RESOLUTION AGREEMENT
Fairfax County Public Schools
OCR Case Nos. 11-16-1149 & -1150

Fairfax County Public Schools (the Division) agrees to fully implement this Resolution Agreement (Agreement) to resolve Office for Civil Rights (OCR) Case Nos. 11-16-1149 and -1150. This Agreement does not constitute an admission by the Division of a violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II) or any other law enforced by OCR. This Agreement, when fully implemented, will resolve the issues and compliance concerns in the above cases. This Agreement is intended to address the issues which form the subject matter of the above-referenced complaints, but is not intended to delineate all responsibilities of the Division under the above-referenced laws. The Parties acknowledge that both during and after the effective duration of this Agreement, the Division will continue to be responsible for compliance with Section 504, Title II, and any other laws enforced by OCR as those laws may then be in effect.

1. **Provision of required services.** The Division will, at each Division school attended by a student with diabetes, conduct an evaluation of each student with diabetes who is either referred by his/her parent for evaluation or who the Division has reason to suspect is a student with a disability and, if it determines that an Individualized Education Program (IEP), 504 Plan, or Health Care Plan (HCP) (collectively the “Plans”) is needed, develop and fully implement a Plan that includes all of the diabetes-related aids and services required by Section 504 and Title II. The Division will arrange for the assignment of at least two individuals (one to be “on-duty” and one to serve as a back-up) with Level 3 training (see Provision 3, below) to each school, and for one of those individuals to be available to provide those aids and services at all of the activities described in Provision 2, below. The Division need not provide a diabetes-related aid or service to a student if a student of that student’s age is normally capable of self-administering/providing that aid or service, unless that aid or service is specifically required by the student’s Plans.¹

¹ See, for example, the publication entitled *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (2016) (the Guide), at page 61 (“[m]iddle- and high school-aged children should be able to provide self-care”); *Diabetes Care in the School and Day Care Setting* (2010), American Diabetes Association, at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2797387/#B18 (“[m]iddle school and high school–aged children usually able to provide self-care”); and *Care of Children and Adolescents With Type 1
2. **Activities covered.** The Division will provide the aids and services required by this Agreement during all regularly scheduled activities (including classes) of a student with diabetes that are conducted by the Division. The Division will also provide these aids and services during all optional and extracurricular activities in which a student with diabetes is an actual participant (rather than merely an observer or audience member) that, although not conducted by the Division, receive significant assistance from the Division, provided that each student or the student’s parent or guardian must provide written notice to the school principal or designee, or other appropriate designated Division staff member, of the student’s participation in the activity at least five school days in advance (email notice is acceptable) unless Division staff already have such notice, e.g., if the student regularly participates in the activity and is on a list of participants in the possession of Division staff at least five school days in advance. All diabetes-related aids and services will be provided by Division staff who have received the proper level of training, as described below.

If the Division is of the opinion that a particular activity that is sponsored by the Division or takes place on Division property does not receive significant assistance from the Division and that it will therefore will not provide diabetes-related aids or services for students with diabetes who will participate in that activity, it will notify the parents or guardians of these students at least three school days before the activity is to take place and will provide them with notice of their rights, including the right to file a grievance with the Division or a complaint with OCR, and information on who to contact in connection with such a filing.

**Reporting Requirements:**

a. By July 15, 2017, the Division will, for the 2016-2017 school year, provide OCR with a listing of each of the activities referenced in the immediately preceding paragraph and, with respect to each activity: the name of it; when and where it took place; the reasons for its finding that the activity did not receive significant assistance from the Division and documentation of the notice provided to the parents or guardians of the students with diabetes.

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*Diabetes* (2005), American Diabetes Association, at [http://care.diabetesjournals.org/content/28/1/186](http://care.diabetesjournals.org/content/28/1/186) (“adolescents have the fine motor control to competently perform most self-management activities”).
b. By July 15, 2018, the Division will provide the information described in item 2(a), immediately above, for the 2017-2018 school year.

