited one or more of his major life activities at any time during the 2015-16 school year through his withdrawal from the School for which he

did not receive special education or related services, the Student’s multi-disciplinary team will determine whether the Student is entitled to compensatory education services. If the Student’s multi-disciplinary team determines compensatory education services are appropriate, a schedule/plan for providing the Student compensatory education services will be developed, included in the Student’s IEP or Section 504 plan, and implemented immediately. The schedule/plan will identify the compensatory education services to be provided, the manner in which they will be provided, who will provide them, and a schedule for providing them.

Reporting Requirement: Within 10 days of receiving parent/guardian consent to evaluate the Student, the School will provide OCR a copy of the signed parent/guardian consent form.

Reporting Requirement: Within 10 days of completing the evaluation of the Student, the School will provide OCR documentation that the School’s procedural safeguards that meet the requirements of 34 C.F.R. § 104.36 were provided to the Complainant, a copy of the complete evaluation of the Student, including all assessments, information, and records considered in the evaluation; notes from the multi-disciplinary team meeting(s); the School’s eligibility determinations for the Student; all IEPs and/or 504 plans developed and implemented for the Student; and notices, correspondence and other records made part of the Student’s Section 504 or special education file in the School for review and approval. If the Student’s multi-disciplinary team determined compensatory education services are appropriate, the schedule/plan for providing the Student compensatory education services will be submitted to OCR for review and approval prior to implementation. Upon receiving OCR’s approval of the Student’s IEP or 504 Plan and the plan to provide compensatory educational services (if any), the School will immediately implement such plan(s).

Reporting Requirement: If applicable, within 15 days of the last day of each semester for the next two school years, the School will provide OCR documentation that it has implemented the Student’s IEP or 504 plan, including, if applicable, but not limited to, the provision of compensatory education services for the Student for OCR’s review and approval. The School will notify OCR in writing if and when the Student withdraws from the School within 15 days of such withdrawal.

G. GENERAL PROVISIONS

The School 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 regulations which were at issue in this case.

The School 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 School understands that during the monitoring of this

Agreement, if necessary, OCR may visit the School, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the School has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504 of the Rehabilitation Act which were at issue in this case.

The School 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 School written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The person(s) signing for the School represents that he is authorized to bind the School to this Agreement.

For the School:

Hannah Loftus
Chief Executive Officer

12/8/2016
Date