

**Resolution Agreement  
Moore Public Schools  
OCR Case Number: 07-19-1050**

The Moore Public Schools (District), Moore, Oklahoma, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve this complaint filed under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 34; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 34 C.F.R. Part 28.

Before OCR completed its investigation, the District agreed to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual*. OCR has not made any conclusions of law or issued a final determination with respect to this complaint. While the District agrees to take the following actions, nothing contained in this Agreement shall be construed as an admission on the part of the District to any of the allegations in the complaint.

1. The District will develop a protocol to be implemented for the Student as needed to ensure consistency with the requirements of Section 504 with regard to any consideration and/or determination that the Student may pose a direct threat<sup>1</sup> to the health or safety of others.<sup>2</sup> At a minimum, the District's protocol will include the following:
  - (a) a statement that in situations where the District views the Student as a potential threat or a safety concern to others, and the risk of harm to others is not imminent (*i.e.*, not a situation the District deems to be an emergency), the District will make an individualized assessment of the threat/safety concern the Student poses to others and whether the Student's behavior is related to the Student's disability before taking action against the Student;
  - (b) a statement that a determination by the District that the Student poses a direct threat to the health or safety of others must be based on an individualized and objective assessment of the Student and on reasonable judgment that relies on current medical knowledge or the best available objective evidence; and
  - (c) a statement of the factors the District will consider in determining whether the Student poses a direct threat to the health or safety of others including: the duration, nature and severity of the risk of harm to the health or safety of others; the probability that the potential injury will actually occur; and whether reasonable modifications of

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<sup>1</sup>Under Section 504, a person is not a qualified person with a disability if the person poses a direct threat to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures, or by the provision of services under Section 504. *See School Board of Nassau v. Arline*, 480 U. S. 273, 287 (Section 504) and *cf.*, 56 Fed. Reg. 35694, 35701 (July 26, 1991) (Title II preamble, adopting the direct threat principles of Title III of the Americans with Disabilities Act); 28 C.F.R. § 36.208 (Title III regulation).

<sup>2</sup>The only statutory or regulatory authority for the use of the direct threat analysis in Section 504 concerns a direct threat to others. Although the concept of direct threat to self does exist in the employment context in Title I of the Americans with Disabilities Act, there is no statutory or regulatory basis to interpret the direct threat to self in employment cases as creating a direct threat to self in cases involving the receipt of education under Section 504.

the District’s policies, practices, or procedures, or the provision of services under Section 504, will mitigate the risk.

In addition, the District will identify the District personnel qualified to assess whether the Student poses a direct threat to the health or safety of others.

2. The District will develop a form on which the District will document each consideration/determination regarding whether the Student poses a direct threat to the health or safety of others, including a detailed description of the incident giving rise to the direct threat assessment; the names of the individuals conducting the assessment; all information and factors considered during the assessment; and the conclusion(s) resulting from the assessment.

REPORTING REQUIREMENT: By \_\_\_\_\_, the District will submit the protocol and form for OCR’s review and will provide OCR with the names, titles, and qualifications of the individuals qualified to assess whether the Student poses a direct threat to the health or safety of others.

3. The District will implement the protocol/form consistent with Section 504 requirements,

REPORTING REQUIREMENT: By \_\_\_\_\_ for the first semester of the 2019-20 school year, and by \_\_\_\_\_, for the second semester of the 2019-20 school year, the District will provide OCR documentation showing it has complied with item 3 of this Agreement, including a copy of the form completed for each direct threat assessment conducted and any supporting documentation for each assessment.

4. By \_\_\_\_\_, the District will remove from the form the reference to XXXXX XXXXX XXXXX which the District completed XXXXX XXXXX XX, XXXX, involving the reference to XXXXX XXXXX XXXXX XXXXX XXXXX. The revised XXXXX XXXXX XXXXX will be included in the Student’s records, consistent with the District’s student record-keeping protocol.

REPORTING REQUIREMENT: By \_\_\_\_\_, the District will provide OCR a copy of the form showing the required redaction.

5. By \_\_\_\_\_, the District will provide training to all District personnel with responsibility for implementing the Student’s protocol regarding the requirements of assessing “Direct Threat”, the protocol, and completion of the form.

REPORTING REQUIREMENT: By \_\_\_\_\_, the District will provide OCR documentation showing it has provided the training session required by item 5 of this Agreement, including

- i. the date, time and location of the training;
- ii. the topics addressed at the training;
- iii. copies of handouts distributed to the training participants;

- iv. the name(s) title(s), and credentials of the individual(s) who conducted the training; and
- v. one or more sign-in sheets with the name and title of each employee who participated in the training.

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 regulations implementing Section 504 and Title II, 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.

\_\_\_\_\_  
Superintendent  
Moore Public Schools

\_\_\_\_\_  
Date