

RESOLUTION AGREEMENT

Cape Henlopen School District
OCR Case Number 03-22-1290

The Cape Henlopen School District (the District) agrees to fully implement this Resolution Agreement (Agreement) to resolve Office for Civil Rights (OCR) Case No. 03-22-1290. The District submits this Agreement to ensure compliance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities.

In order to address the violations identified in OCR's investigation of complaint 03-22-1290, the District agrees to the following terms:

Action Step I: Notice to Staff

1. The District will distribute via email, a notice to all District staff, which affirms the District's obligations to not discriminate on the basis of disability. The notice will include, but need not be limited to, the items set forth in Action Steps I.1(a)-(d), below.
 - a. Pursuant to the Section 504 regulation, at 34 C.F.R. § 104.4(a) as well as Title II, at 28 C.F.R. § 35.130(a), no qualified individual shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.
 - b. Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program.
 - c. The District is obligated to provide a free appropriate public education (FAPE) to each qualified student with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability in accordance with Section 504 at 34 C.F.R. § 104.33.
 - d. Harassment and bullying of a student with a disability that results in a denial of FAPE under Section 504 must be remedied.

Reporting Requirement:

1. **Within 15 calendar days of signing this Agreement**, the District will provide OCR with a copy of the notice and email message, including a list of recipients by name or title, to OCR.

Action Step II: School and District Staff Training

A. Training

1. The District will provide training during the 2024-2025, 2025-2026, and 2026-2027 school years to all employees at [redacted content] School, including administrators and the Transportation Specialist and Transportation Supervisor, and also to District level staff and administrators who have responsibilities related to investigating disability harassment complaints. The training will address the following topics:
 - a. Title II/Section 504's prohibition on discrimination based on disability;
 - b. Disability-based harassment, including what constitutes disability-based harassment and how to recognize potential incidents;
 - c. Examples of harassment on the basis of disability;
 - d. The District's procedure for resolving complaints of disability discrimination, including disability-based harassment;
 - e. Instructions on how to conduct and document reliable and impartial investigations of alleged discrimination on the basis of disability;
 - f. School administrators' responsibilities to investigate such complaints;
 - g. A review of the appropriate legal standards to apply in such investigations, the importance of evaluating the totality of the circumstances, including previous acts of harassment, and the need to take appropriate measures to assure that harassment does not continue during the investigation or recur thereafter;
 - h. A statement that a student or parent/guardian who has reported alleged incidents of harassing behavior must be notified of the steps the District is taking in response to the reported incident(s), and guidance to staff on how and when to provide this notification;
 - i. A description of the steps the District will take in response to any harassing behavior discovered, including actions to ensure that the offending student(s) understands the seriousness of the alleged offense and, where applicable, progressive disciplinary steps;
 - j. The existence of OCR and its authority to enforce Title II and Section 504;
 - k. The District's responsibility to consider the effects of bullying or harassment of a student with a disability, on any basis, including whether the student was denied a free appropriate public education (FAPE), that must be remedied under Section 504; and
 - l. A distribution of written materials that contain the information discussed.
2. The District will ensure that any new District employees hired after the training outlined above in Action Step II.A.1, who are tasked with investigating reports of disability harassment, receive the training. Such training may be provided by means of a video recording of training sessions previously presented by the District.

Reporting Requirements:

1. **By July 12, 2024**, the District will provide to OCR draft training materials and the name(s), title(s)/positions(s), and qualifications of one or more qualified individuals to provide the training required under Action Step II.A. The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the training materials and trainer(s).
2. After receiving OCR's final approval of the training materials and trainer(s), the District will provide the training annually by October 30 in the years 2024, 2025, and 2026.. The District will ensure that School and appropriate District level staff are trained and will submit to OCR within 30 days of the completion of the training: (i) the date, time and location of the training; (ii) confirmation that the approved training materials were used; (iii) confirmation that the approved trainer(s) was used; (iv) the names and titles/positions of staff who attended the training; and (v) the names and titles/positions of staff who did not attend the training, an explanation for each person's absence, and a plan to train each person. The District will promptly and fully address OCR's feedback, if any, until the District receives notice from OCR that no further reporting is required for this item.

B. Training Surveys

1. The District will assess the effectiveness of the training referenced in Action Step II.A by conducting training assessment surveys at the conclusion of the training each year, of all staff who attended the training(s). The survey will specifically inquire about their knowledge and perceptions about their obligation to report all allegations of possible disability harassment, and the process for doing so, and will specifically inquire about their knowledge of the process for responding to and investigating disability harassment complaints.

Reporting Requirements:

1. **Within 30 calendar days** of completing the training required under Action Step II.A, the District will provide OCR draft surveys for assessing the effectiveness of the training. The District will promptly and fully address OCR's feedback, if any, until the District receives notice from OCR that no further reporting of this item is required.
2. **Within 30 calendar days** of receiving OCR's final approval of the survey, the District will disseminate the survey to all staff who were trained.
3. **Within 30 calendar days** of disseminating the survey required by Action Step II.B, and by December 1, 2024, 2025, and 2026, the District will provide OCR with the survey results regarding the effectiveness of the training. The District will promptly and fully address OCR's feedback on the results of the assessment survey, including the potential need for additional training, until the District receives OCR's final approval that no further action or reporting is required for this item.

