

**Resolution Agreement
Pierre School District
OCR Case No. 07-16-1216**

The U. S. Department of Education, Office for Civil Rights (OCR) and Pierre School District, Pierre, South Dakota (District) enter into this Resolution Agreement (Agreement) to resolve the allegations in the above-referenced complaint. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District assures OCR that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35.

The District agreed to resolve these issues prior to the completion of OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual*.¹ Accordingly, to resolve the issues of this investigation, the District agrees to take the following actions:

Section 504 Evaluation, Meeting and Plan

1. 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 evaluation will be considered within sixty (60) days of the date of this Agreement. The District will advise the complainant and his advocate, in writing, of the date of the meeting in which it will consider the evaluation, and give the complainant at least ten (10) calendar days to provide any information he would like the District to consider.
 - a. In accordance with Section 504 regulations at 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 District will, at a minimum, have a qualified, neutral provider(s) evaluate and/or assess the Student's behavior and psychiatric diagnoses, explain if and how each affects the Student's school performance, and specify ways the District should address same.
 - b. The District will determine whether the Student's current IEP adequately meets the Student's Section 504 disabilities. If the IEP does not

¹ The *Case Processing Manual* is available on OCR's website at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

sufficiently address same, the District shall develop an appropriate Section 504 plan that includes the special education or related services necessary to ensure the Student receives a free appropriate public education (FAPE). In accordance with 34 C.F.R. § 104.33, the District may choose to update the Student's IEP to address the Section 504 disabilities in lieu of creating a separate Section 504 plan.

- c. The District will provide to the Complainant via regular mail or in-person a copy of the District's notice of the procedural safeguards prior to the team meeting with a written explanation of the Complainant's right to challenge the team's determination via a Section 504/Title II impartial hearing.

REPORTING REQUIREMENT A: At least five (5) days prior to the scheduled meeting, the District will provide OCR with an email specifying the date and time of the Section 504 multidisciplinary meeting described above. If the District emails OCR a copy of the Notice of Meeting, that is sufficient to meet this requirement.

REPORTING REQUIREMENT B: Within ten (10) days of the Section 504 evaluation meeting required by item 1, the District will submit to OCR documents supporting the team's decisions regarding the Student's eligibility for special education or related services pursuant to Section 504, for OCR's review and approval. The documentation submitted shall include: 1) information provided by the Complainant and the District, 2) a copy of any notices of procedural safeguards provided to complainant, and when provided, 3) a sign-in sheet with the date of the team meeting signed by each team member, 4) an explanation for decisions made and the information considered, and 5) a copy of the 504 plan. 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.

2. The District will also address the alleged failure to provide a FAPE and a Section 504 plan to the Complainant's son during the 2014-2015 and 2015-2016 school years by providing a minimum of 40 hours of academic tutoring and/or other services. The District will ascertain whether 40 hours is sufficient by having a qualified, neutral provider(s) agreed to by both the District and the complainant assess the Student to determine his current level of functioning in his various academic subjects, identify any deficits and recommend a remediation plan, including how much 1:1 academic tutoring or other services it would take, in the provider's opinion, to address any identified deficits. At the meeting further described in paragraph 1, the District will develop a schedule of academic tutoring and/or other services. In developing the schedule, the District will consider:

- a. the type, frequency, and location of appropriate academic tutoring and/or other educational services that will accommodate the Student’s schedule, including whether it is appropriate to offer the Student more than 40 hours of academic tutoring and/or other services, based on the neutral provider’s report.
 - b. how to provide the academic tutoring and/or other services at no cost to the Complainant and to schedule around the Student’s school day or other educational and non-academic activities associated with his school.
 - c. how to schedule the academic tutoring and/or other services to the Student so that all sessions are provided by May 22, 2018.
3. The District and the Complainant may mutually agree to change the schedule of academic tutoring and/or other services, including the type of services, based on the individual needs of the Student, which may change over time. If the parties change the schedule or type of services, the change will be reflected in writing and be signed and dated by the District and the Complainant.
4. The District shall not be obligated to provide specific academic tutoring and/or other services if the Complainant declines those services in writing or does not respond to the District’s offer within three weeks of the date of the District’s offer. If the Complainant does not make the Student available at the scheduled date or time for a service that service will be considered waived by the Complainant for that day or time, unless the Student is physically ill, in which case the missed service will be rescheduled. The District shall provide to the Complainant via email the name and contact information for any service provider or tutor prior to the start of academic tutoring and/or other services, and the Complainant shall contact directly the provider or tutor prior to any academic tutoring and/or other services session or program if the Complainant needs to cancel a session or program. The academic tutoring and/or other services may be provided by a District staff member. If academic tutoring and/or other services are missed 3 consecutive times without advance notice by the Complainant to the service provider or tutor, or without written medical documentation of an illness or injury, the District will notify the Complainant in writing that any additional failure to provide advance notice of the Student being unable to attend the services will result in the District discontinuing those services.

REPORTING REQUIREMENT C: Within ten (10) days of the Section 504 evaluation meeting described in the preceding paragraphs, the District will provide to OCR for review and approval a copy of the neutral provider’s report and the schedule for academic tutoring and/or other educational services, which shall include a listing of the type of services considered, and the specific reason(s) for rejecting any particular type of academic tutoring and/or other services, if applicable.

REPORTING REQUIREMENT D: Within seven (7) days of receiving OCR’s approval of the information provided regarding the Section 504 evaluation meeting and the academic tutoring and/or other services, the District will send a letter to the Complainant enclosing copies of the Section 504 plan, schedule of academic tutoring and/or services agreed to, including the dates and amount of academic tutoring and/or other services for each, and the District’s notice of procedural safeguards. The letter will be sent in any manner in which the District can confirm receipt, and the OCR investigator will be copied on the letter.

REPORTING REQUIREMENT E: The District will maintain a log specifying the date, start time, end time and total time that academic tutoring and/or other services were provided to the Student for each session, class, or program, along with short description of the service provided. The District will provide to OCR via email a copy of the log at the end of each academic semester, until the District has provided the required amount of academic tutoring and/or other educational services.

5. Reimbursement

By December 22, 2017, the District will reimburse the Complainant for the costs he incurred in obtaining the risk assessment and psychiatric assessment of the Student.

REPORTING REQUIREMENT F: Within ten (10) business days of the date of this Agreement, the District shall request in writing that the Complainant provide the District with a summary of the above described costs at the meeting further described in Section 1. The District shall remit payment to the Complainant within five (5) business days following the meeting. Within five (5) days thereafter, the District shall provide OCR with documentation demonstrating that it remitted payment to the Complainant.

6. Training

By May 1, 2018, the District will provide training at the Student’s elementary and middle school (Schools) regarding the District’s obligation to provide services to students with behaviors that interfere with any major life activity in the school setting; the District’s Section 504 policies and procedures, including how they relate to students with interfering behaviors. The training shall be provided to the Schools teachers, staff, counselors, and administrators. The training shall include, but not be limited to outlining statutes, regulations, OCR policies and guidance, and hypothetical situations relevant to the evaluation and accommodation of students with interfering behaviors.

REPORTING REQUIREMENT G: Within ten (10) days of the date the training is conducted, the District shall provide a copy of the training presentation and materials, the name and qualifications of the individual who conducted the training, and a copy of the completed sign-in sheet to OCR for review and approval.

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, 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 the regulation at 34 C.F.R. §§ 104.33 and 104.35, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close 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.

Kelly J. Glodt, Ph.D., Superintendent

Date