

## **RESOLUTION AGREEMENT**

Lockwood R-1 School District

OCR Docket Number

07151025

The Lockwood R-1 School District (District), Lockwood, Missouri, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), in order to resolve the allegation against the District in OCR Docket No. 07151025, and to ensure compliance with 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. Prior to the completion of OCR's investigation, the District agreed to resolve the allegation in this complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Accordingly, to ensure compliance with Section 504/Title II and/or its implementing regulations and to resolve the allegations of this complaint and any other issues identified by OCR during the course of its investigation of this complaint, the District voluntarily agrees to take the following actions:

### **I. GENERAL PROVISIONS**

This Agreement resolves the allegations in OCR Docket No. 07151025 and does not constitute an admission by the District of any violation of Section 504, Title II, or any other law.

This Agreement shall become effective upon the District's receipt of a letter from OCR advising the District that this Agreement resolves the allegation made in OCR Docket No. 07151025.

OCR agrees to discontinue its investigation of OCR Docket No. 07151025 based upon the District's commitment to take the actions specified in this Agreement which, when fully implemented, will resolve the allegation in this case and any other issues identified by OCR during the course of its investigation.

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 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; provided that any contact with or request of the District by OCR be communicated through the District's attorneys assigned to this case.

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, which were at issue in these cases. OCR will consider the District to have fulfilled the terms of this Agreement and to be in compliance with the regulations implementing Section 504 and Title II upon OCR's determination that the District has completed the three Reporting Requirements listed below in Section II.

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 sixty (60) calendar days to cure the alleged breach.

## **II. RESOLUTION PROVISIONS**

### **A. Individual Remedy**

1. Within sixty (60) calendar days from the date this agreement is executed, the District will initiate an evaluation and convene a multidisciplinary team (including the Complainant) to determine whether the Complainant's son (hereinafter, "the Student") is a qualified individual with a disability as defined by the regulation implementing Section 504 at 34 C.F.R. § 104.3(j) and (l). If the District determines the Student is a qualified individual with a disability under Section 504, the District will make an evaluative determination as to what regular or special education and related aids and services, if any, the Student requires to receive a free appropriate public education, as defined by 34 C.F.R. § 104.33.
2. If the multidisciplinary team determines that the student is a qualified individual with a disability under Section 504, the multidisciplinary team will also consider whether it is appropriate under Section 504 for the student to receive compensatory services and, if so, which type of services should be provided. The District's determinations will be made in accordance with the procedural requirements of the regulation implementing Section 504 at 34 C.F.R § 104.35; specifically, in interpreting evaluation data and making placement decisions, the District shall: a) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; b) ensure that the information obtained from all such sources is documented and carefully considered; and c) ensure that the placement decisions are made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options. If it is determined that compensatory education services are appropriate:

- a. The team will discuss and determine the type, frequency, duration, and location of appropriate compensatory services that will accommodate the Student's schedule.
- b. Compensatory services will be provided at no cost to the Complainant and will not be scheduled during the Student's school day or other educational and non-academic activities associated with his school. In addition, the provision of any tutoring or educational programs will be provided by qualified staff.
- c. The District and the Complainant may mutually agree to change the schedule of compensatory services, including the type of compensatory services, based on the individual needs of the Student, which may change over time. If the parties change the schedule or type of compensatory services, the change will be reflected in a written agreement signed and dated by the District and the Complainant.
- d. The District shall not be obligated to provide specific compensatory services if the Complainant declines those services in writing or does not respond to the District's offer within two weeks of the date of the District's offer. If the Complainant does not make the Student available at the scheduled date or time for a compensatory 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.
- e. If applicable, the District will provide the Student transportation to and from the location of the compensatory services. The District also may reimburse the Complainant for round-trip mileage from his residence or other location to the location of compensatory services, for each day of the Student's compensatory services sessions if he chooses to transport the Student instead of accepting transportation from the District.
- f. In addition, the District will provide notice of its decisions and notice of Section 504 procedural safeguards/due process rights pursuant to 34 C.F.R. § 104.36 (notice, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by the parents/guardians and representation by counsel, and a review procedure) to the Student's parents.

#### REPORTING REQUIREMENT – INDIVIDUAL REMEDIES:

- a. Within three weeks of the multidisciplinary team meeting to evaluate and analyze compensatory services, the District will provide to OCR for review all documentation and information considered and created by the multidisciplinary team, including if applicable: 1) information provided by the Complainant and the District, 2) a sign-in sheet with the date of the team meeting signed by each team member, 3) a copy of the Student's Section 504 plan; 4) the Student's compensatory services plan and specific schedule of services, 5) the specific reason(s) for rejecting any particular compensatory service or program, if applicable; and 6) documentation showing the District provided the

Complainant a copy of the District's notice of the procedural safeguards at the end of the meeting which provided explanation to the Complainant of her right to challenge the team's determination of compensatory services via a Section 504/Title II impartial hearing.

