

## RESOLUTION AGREEMENT

Center #58 School District  
OCR Docket Number 07151032

The Center #58 School District (District), Kansas City, Missouri, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the above-referenced discrimination complaint against the District and to ensure compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and the implementing regulations of these federal laws.

The District is resolving this complaint during OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual*.<sup>1</sup> 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:

### REVISION AND PUBLICATION OF NOTICE OF NONDISCRIMINATION

- 1) The District shall revise the District's combined notice of nondiscrimination in accordance with Section 504, Title II, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (Title IX); the Age Discrimination Act of 1975, 42 U.S.C. § 6101; Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d; and the Boy Scouts of America Equal Access Act (Boy Scouts Act), and the implementing regulations of these federal laws. The District may consult with OCR for technical assistance in revising the notice of nondiscrimination, and may refer to OCR's policy guidance entitled *Notice of Non-Discrimination*, including the sample combined notice of nondiscrimination,<sup>2</sup> and OCR's *Dear Colleague Letter* (April 4, 2011, page 6, pertaining to notices of nondiscrimination).<sup>3</sup> The revised notice of nondiscrimination must include the name or title, address, telephone number (including any TTY or TDD number), and email address of the District employee(s) designated to coordinate efforts to comply with and carry out responsibilities under Title IX, Section 504, Title II,<sup>4</sup> and the Age Act.<sup>5</sup> The District will ensure that the District's notice of nondiscrimination references the Boy Scouts Act and is consistent in all publications, including the provision of consistent coordinator designations.

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<sup>1</sup> OCR's *Case Processing Manual* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

<sup>2</sup> OCR's guidance entitled *Notice of Non-Discrimination* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.

<sup>3</sup> OCR's April 14, 2011 *Dear Colleague Letter* may be accessed at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.

<sup>4</sup> The designated coordinator requirement is applicable for public entities that employ 50 or more individuals under Title II.

<sup>5</sup> While these federal laws explicitly require the designation of a compliance coordinator, OCR also recommends the designation of a compliance coordinator for Title VI and the Boy Scouts Act.

**REPORTING REQUIREMENT:** By **June 1, 2015**, the District will provide to OCR a draft, revised combined notice of nondiscrimination in accordance with this Agreement for OCR’s review and approval.

- 2) The District shall prominently display the notice of nondiscrimination on the homepage and each section of the District’s website. The online notice of nondiscrimination shall contain a link to the District’s anti-discrimination, anti-harassment, and anti-retaliation policies and grievance procedures, including grievance procedures to address discrimination based on disability.

**REPORTING REQUIREMENT:** By **June 30, 2015**, the District will provide to OCR a link to the revised combined online notice of nondiscrimination with embedded links.

- 3) The District shall publish and prominently display the revised, OCR-approved combined notice of nondiscrimination in an easily visible location, in student and employee hard-copy and online publications, including, but not limited to, the following publications: a) announcements; b) bulletins; c) catalogs; d) student and employee application forms; e) board policies and grievance procedures for discrimination complaints; f) student, parent and staff handbooks and student codes of conduct; g) recruitment materials; h) employee handbooks or materials; and i) general publications. For publications such as student, parent, and staff handbooks, the notice should be placed at the beginning of each handbook in a section entitled *Notice of Nondiscrimination* or a similar title.

**REPORTING REQUIREMENT:** By **June 30, 2015**, the District will provide to OCR a current list of the hard-copy and online publications containing the revised, OCR-approved combined notice of nondiscrimination, including copies of the hard-copy publications containing the revised notice.

## **SECTION 504 AND TITLE II POLICIES AND PROCEDURES**

- 4) The District shall review and revise 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>6</sup> and the applicable federal regulations, including Section 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:

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<sup>6</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).

- a) The expanded definitions of physical and mental impairments, in accordance with the ADA Amendments Act.
- 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>7</sup>
  - iii) 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.
  - 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. 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.
  - v) 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

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<sup>7</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.

- 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):
- 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.
  - 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. Grades alone are an insufficient basis upon which to determine whether a student has a disability and grades may not be the determinative factor in deciding whether a student with a disability needs special education or related aids or services. Grades are just one consideration and do not provide information on how much effort or how many outside resources are required for the student to achieve those grades.<sup>8</sup>
    - (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.

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<sup>8</sup> See Q&A on the Amended ADA, answer to question # 9.

- d) The District shall delete language in the District’s 504 Manual and any other documentation requiring a parent or guardian to provide a written release or authorization to the District to obtain further information from diagnosing or treating physicians, psychologists, or other professionals. The District also shall delete language in the District’s 504 Manual that the District will consider a student not disabled under Section 504 if the student’s parent or guardian refuses to provide to the District a written release or authorization to obtain medical, psychological, or other information.
- e) The District shall delete language in the District’s 504 Manual and any other documentation indicating a student’s parent or guardian is not a required or mandatory participant of a 504 multidisciplinary team and replace that language with “a student’s parent or guardian is a required member of the 504/Title II multidisciplinary team for the student if the parent or guardian is knowledgeable about the student.”
- f) The District shall reduce 30 days to 15 days in paragraphs 3 and 8 of the 504 referral/evaluation procedures on pages 23 and 24 of the District’s 504 Manual.
- g) The District shall revise paragraphs 11-16 to eliminate a determination or pre-determination of a disability or eligibility under Section 504 and Title II before an evaluation is completed.
- h) The District shall add “Title II” to the title of the District’s “504 Manual.”
- i) 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.
- j) 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 **June 30, 2015**, the District will provide to OCR copies of its draft revised Section 504 and Title II policies, procedures, manual, and procedural safeguards notice for OCR’s review and approval.