3. **Staff training.** The Division will provide all staff who are responsible for the immediate custodial supervision or care of a student with diabetes with the proper level of training, for example, but not limited to, the training described in the Guide (e.g., at pages 18-20) or training made available by the American Diabetes Association.² For Division staff with responsibilities that are categorized as Level 3 in the Guide, the training will include the instruction necessary to provide the diabetes-related aids and services in the student’s Plans and to comply with Section 504 and Title II, including those relating to any insulin pump. The training will also include instruction in those diabetes-related aids and services Division staff are to provide in the event of the failure of the student’s pump (if any). The Division will provide the necessary level of training prior to the beginning of each such school year for all such staff who are hired before the school year starts and within four weeks of the hiring of such a new staff member, the enrollment of a new student with diabetes, or the date on which a staff member becomes responsible for a student with diabetes, e.g., through reassignment of the student to a new class. All diabetes-related aids and services will be provided by Division staff who have received the proper level of training.

**Reporting Requirements:**

a. By July 13, 2017, the Division will submit for OCR approval the proposed training it intends to provide pursuant to Provision 3 for the 2017-2018 school year.

b. Within twelve weeks of the OCR approval referenced in item (a), the Division will provide all of the staff referenced in Provision 3 with the training referenced in Provision 3 and will submit to OCR a complete statement that includes: (1) the dates on which the above-referenced diabetes training was conducted; and (2) a description of the procedures it has or will have in place to ensure the timely provision of such training to all of the staff referenced in Provision 3.

c. By June 1, 2018, the Division will provide OCR with a list of all Division schools attended by at least one student with diabetes during the 2017-

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2018 school year. OCR will subsequently ask the Division for the names of all students with diabetes in up to ten specific schools.

d. By July 6, 2018 or within four weeks of receiving the OCR request referenced in item (c), whichever is later, the Division will provide OCR with the names of all students with diabetes who, during the 2017-2018 school year, attended each of the Division schools identified by OCR in that request. OCR will subsequently ask the Division for the Plans for specific students with diabetes.

e. By July 14, 2017, the Division will, for the 2017-2018 school year, provide OCR with: the names and positions of the staff at the XXXX referenced in the last sentence of Provision 3 (e.g., teachers and athletics coaches), if any; the dates on which such staff were hired or became responsible for a student with diabetes (e.g., for a newly-enrolled or reassigned student with diabetes); the dates on which the Division provided them with the above-referenced training; documentation of the provision of that training, e.g., training attendance sheets signed by the recipients of the training.

f. By July 13, 2018, the Division will submit for OCR approval the proposed training it intends to provide pursuant to Provision 3 for the 2018-2019 school year.

g. By August 3, 2018 or within four weeks of receiving the OCR request referenced in item (e), whichever is later, the Division will provide, for each student with diabetes identified by OCR in its request, the Plans and the names and telephone numbers of the student’s parents or guardians. Additionally, for each staff member who was responsible for the immediate custodial supervision or care of each such student, the Division will provide: the staff member’s name; the dates on which the Division provided the staff member with the above-referenced training; copies of all training materials; documentation of the provision of that training; and documentation establishing that the provision of insulin pump-related aids and services was included in that training, when appropriate.

h. Within twelve weeks of the OCR approval referenced in item (g), the Division will provide all of the staff referenced in Provision 3 with the training referenced in Provision 3 and will submit to OCR a complete statement that includes: (1) the dates on which the above-referenced diabetes training was conducted; and (2) a description of the procedures it has or will have in place to ensure the timely provision of such training to all of the staff referenced in Provision 3.

i. By April 26, 2019, the Division will provide OCR with a list of all Division schools attended by at least one student with diabetes during the 2018-
2019 school year. OCR will subsequently ask the Division for the names of all students with diabetes in up to ten specific schools.

j. By June 7, 2019, or within four weeks of receiving the OCR request referenced in item (i), whichever is later, the Division will provide the names of all students with diabetes who, during the 2018-2019 school year, attended each of the Division schools identified by OCR in that request. OCR will subsequently request the Plans for specific students with diabetes.

k. By July 12, 2019 or within four weeks of receiving the OCR request referenced at item (j), whichever is later, the Division will provide, for each student with diabetes identified by OCR in its request, the Plans and the names and telephone numbers of the student’s parents or guardians. Additionally, for each staff member who was responsible for the immediate custodial supervision or care of each such student, the Division will provide: the staff member’s name; the dates on which the Division provided the staff member with the above-referenced training; documentation of the provision of that training; and documentation establishing that the provision of insulin pump-related aids and services was included in that training, when appropriate.