- b. Within one week of receiving OCR's response to the information provided regarding the multidisciplinary team meeting to determine eligibility and compensatory services, the District will send a letter to the Complainant enclosing a schedule of the specific compensatory services, classes, or programs the team agreed to, including the anticipated dates and amount of compensatory time for each. The letter will be sent certified mail, return receipt requested, and the OCR investigator will be copied on the letter.
  - c. If it is determined that compensatory services are needed, the District will maintain a log specifying the date and the start and end time that compensatory services were provided to the Student for each session, class, or program, along with the amount of compensatory services time. The District will provide OCR a copy of the log at the end of each academic semester (and summer, if applicable) until the District has provided the required amount of compensatory services.
3. Within fifteen (15) calendar days from the date this Agreement is executed, the District, in consultation with the Complainant, will identify a contact person at the Student's school, such as a counselor, who can answer questions regarding parental communication and assist the Complainant and his son with any other concerns regarding implementation of the Student's 504 plan. The District will ensure that the individual identified to be the contact person pursuant to this paragraph is knowledgeable on the District's obligation to appropriately provide services under Section 504 and Title II. By letter or email, the District will notify the Complainant of the contact person's name, telephone number and email address.

**REPORTING REQUIREMENT:** Within fifteen (15) calendar days from the date this Agreement is executed the District will provide OCR documentation showing it has provided the Complainant a contact person and provided the contact information described above.

## **B. Training**

4. By **January 1, 2016**, the District will provide training on the subject of Section 504 and Title II compliance to District officials and staff, including but not limited to, administrators teachers, paraprofessionals, counselors, process coordinators, nurses and any other individuals who may be involved in the identification, evaluation, and placement of students suspected of having disabilities at the Student's current school. The training will be conducted by an individual(s) knowledgeable about the laws and

issues pertaining to Section 504 and Title II. The District's training will include the following topics and activities:

- a) Information regarding the District's Section 504 and Title II policies, procedures, manuals, and forms.
- b) The District's requirement, pursuant to the Section 504 regulation at 34 C.F.R. § 104.33(a) to provide a FAPE to all qualified students with a disability in its jurisdiction and that the provision of a FAPE is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled students as adequately as the needs of non-disabled students are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.
- c) The District's requirement pursuant to Section 504 at 34 C.F.R. § 104.37 to provide non-academic and extracurricular services, including athletics, transportation, recreational activities and non-curriculum field trips in such a manner as is necessary to afford all students with disabilities an equal opportunity for participation.
- d) The Section 504 regulation at 34 C.F.R. § 104.3(j)(1)(i) definition of a qualified individual with a disability as any person who has a physical or mental impairment which substantially limits one or more major life activities or has a record of or is regarded as having such an impairment. Examples of physical and mental impairments shall be discussed.
- e) The eligibility criteria under Section 504 and Title II (including information on the ADA Amendments Act that requires a determination of whether an impairment substantially limits a major life activity to be made without regard to the ameliorative effects of mitigating measures), including examples of the circumstances and situations that obligate the District to conduct an evaluation under Section 504. The examples should include scenarios that demonstrate the coordination sometimes required between District/school departments to implement services.
- f) The District's obligation pursuant to 34 C.F.R. § 104.3 (and under 28 C.F.R. § 35.104), to consider the full range of major life activities (including, but which are not limited to, academic performance and/or educational impact) of a qualified individual with a disability, when identifying and evaluating a student who needs or is believed to need regular or special education and related aids and services due to a disability under Section 504.
- g) The District's Section 504 referral and evaluation process and how it interfaces with student referrals and evaluations conducted pursuant to the Individuals with Disabilities in Education Act. The training will also include an explanation of the legal rights and responsibilities afforded students under Section 504 versus any school obligations that may exist to students receiving services under an individualized education plan.

- h) The District's system of procedural safeguards under Section 504, including what it includes, and when and how the system of procedural safeguards is implemented, including when the District's procedural safeguards document should be provided to parents/guardians.
- i) Information regarding disability discrimination and disability harassment, including a description of the District's nondiscrimination policies and procedures, the identification of the District's Section 504/Title II compliance Coordinator, and how and to whom to report incidents of disability discrimination or harassment.