Action Step III: Individual Remedies

A. Reimbursement to Complainant

1. **Within 15 days of signing this Agreement**, the District will write to the Complainant to offer to reimburse the Complainant up to [redacted content] for past counseling, academic, or therapeutic services the Complainant obtained for the Student as a direct result of the disability-based harassment the Student experienced in [redacted content] and/or for future services received for up to one year after the date of the signing of this Agreement. The total amount of reimbursement shall not exceed in total [redacted content] for both past and future counseling, academic, or therapeutic services the Complainant obtained for the Student as a result of the disability-based harassment the Student experienced and is conditioned on reasonable proof of expenditures by or on behalf of Student. The District will reimburse the Complainant within 30 days of receiving proof of expenditures.

Reporting Requirements:

1. **Within 30 calendar days of signing this Agreement**, the District will inform OCR that it has offered to reimburse the Complainant up to [redacted content] for past counseling, academic, or therapeutic services received by the Student after the alleged harassment began and/or for future services received for up to one year after the date of the signing of this Agreement.
2. **Within 60 calendar days of signing this Agreement**, the District will also provide OCR with documentation to show that the District reimbursed the Complainant up to [redacted content] for the services described in III.A.1, if the Complainant provides reasonable proof of expenditures to the District up to one year after the date of the signing of this Agreement.

B. Convening an IEP Team for the Student

1. **By October 4, 2024** the District will convene the Student's Individualized Education Program (IEP) team to determine whether the Student suffered an educational loss during the [redacted content] school year due to the harassment she experienced. The District will invite the Complainant, in writing via regular mail as well as by email, to attend the IEP meeting, at least fifteen (15) calendar days in advance of the meeting, unless the Complainant agrees to waive this requirement. If the District determines that the Student suffered an educational loss due to the harassment she experienced, regardless of the basis, the District will assess whether the Student requires any compensatory or remedial services as a result, and develop a schedule for implementing the services, as appropriate. In making this determination, the IEP team will adhere to the requirements of 34 C.F.R. § 104.35 (evaluation and placement) and § 104.36 (procedural safeguards). The District will ensure that accurate meeting minutes are kept to document this meeting, including

documenting information considered from all sources and all decisions made by the team, which includes the Complainant.

Reporting Requirement:

1. **Within 60 calendar days** of the IEP team meeting required by Action Step III.B.1., the District will provide OCR with documentation demonstrating that it held the required IEP meeting and determined whether the Student requires compensatory education. OCR will review and approve the documentation submitted by the District to ensure that the District has met the procedural and other requirements of the Section 504 implementing regulation, at 34 C.F.R. §§ 104.34, 104.35, and 104.36, in making these determinations.

Specifically, the documentation submitted shall include:

- a) the written invitation sent to the Complainant for the IEP team meeting;
- b) a list of meeting participants;
- c) the information considered by the IEP team;
- d) an explanation for all decisions made, including the team’s decision as to whether the Student suffered an educational loss;
- e) a description of the types of compensatory education or other remedial service options discussed;
- f) a description of and schedule for providing compensatory and/or other remedial services the Student for educational loss (if any);
- g) the notice of procedural safeguards provided to the Complainant; and
- h) a copy of the meeting minutes.

If the District determines that the Student is eligible to receive compensatory and/or other remedial services, the District will provide documentation to OCR of the dates, times, and locations that the services were provided, a description of what was provided, and the name(s) of the service provider(s) within 14 calendar days of the conclusion of services.

Action Step IV: Remedies for Other Students

1. **Within 30 calendar days of signing this Agreement**, the District will send a letter to the parent/guardian of every student that was on the same bus with the Student in [redacted content], to advise them of the alleged conduct of the bus aide. The letter will provide the contact information for a School staff member charged with receiving any additional information regarding alleged harassment experienced by any other student as a result of the bus aide’s conduct in [redacted content]. The letter will provide each parent/guardian with the opportunity to meet with the assigned School staff member to discuss the alleged conduct by the bus aide, and the resulting impact on the student.
2. **Within 30 calendar days** of meeting with the parent/guardian of other students, pursuant to Action Step IV.1, the District will review the information already obtained as a result of its investigation of the bus aide, to determine whether any other student experienced

disability-based harassment due to the bus aide's conduct. If the District concludes that there were other students who experienced harassment due to the bus aide's conduct, consistent with Section 504, the District will investigate each incident promptly and respond appropriately. If the District's investigation reveals that harassment based on disability created a hostile environment for the student, the District will take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects. The District will also notify each student's parent/guardian of the outcome. For a student with a disability who is eligible for FAPE services, the District will determine whether the student experienced a denial in FAPE due to the harassment. In each instance, the District will determine whether the affected student requires additional remedies, such as counseling and compensatory educational services, to address the effects of the bullying or harassment and will offer these remedies to the student's parent/guardian, asking them to accept the offer within 21 calendar days.

Reporting Requirement:

1. **Within 90 days of signing this Agreement**, the District will provide to OCR a copy of all documentation of its assessment of the other students who was on the same bus with the Student in [redacted content], in accordance with Action Steps IV.1 and IV.2. The documentation will include: correspondence with the parent/guardian of each student; a documented review of the information received from the parent/guardian and the information already obtained from the District regarding the bus aide's conduct; documentation of any additional investigation; a conclusion regarding whether the student experienced a hostile environment, and if so, the remedies proposed by the District.

The District understands that by signing this resolution agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirement 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 and obligations of this Agreement.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has demonstrated compliance with all the terms of this Agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. Part 104, and Title II and its implementing regulation at 28 C.F.R. Part 35, which were at issue in this complaint.

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

This Agreement will become effective immediately upon the signature of the District's representative below.

By: /s/_____ Date: 6/17/2024

Name: Dr. Jenny Nauman

Title: Asst. Superintendent