

**Resolution Agreement
Baltic 49-1 School District
Case Number 07-18-1034**

The U.S. Department of Education, Office for Civil Rights (OCR) and the Baltic 49-1 School District, Baltic, South Dakota (District), enter into this Resolution Agreement (Agreement) to resolve the allegations in the above-referenced complaint. The Agreement does not constitute an admission of liability, non-compliance, or wrong-doing 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 (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 public entities.

The District agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's *Case Processing Manual*, resolution prior to the completion of OCR's investigation.¹ Accordingly, the District voluntarily agrees to take the actions set forth below.

Individual Education Plan (IEP) Meeting and Plan Creation

1. Within two (2) weeks after receipt of the independent educational evaluation at District expense (IEE) obtained by the Complainant, the District will determine whether any additional evaluation of the Student pursuant to 34 C.F.R. § 104.35 is necessary. The District will consider the IEE and any additional evaluation(s) obtained by the District at an IEP meeting within eight (8) weeks of receipt of the IEE. The District will advise the Complainant, 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 additional information she would like the District to consider. 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 Student, the meaning of the evaluation data, including audiological 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 consider whether it is appropriate to include American Sign Language (ASL) goals on the Student's IEP in order to ensure the Student receives a free appropriate public education (FAPE).

2. 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 due process hearing.

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

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 IEP 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 IEP meeting required by item 1, the District will submit to OCR 1) information provided by the Complainant and the District considered at the IEP meeting, 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, 5) a copy of meeting minutes, if any, and 6) a copy of the IEP. OCR will review and approve the documentation provided by the District to ensure that the District met the provisions of this Agreement and 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.

3. During the IEP meeting required by section one of this Agreement, the District will also consider whether the District's alleged failure to conduct a compliant meeting at the start of the 2017-2018 school year deprived the Student of a FAPE, and if so, will determine whether compensatory education and/or other services are warranted. Specifically, the District will determine whether its alleged failure to include an individual knowledgeable about audiological data and/or consider providing the Student with ASL language goals warrants compensatory education and/or service.
 - a. If the District determines compensatory education and/or other services are not warranted, the District will explain to OCR in writing the basis upon which it made its decision, including any documentation considered.
 - b. If the District determines compensatory education and/or other services are warranted, the District will consider:
 - i. the type, frequency, and location of appropriate compensatory education and/or other services that will accommodate the Student's schedule;
 - ii. how to provide the compensatory education 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 her schooling; and
 - iii. how to schedule the compensatory education and/or other services to the Student so that all sessions are provided they are provided by December 31, 2018.

The District and the Complainant may mutually agree to change the schedule of compensatory education 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.

The District shall not be obligated to provide specific compensatory education 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 her daughter 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 at the start of the compensatory education and/or other services, and the Complainant shall contact directly the service provider or tutor prior to any compensatory education and/or other services session or program if the Complainant needs to cancel a session or program. If compensatory education and/or other services are missed three (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 IEP meeting described in the preceding paragraphs, the District will provide to OCR for review and approval a statement of the type of compensatory education or other services considered, the specific reason(s) for accepting or rejecting any particular type of compensatory education and/or other services or for rejecting compensatory education and/or services entirely, and a copy of the schedule for compensatory education and/or other services, if applicable.

REPORTING REQUIREMENT D: Within seven (7) days of receiving OCR's approval of the information provided in accordance with this reporting requirement, the District will send a letter to the Complainant enclosing copies of the statement and the schedule of compensatory education and/or other services agreed to, if applicable, including the dates and times for the compensatory education and/or other services, 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 provided with a copy of the letter and enclosures and the proof of receipt.

REPORTING REQUIREMENT E: If the District determines that compensatory education and/or other services is warranted, the District will maintain a log specifying the date and the start and end time that said

compensatory education and/or other services were provided to the Student for each session, class, or program, along with the amount of compensatory education and/or other services time. 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 compensatory education and/or other services.

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 regulations implementing Section 504 at 34 C.F.R. § 104 et. seq., 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, 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 at 34 C.F.R. § 104 et. seq., 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.

The Agreement will become effective immediately upon the signature of the University's representative below.

Robert Sittig, Superintendent

Date