

Resolution Agreement
Norwalk City School District
OCR Docket Nos. 15-17-1568 and 15-18-1329

Norwalk City School District (the District) voluntarily submits this Resolution Agreement (Agreement) to the U.S. Department of Education's Office for Civil Rights (OCR) for the purpose of ensuring compliance with 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, and to resolve the above-referenced complaints. Accordingly, the District agrees to take the following actions:

- A. By **June 6, 2018**, the District will convene a Section 504 team meeting regarding the student at issue in this complaint (the Student) and determine what regular or special education and related aids and services she needs to receive a free and appropriate public education (FAPE), *i.e.*, the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the Student as adequately as the needs of nondisabled persons are met. The team will conduct the meeting to assess whether the current placement set forth in the Student's Section 504 plan was designed to meet the Student's needs as adequately as the needs of students without disabilities are met and adheres to the requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.3, 104.34, and 104.35, as well as 34 C.F.R. § 104.37, as articulated in the description under Item B. below. Determinations as to FAPE must be based on the Student's individual education needs, not matters relating to administrative convenience or District resources, and must take into account the requirement that she be educated with peers to the maximum extent appropriate for her disability.

The District will also, in consultation with the Student's parents and/or appropriate health professional(s) as necessary, include in the Student's Section 504 plan provisions to ensure that services (e.g., providing necessary medication to the Student) are provided on an appropriate timetable, equipment is cleaned as needed, and, should primary providers of services to the Student be absent or unavailable, the Student will receive related aids and services from another, appropriately trained individual.

The District will provide the Student's parents with a meaningful opportunity to provide input into the team's decisions, notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial hearing by a hearing officer knowledgeable about the requirements of Section 504.

The District will then notify relevant staff of the changes to the Student's Section 504 plan and implement the plan.

REPORTING REQUIREMENT: By **June 21, 2018**, the District will provide OCR with all documentation related to the meeting, including a copy of the notes from the meeting(s), showing when the team met, who was present, what information and/or data the team reviewed and considered to determine the Student's individual needs, which placement options were considered, the reasons any placement options were rejected, the team's decisions regarding placement, an explanation of how the team applied appropriate standards and its criteria/rationale in reaching its determinations, and information documenting that the Student's parents were provided a meaningful opportunity to provide input and notice of their procedural safeguards. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504 in making these determinations. The District will also provide OCR with a copy of the resulting Section 504 plan for the Student.

By **October 31, 2018**, the District will provide OCR with documentation showing that the District provided the notice and any necessary training(s) to relevant staff concerning changes in the Student's Section 504 plan, as well as documentation as to how the Student's Section 504 plan has been implemented since the adoption of the resulting Section 504 plan (e.g., explanation of how the services have been provided to the Student and by whom).

B. By **June 29, 2018**, the District will revise and submit to OCR for review and approval Section 504 policies and procedures to ensure the identification, evaluation, reevaluation, and placement of students with disabilities in conformity with the regulation implementing Section 504, including 34 C.F.R. §§ 104.3 (definition), 104.33 (FAPE), 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards), as well as the requirements regarding non-academic services under 34 C.F.R. § 104.37. Revisions should include clarification that:

1. while the District may use regular education intervention strategies to assist students with difficulties in school, Section 504 requires the District to timely refer a student for an evaluation for possible special education or related aids and services or modification to regular education if a student, because of disability, needs or is believed to need such services and to complete the evaluation within a reasonable period;
2. the persons evaluating and placing a student under Section 504 (the Section 504 Team) must include persons knowledgeable about the student, including his/her disability; the meaning of the evaluation data; and the placement options; the student's parent(s) should be provided a meaningful opportunity to provide input;
3. in evaluating the student to determine if he/she has a physical or mental impairment that substantially limits one or more major life activities, the 504 Team:
 - a. will consider whether an particular mental or physical impairment substantially limits one or more major life activities, not solely learning or the ability to function in the school setting; the District will consider all possible major life activities, including operation of major bodily functions, and will

not restrict this consideration to only such activities or behavior as is demonstrated during the school day; the District will construe the definition of disability broadly;

- b. will not take into account mitigating measures, such as medication being taken by the student or related aids and services or modifications already being provided to the student by the District; and
 - c. will recognize that, if the student has an impairment that is episodic in nature or in remission, she is eligible if her impairment, when active, substantially limits one or more major life activities;
- 4. the Section 504 Team must determine if team members have enough information and information of the appropriate type to make a knowledgeable decision as to whether or not the student has a disability and what special education and/or related aids and services the student needs in order to receive a FAPE;
 - 5. the Section 504 Team must draw from a variety of sources in the evaluation and placement process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, and outside evaluations;
 - a. tests and other evaluation materials used in evaluation include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient;
 - b. tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel;
 - c. tests must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured;
 - d. should the District determine, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation, the district must ensure that the child receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment;
 - 6. in making placement determinations, the District shall ensure that a student with a disability will be educated with persons without disabilities to the maximum extent appropriate to the student's needs. The District shall place the student with

a disability in the regular educational environment unless it demonstrates that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily;

7. the District's requirement to provide students' parents with notice of the procedural safeguards afforded them under Section 504, including clear identification of how and where requests for impartial due process hearings may be filed; and
8. re-evaluate the student periodically or when conditions warrant.

C. Within 60 calendar days of OCR's approval of the revised Section 504 policies and procedures, the District will:

1. adopt the policies and procedures, publish them on its website, and notify students, parents, and guardians of the policies and procedures and where a copy may be obtained;
2. provide a copy of the policies and procedures to all District staff responsible for the identification, evaluation, and placement of students that have or are suspected of having a disability under Section 504, or who play any role in implementing students' Section 504 plans; and
3. provide training on the District's obligations to students with disabilities under Section 504 and the revised District's Section 504 policies and procedures to all District staff identified in Item C.2 above.

REPORTING REQUIREMENTS: By **June 29, 2018**, the District will submit a copy of its revised Section 504 policies and procedures to OCR for review.

Within 60 calendar days of OCR's approval of the District's revised Section 504 policies and procedures, the District will submit information to OCR documenting implementation of Items C.1-3 above, including: a description of the means used to provide notice to students, parents, and guardians, of the District's new Section 504 policies and procedures and copies of any notices issued; the link to the policies and procedures on the District's website; documentation that copies of the policies and procedures were distributed to appropriate District staff; copies of all training materials, including any agendas, outlines, handouts, or other materials it used in the training, the identity and qualifications of each person delivering the training; and documentation showing the date(s) of the training(s) and sign-in sheet(s) showing the names and job titles of all persons who attended the training.

General Requirements

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 the Agreement.

Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the recipient, interview staff, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of the Agreement. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close the 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 will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/

5/16/18

Superintendent or designee

Date