**REPORTING REQUIREMENT:** By **February 1, 2016**, the District will provide OCR documentation showing it has completed the training described above for the 2015-16 school year. The documentation must identify: a) the date(s) and time(s) of the training; b) the topics addressed at the training(s) (the District may provide OCR a copy of the materials disseminated at the training); c) the name(s), title(s), and credentials of the individual(s) who conducted the training; and d) 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). OCR may be available to provide technical assistance and training to the District upon request.

The District commits to provide training to employees regarding Section 504 and Title II on an annual basis; provided that any such annual training shall not be considered a part of this Agreement, shall not be subject to continued monitoring by OCR, and shall not be interpreted as an obligation or term of this Agreement to be fulfilled by the District prior to OCR's closing of OCR Docket No. 07151025.

### **C. Section 504 and Title II policies and procedures**

- 5) The District shall review and revise as appropriate the District's Section 504 and Title II policies, procedures, manual, forms, and notices to comply with Section 504 and Title II, including the Americans with Disabilities Act Amendments Act of 2008 (ADA Amendments Act),<sup>1</sup> and the applicable federal regulations, including Section

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<sup>1</sup> The definition of a qualified individual with a disability was amended by the ADA Amendments Act (P.L. 110-325), which became effective on January 1, 2009. The Act also amended Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. § 705).

504 regulations at 34 C.F.R. §§ 104.31 through 104.35 regarding the identification, evaluation, and educational placement of students who, because of a disability, need or are believed to need special education or related services. The District's Section 504 and Title II policies, procedures, handbooks, and notices shall include, but are not limited to:

- a) The expanded definitions of physical and mental impairments, in accordance with the ADA Amendments Act, including the following.
- b) The following language in accordance with the Section 504 regulations at 34 C.F.R. §§ 104.32, 104.33, and 104.34 (identification, free appropriate public education (FAPE), and educational setting):
  - i) The District shall annually undertake to identify and locate every qualified child with a disability residing in the District's jurisdiction who is not receiving a public education and take appropriate steps to notify children with disabilities and their parents or guardians of the District's duties under Section 504 and Title II. The District shall include a provision addressing Section 504 and Title II in the District's child find publications, including newspaper notices, letters, flyers, and brochures.
  - ii) Examples of situations in which school personnel may reasonably conclude that a student needs or is believed to need special education or related aids and services, including 1) when a teacher, based on observation of or work with the student, expresses the view that an evaluation is needed, or 2) when the parent of a student has requested an evaluation.<sup>2</sup>
  - iii) The District shall provide a FAPE to each qualified student with a disability. 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.
  - iv) 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.

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<sup>2</sup> See OCR's guidance entitled *Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools* (Q&A on the Amended ADA), answer to question # 9. This guidance is available on OCR's website at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>.

- v) The District shall provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. These 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.
- c) The following language in accordance with the Section 504 regulation at 34 C.F.R. § 104.35 (evaluation and placement): 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.
- d) The District shall ensure the following actions are taken when interpreting evaluation data and making placement decisions:
  - i) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.
  - ii) Establish procedures to ensure that information obtained from all such sources is documented and carefully considered.
  - iii) 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.
  - iv) 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.
- e) The District shall ensure that students with disabilities who have been provided special education or related services are periodically reevaluated.
- f) The District shall include the name or title, address, telephone number, and email address of the District's designated Section 504 and Title II compliance coordinator.
- g) The District shall revise the District's Section 504/Title II procedural safeguards notice, and any related provisions in the District's Section 504/Title II policies, procedures, manual, and forms, to comply with 34 C.F.R. § 104.36, including the



following revisions to the District's procedural safeguards notice:

- i) Insert an anti-retaliation provision.
- ii) Update OCR's address, including OCR's email address.
- iii) Update the District's Section 504/Title II coordinator contact information to include the coordinator's address and email address.

REPORTING REQUIREMENT: By **September 1, 2015**, the District will provide to OCR copies of its draft revised Section 504 and Title II policies, p r o c e d u r e s manual, and procedural safeguards notice for OCR's review and approval.

**D. Communication of Section 504 and Title II policies and procedures**

- 6) The District shall communicate its revised Section 504 and Title II policies, procedures, manual, forms, and notice of procedural safeguards (policies and procedures), to all District administrators, board members, officials, and employees by:
  - a) Disseminating those revised policies and procedures via the District's electronic communications (email) system.
  - b) Including those revised policies and procedures on the District's website.

REPORTING REQUIREMENT: Within 30 calendar days of receiving OCR's approval of the District's revised Section 504 and Title II policies and procedures, the District will provide to OCR the following:

- a) A copy of the District's email message and attachments distributing the revised policies and procedures via the District's email system.
- b) Links to the policies and procedures on the District's website.

/S/ Bill Rogers

5/26/15

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Superintendent

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Date