### **COMMUNICATION OF SECTION 504 AND TITLE II POLICIES AND PROCEDURES**

- 5) 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.

### **INDIVIDUAL RELIEF**

- 6) **Within three weeks after this Agreement** is signed, the District will convene a meeting at a mutually agreeable date and time, which shall include the parents and other individuals knowledgeable about the Complainant’s son (team), to discuss and determine specific compensatory education or services (e.g., one-on-one tutoring outside the academic day, summer classes, counseling, etc.), to address the alleged denial of a free appropriate public education (FAPE) resulting from the failure to evaluate and determine the Complainant’s son (Student) eligible under Section 504 and Title II, and the failure to create and implement a Section 504/Title II Plan. A determination of compensatory education or services (compensatory services) will be made for the time period from at least the beginning of the 2012-13 school year until the Student’s last day of enrollment with the District on February 27, 2015. If the parties are not able to agree on a date and time for this team meeting within one week after this Agreement is signed, OCR will determine a date and time after consultation with the parties, and email the date and time of the meeting to the parties.

- 7) The team will discuss and determine the type, frequency, duration, and location of appropriate compensatory services that will accommodate the Student's schedule. 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.
- 8) 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.
- 9) 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 her son 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. The District shall provide to the Complainant via email the name and contact information for any service provider or tutor prior to the start of compensatory services, and the Complainant shall contact directly the service provider or tutor at least 5 hours prior to any compensatory services session or program if the Complainant needs to cancel a session or program. If compensatory services are missed 5 consecutive times without advance notice by the Complainant to the service provider or tutor, or without written medical documentation of an illness or injury, the District may discontinue those compensatory services.
- 10) 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 her residence or other location to the location of compensatory services, for each day of the Student's compensatory services sessions if she chooses to transport her son instead of accepting transportation from the District.
- 11) The District will provide to the Complainant via email a copy of the District's notice of the procedural safeguards prior to the team meeting with a written explanation of the Complainant's right to challenge the team's determination of compensatory services via a Section 504/Title II impartial hearing.

REPORTING REQUIREMENTS FOR ITEMS 8-13, ABOVE:

- a) **Within one week of the multidisciplinary team meeting** to determine compensatory services, the District will provide to OCR for review all

documentation and information considered and created by the multidisciplinary team, including 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 compensatory services plan and specific schedule of services, and 4) the specific reason(s) for rejecting any particular compensatory service or program, if applicable.

- b) **Within one week of receiving OCR’s response to the information provided regarding the multidisciplinary team meeting** to determine 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, and a copy of the District’s notice of procedural safeguards. The letter will be sent certified mail, return receipt requested, and the OCR investigator will be copied on the letter.
- c) 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 to the designated OCR staff member via email 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.

## **TRAINING**

- 12) The District will provide training on the subject of Section 504 and Title II compliance and the anti-discrimination and anti-retaliation requirements of those laws, to District officials and staff, including administrators, teachers, substitute teachers, paraprofessionals, substitute paraprofessionals, counselors, the designated Section 504 compliance coordinator and investigator(s), and other District staff who teach, supervise, or provide services to District students with disabilities. The training will be conducted by an individual(s) knowledgeable about the laws and issues pertaining to Section 504 and Title II compliance and the specific topics listed below. The training will include:
  - a) A discussion and distribution to trainees of the District’s Section 504 and Title II policies, procedures, manual, and notice of procedural safeguards.
  - b) The identification of the District’s Section 504 and Title II coordinator, including required contact information, and an explanation of the responsibilities of the coordinator(s).



- c) A discussion of the general anti-discrimination provisions of Section 504 and Title II, including the prohibition against denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service of the District.<sup>9</sup>
- d) A discussion of the District's child find obligations and 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. This discussion will include a review of OCR's Q&A on the Amended ADA, including the answer to question # 9 in that guidance document.
- e) A discussion and distribution to trainees of the District's revised notice of nondiscrimination, and anti-discrimination and anti-retaliation policies and procedures, including the District's grievance procedures for complaints of discrimination and how to file a complaint of discrimination.

**REPORTING REQUIREMENT:** By **September 15, 2015**, the District will provide training in accordance with the requirements of this Agreement. By **September 30, 2015**, the District will provide to OCR documentation showing it has completed the training. The documentation must identify the:

- a) Date, time, and location of the training.
  - b) Topics addressed at the training (the District may provide OCR an outline of the training and copy of the materials disseminated at the training).
  - c) Name(s), title(s), and credentials of the individual(s) who conducted the training.
  - d) Name, title, and work location of each employee who attended the training (a sign-in sheet with the attendees' names, signatures, titles, and work locations is sufficient).
- 13) 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 this case.

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<sup>9</sup> See, 28 C.F.R. § 35.130(b)(1)(i), (ii) and (vii) (Title II) and 34 C.F.R. § 104.4(b)(1)(i), (ii) and (vii) (Section 504).

- 14) 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 and Title II, which were at issue in this case.
  
- 15) 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.

The person(s) signing for the District represents that he is authorized to bind the District and to this Agreement.

For the District:

/s/ David A. Leone  
David A. Leone, Superintendent of the District

4/30/15  
Date