

**RESOLUTION AGREEMENT
BURLINGAME PUBLIC SCHOOLS
OFFICE FOR CIVIL RIGHTS DOCKET NUMBER 07141210**

The Burlingame Public Schools USD 454 (District), Burlingame, Kansas, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the allegations against the District in OCR Docket Number 07141210, and to ensure compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504)¹, 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)², 42 U.S.C. § 12131, and the implementing regulations at 28 C.F.R. Part 35.

The District is resolving this complaint during OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual*.³ Therefore, OCR has not made any findings of fact or law or issued a final determination with respect to this complaint. The District agrees to take the following actions, but nothing contained in this Agreement shall be construed to constitute an admission on the part of the District to any of the allegations in this complaint.

SECTION 504 POLICIES AND PROCEDURES

1. By May 1, 2015, the District will review its Title II and Section 504 policies, procedures, manuals, and forms (*Section 504 Procedures*) to ensure the procedures related to the identification, evaluation and placement of students with disabilities comply with the Section 504 implementing regulations at 34 C.F.R. §§104.31-36. The revised *Section 504 Procedures* will be consistent with the legal standards under the Americans with Disabilities Amendments Act of 2008 (ADAAA), the guidance set forth in the January 19, 2012 *Dear Colleague Letter* from the U.S. Department of Education Assistant Secretary for Civil Rights and its attached FAQs. The revised *Section 504 Procedures* and forms will include the definition of an individual with a disability at 34 C.F.R. 104.3(j) (2), as amended by the ADAAA. The definition will also include several examples of major life activities, such as reading, writing, thinking and concentrating, and an explanation of "substantially limits." This explanation will state that an impairment need not prevent or severely restrict a major life activity to be considered substantially limiting. The *Section 504 Procedures* will make clear that the determination of whether an individual has a disability should not demand extensive

¹ Section 504 provides that no qualified individual with a disability shall solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 29 U.S.C. § 794(a). See 34 C.F.R. Part 104 (Section 504 implementing regulations).

² Title II provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. See 28 C.F.R. Part 35 (Title II implementing regulations).

³ OCR's *Case Processing Manual* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>

analysis and may not be foreclosed solely on the basis of bottom-line measures such as grades.

The District shall ensure its Section 504 *Procedures* comport with the following:

- a. The expanded definitions of physical and mental impairments and major life activities in accordance with the ADA Amendments Act;
- b. The following language in accordance with the ADA Amendments Act:
 - i. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as: (1) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; (2) use of assistive technology; (3) reasonable accommodations or auxiliary aids or services; or (4) learned behavioral or adaptive neurological modifications. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity;
 - ii. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability;
 - iii. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
 - iv. The definition of disability shall be construed in favor of broad coverage of individuals under Section 504 and Title II, to the maximum extent permitted by the terms of those laws.
- c. The following language in accordance with the Section 504 regulations at 34 C.F.R. §§ 104.33 and 104.34 (free appropriate public education (FAPE) and educational setting):
 - i) The District shall provide a FAPE to each qualified student with a disability in the District's jurisdiction. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met, and complies with applicable federal regulations;

- ii) The District shall educate, or shall provide for the education of, each qualified student with a disability in its jurisdiction with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. The District shall place a student with a disability in the regular educational environment unless it is demonstrated by the District that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily; and
 - iii) The District shall ensure that students with disabilities participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the student with a disability. Nonacademic and extracurricular services and activities include, but are not limited to, meals, recess periods, counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the District, referrals to agencies which provide assistance to students with disabilities, and employment of students.
- d. The following language in accordance with the Section 504 regulation at 34 C.F.R. § 104.35 (evaluation and placement):
- i) The District shall conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related services, before taking any action with respect to the initial placement of the student in regular or special education and any subsequent significant change in placement. The District shall ensure that:
 - 1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
 - 2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
 - 3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

- ii) The District shall ensure the following actions are taken when interpreting evaluation data and making placement decisions:
 - 1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
 - 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, and the placement options. A parent(s) or guardian is a required participant if he or she is a person knowledgeable about the student;
 - 4) Ensure that the placement decision is made in a timely manner, and in the least restrictive environment in accordance with 34 C.F.R. § 104.34.
- iii) The District shall ensure that students with disabilities who have been provided special education or related services are periodically reevaluated.
- e. The revised *504 Procedures* will clarify the difference between (1) the procedures to be used if a parent/guardian wishes to dispute a decision concerning the identification, evaluation or placement of a student with a disability and (2) the procedures to be used if a parent/guardian wishes to file a complaint alleging that a student with a disability has been subjected to discriminatory treatment (e.g., harassment, exclusion from a program or activity, or denial of access).

REPORTING REQUIREMENT: By May 1, 2015, the District will provide OCR with a draft copy of its revised Section 504 policies and procedures developed pursuant to item 1 for review and approval.

- 2. Within 60 calendar days of written notification from OCR that its Section 504 Procedures are consistent with Section 504/Title II requirements, the District will adopt and implement the procedures, publish the procedures in its student/parent and employee handbooks and post the procedures on its website in a section easily accessible to students and parents.

REPORTING REQUIREMENT: Within 30 calendar days of the publishing of the procedures as required by item 2, the District will provide OCR documentation evidencing it published its revised Section 504 policies and procedures as required by item 2 of this Agreement.