4. **Parental notification.** The Division will not require or request that a student’s parent or guardian provide the student with diabetes-related aids or services unless the student’s parent or guardian has submitted a written request to themselves provide the student with the aid or service. However, the Division is permitted to notify a parent or guardian, in accordance with the provisions of the student’s Plans or who has otherwise requested to be notified, of the Division’s provision of diabetes-related aids or services.

5. **Notification to staff.** By July 28, 2017, the Division will submit for OCR approval a draft Division-wide written communication to all administrative staff responsible for the education or care of students with diabetes informing them that: (a) the diabetes-related aids and services they provide to each student with diabetes who utilizes an insulin pump must include all of the insulin pump-related aids and services necessary to comply with Section 504 and Title II and those provided for in the student’s Individualized Education Program (IEP), 504 Plan, and Health Care Plan (HCP); (b) training in the provision of insulin pump-related aids and services will be provided to all staff responsible for the immediate custodial supervision or care of a student with diabetes who utilizes an insulin pump, and whose Plans require such services; (c) each student with diabetes must be provided with all of the above diabetes-related aids and services (see item (a)) during all optional and extracurricular activities that, although not conducted by the Division, receive significant assistance from the Division,
including activities conducted by outside organizations on any Division premises, when notified by the student or student’s parent or guardian in writing at least five school days in advance or if Division staff already have such notice, e.g., if the student regularly participates in the activity and is on a list of participants in the possession of Division staff at least five days in advance; and (d) they are prohibited from requesting that a parent or guardian provide diabetes-related aids or services to a student unless the student’s parent or guardian has submitted a written request to themselves provide the student with the aid or service.

Within three weeks of the receipt from OCR of the approval referenced in the above paragraph, the Division will issue the approved Division-wide written communication to all staff.

Reporting Requirement:

Within two weeks of sending the above written communication to staff, the Division will provide OCR with a copy of the written communication as issued.

6. Compliance of student assessments and Plans with Section 504 and Title II. Nothing in this Agreement limits the Division’s right and duty to conduct individualized assessments of students with diabetes and to prepare and implement Plans that address the individual needs of such students and include all of the aids and services required by Section 504 and Title II to the extent they are appropriate to meet the needs of the individual student.

7. Duration and monitoring of agreement. This Agreement shall become effective as of the date that an authorized Division representative has signed it (“Effective Date”). Unless otherwise provided in the Agreement, all provisions of the Agreement become effective on the Effective Date. This Agreement shall remain in effect for two (2) years following the Effective Date of this Agreement (“Term”). At such time, if OCR determines that the Division has completed all actions required by the Agreement, OCR’s review and monitoring of this Agreement shall terminate.

The Division understands that OCR will not close the monitoring of this Agreement until OCR determines that the Division has fulfilled the terms of this Agreement and is in compliance with Section 504 and Title II.

The Division understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the Division understands that, during
the monitoring of this Agreement, OCR may visit XXXX or any other Division school (after providing notice to the Division’s central office), interview Division staff and students, and request such additional reports or data as are necessary for OCR to determine whether the Division has fulfilled the terms of this Agreement and is in compliance with Section 504 and Title II.

8. **Enforcement.** The Division 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 will give the Division written notice of the alleged breach and a minimum of sixty calendar days to cure the alleged breach.

By: _______________________/s/_________________________ Date: ____05/22/2017_______

Dr. Steven Lockard, Interim Superintendent
Fairfax County Public Schools