TRAINING

3. By August 15, 2015, and annually thereafter, the District will provide Section 504/Title II training⁴ to all administrators, teachers and staff, including individuals responsible for implementing Section 504/Title II including the designated contact person(s) for complaints of discrimination under Section 504/Title II. The training must include, at a minimum:
 - (a) a review of the District’s revised Section 504 policies and procedures;
 - (b) a review of the District’s procedure for referring a student for a Section 504/Title II evaluation;
 - (c) a review of the District’s obligation to provide a free appropriate public education to each qualified student with a disability in its jurisdiction;
 - (d) a review of the District’s obligation to ensure that the evaluation and placement process includes consideration of information from a variety of sources, including input from parents/guardians.
 - (e) a review of the District’s obligation to ensure that determinations as to whether a student is a qualified individual with a disability are made by a group of individuals knowledgeable about the student, including the student’s parent or guardian; and
 - (f) a review of the District’s obligation to ensure Section 504/Title II meetings are conducted in accordance with Section 504 and the implementing regulation, at 34 C.F.R. Section 104.35 (evaluation and placement) and Section 104.36 (procedural safeguards).

REPORTING REQUIREMENT: Within 30 calendar days of completing the training described in item 3 of this Agreement, the District will provide OCR with documentation confirming the completion of item 3. The documentation must identify the following: 1) the date, time and location of the training; 2) the topics addressed at the training (the District may provide OCR an outline of the training and a copy of the materials disseminated at the training); 3) the name(s), title(s), and credentials of the individual(s) who conducted the training; and 4) the name and title of each District administrator or employee who attended the training (a sign-in sheet with the attendees’ names and titles is sufficient). The District need not provide OCR

⁴ The training may be completed in-person or electronically.

documentation of subsequent annual training unless OCR requests such documentation.

4. By December 31, 2015, the District will provide training to the Section 504/Title II coordinator(s) regarding their specific responsibilities as coordinator's for Section 504 and Title II and the District's internal policies and procedures related to 504 and Title II.

REPORTING REQUIREMENT: Within 30 calendar days of completing the training described in item 4 of this Agreement, the District will provide OCR documentation showing the Section 504/Title II coordinators have received appropriate training regarding their responsibilities under Section 504 and Title II, and the District's internal policies and procedures related to Section 504 and Title II. The documentation must identify the following: 1) the date, time and location of the training(s); 2) the topics addressed at the training(s) (the District may provide OCR an outline of the training and a copy of the materials disseminated at the training); 3) the name(s), title(s), and the credentials of the individual(s) who conducted the training(s), if available.

INDIVIDUAL REMEDY

5. By April 1, 2015, the District will send the Complainant a written notice by certified mail that it will conduct an evaluation of the Student if she reenrolls the Student within the District within 6 months of receiving the notice from the District. Within 30 calendar days of the Student's reenrollment within the District, the District will conduct an evaluation following evaluation procedures and procedural safeguards, which meet or exceed the requirements outlined in 34 C.F.R. §§ 104.34, 104.35 and 104.36. The team, which will include the Complainant, will also assess the Student's educational needs to determine whether the Student is entitled to compensatory education because of a loss in educational benefit as a result of the District's failure to evaluate the Student under Section 504 during the 2013-14 school year. If the team determines compensatory education is needed, the team will include in the Section 504 plan or IEP, a schedule for providing the compensatory educational services to the Student within 6 months from the date of the Section 504 plan or IEP.

REPORTING REQUIREMENT: By September 1, 2015, the District shall provide written notice to OCR of the Complainant's acceptance or refusal to have her son reenrolled in the District and evaluated under Section 504.

6. If the Complainant reenrolls the Student and agrees to the evaluation, within 30 calendar days of the completion of the evaluation meeting, the District will provide

written notice to the Complainant of the outcome of the meeting, by certified mail. This notification must include a copy of any IEP or Section 504 plan, including any schedule for providing compensatory educational services that were developed as a result of the meeting, notation of the Student's educational placement, an explanation of the information considered by the evaluation team in determining an appropriate placement for the Student, and notification of procedural safeguards.

REPORTING REQUIREMENT: Within 30 calendar days of providing the written notice described in item 6 of this Agreement, the District shall submit a report to OCR which includes the following: (1) a copy of the written notice provided to the Complainant of the outcome of the evaluation meeting; (2) the participants in the evaluation meeting; (3) the information considered by the team; (3) an explanation for the decision(s) made by the evaluation team, including the decision regarding any needed compensatory educational services; (5) a copy of the Section 504 plan or IEP, including the schedule to provide the compensatory educational services, if determined necessary.

If the team determines compensatory services are necessary, prior to implementing any compensatory services, the District will submit the agreed-upon compensatory services to OCR for its review to determine whether the District complied with the procedural requirements of the regulation implementing Section 504 at 34 C.F.R. §§ 104.34, 104.35 and 104.36 in making its determination.

Once the District receives OCR's approval of the compensatory services, the District will provide the services and will provide to OCR a copy of written notification to all staff responsible for providing the compensatory educational services.

REPORTING REQUIREMENT: Within 30 calendar days of the completion of the compensatory services, the District shall provide documentation to OCR of the dates, times and locations that the compensatory services were provided to the Student, a description of what was provided, and the name(s) and title(s) of the service provider(s).

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II, at 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. 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 at 34 C.F.R. Part 104, and Title II at 28 C.F.R. Part 35, 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 a minimum of 60 (sixty) calendar days to cure the alleged breach.

Allen Konicek, Superintendent
Burlingame Public Schools USD 454

Date