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Student Expectations and Evolving Needs Under ADA/504

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Supplemental Materials

ABOUT THE AUTHOR

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Before joining Grand River Andrea served as Deputy General Counsel and Director of Government Relations & Compliance at Barnard College, where she oversaw all legal and compliance matters. At the State University of New York Andrea represented three colleges and provided system-wide Title IX compliance advice. She has advised federal and state legislators on best practices in campus safety and sexual harassment prevention and served on a state-wide campus working group with prevention and response partners throughout New York. At SUNY, Andrea co-coordinated a working group that created the policies that evolved into New York Education Law Article 129B, a groundbreaking state law providing fair and transparent practices to prevent and respond to sexual and interpersonal violence on campus. Andrea worked in federal higher education lobbying for Rutgers University before attending law school. In 2014, Andrea was awarded the Commissioner's Award from the State University Police, and in 2019 she received the First Decade Award from the National Association of College and University Attorneys. She graduated from Rutgers University and The George Washington University Law School.



Summary of Contents

I. Recent Resolution Agreements

a. University of Stony Brook	
i. <u>Letter</u>	4
ii. <u>Agreement</u>	8
b. The College of New Jersey	
i. <u>Letter</u>	12
ii. <u>Agreement</u>	14
c. Tufts University	
i. <u>Letter</u>	22
ii. <u>Agreement</u>	28
d. University of Miami	
i. <u>Letter</u>	31
ii. <u>Agreement</u>	33

II. U.S. Department of Education Office for Civil Rights Materials

a. <u>2022 Annual Report</u>	40
b. <u>Dear Colleague Letter on Postsecondary Online Accessibility</u>	79
c. <u>Protecting Students with Disabilities</u>	83

III. Articles from Grand River Solutions

a. <u>Andrea Stagg, OCR Announces Resolution Agreement of Disability Discrimination Investigation of Allegheny Valley School District in Pennsylvania</u>	100
b. <u>Andrea Stagg, A Closer Look at the Title IX Proposed Rules: Coordination Between Title IX and Disability/Accessibility Services</u>	102
c. <u>Autism Training for Sexual Assault Counselors</u>	104



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

May 26, 2023

Sent via email only to president@stonybrook.edu

Maurie McInnis, Ph.D.
President
University at Stony Brook
State University of New York
310 Administration Building
Stony Brook, New York 11794-0701

Re: Case No. 02-23-2035
State University of New York at Stony Brook

Dear Dr. McInnis:

By letter dated December 9, 2022, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that it would investigate a complaint filed against the State University of New York - Stony Brook University (the University). The Complainant alleged that the following University facilities at its Southampton campus are inaccessible to individuals with disabilities:

- **Southold Hall** – (a) the automatic door openers at the exterior main entrance are not consistently operational from both inside and outside the building; (b) doors to the common room and laundry room are too heavy; and (c) the elevator car dimensions, including the door width, are too small; and (d) the doors to and at the elevator are too heavy and do not have accessible hardware (Allegation 1);
- **Atlantic Hall** – (a) the second set of interior doors at the main entrance and (b) the interior doors to the two first-floor classrooms, conference room, student lounge, and first-floor restroom (on the left upon entrance) are too heavy (Allegation 2); and
- **Student Center** – (a) the building lacks an accessible entrance because the doors are too heavy; and (b) the restroom doors on the main level are too heavy (Allegation 3).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving Federal financial assistance. In addition, OCR enforces Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. As a

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public post-secondary education system that receives federal financial assistance from the Department, the University is subject to Section 504, Title II, and their implementing regulations.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.” Title II includes a similar requirement for public entities at 28 C.F.R. § 35.149.

In its investigation, OCR reviewed documentation that the University provided and interviewed the Complainant. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as “new construction.” Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, are considered “new construction.”

The University’s Facilities

OCR determined that the University’s Southold Hall (Southold), including its original doors, was constructed in 1965. The University altered Southold when it constructed an elevator in 2007, and installed automatic door openers at the exterior main entrance and common room and constructed the laundry room in 2022.

OCR determined that Atlantic Hall (Atlantic), including its original doors, was constructed in 1965. The University informed OCR that it began renovations on the first floor of Atlantic in October 2019, and the first floor includes two classrooms, a conference room, a student lounge, and a restroom. The University stated that in October/November 2022, it installed automatic door openers at Atlantic’s second set of interior doors at the main entrance, making the entrance to Atlantic Hall accessible; and installed automatic door openers at Atlantic’s first-floor gender neutral restroom.

OCR determined that the Student Center, including its original doors, was constructed in 1966. The University informed OCR that it installed automatic door openers at the two restroom doors on the main level of the Student Center in December 2022, and installed automatic door openers at the Student Center’s interior and exterior doors at the designated accessible entrance in or before March 2023.

OCR determined that Southold’s exterior main entrance, doors to the common room and laundry room, elevator, and doors providing access to the elevator; Atlantic’s second set of interior doors at the main entrance and first floor, including two classrooms, a conference room, a student lounge, and gender neutral restroom; and the Student Center’s interior and exterior doors at the designated accessible entrance¹ and two main-level restrooms that were at issue in this case were renovated

¹ The Student Center has two sets of exterior and interior entrance doors. As stated above, the main entrance and accompanying interior set of doors are not considered new construction, as they were constructed in 1966. The University has designated another entrance as its accessible entrance. The designated accessible entrance has a set of exterior and interior entrance doors and the University installed automatic door openers there in 2022/2023. Under the Department of Justice’s 2010 Americans with Disabilities Act Standards for Accessible Design, the main entrance doors are not required to be accessible as long as the designated accessible entrance and the exterior and interior routes to the designated accessible entrance are found to be accessible.

between 2007 and 2023, and therefore, are considered “new construction” under Section 504 and Title II.

The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing Title II contains a similar requirement at 34 C.F.R. § 35.151. The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all buildings constructed or alterations to existing facilities made after January 18, 1991, must comply with UFAS, or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with AADAG. Pursuant to the regulation implementing Title II, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must conform to UFAS, ADAAG, or equivalent standards. Beginning on March 15, 2012, all new construction or alterations of existing facilities must conform to the Department of Justice’s 2010 Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards), 28 C.F.R. Part 36, Appendix A.

On February 9, 2023, OCR contacted the University to discuss OCR’s Rapid Resolution Process (RRP) pursuant to Section 203 of OCR’s *Case Processing Manual (CPM)*.² On February 15, 2023, the University agreed to voluntarily resolve the OCR complaint to address possible concerns OCR identified with respect to the accessibility of the University’s facilities, including consideration of individualized requests for access to particular facilities. On May 22, 2023, the University voluntarily entered into the attached resolution agreement to resolve these concerns in accordance with Section 302 of OCR’s *CPM*.

Under the agreement, the University agreed that by June 1, 2023, it will ensure that the following designated areas comply with the requirements of the 2010 ADA Standards: the Southold automatic door openers at the exterior main entrance and doors to the common room and laundry room; the Atlantic second set of interior doors at the main entrance and interior doors to the two first-floor classrooms, conference room, student lounge, and first-floor restroom; and Student Center automatic door openers for its interior and exterior doors at the designated accessible entrance and two restroom doors on the main level.

The University also agreed that by August 1, 2025, it will ensure that if the Southold elevator car and doors to and at the Southold elevator are not already compliant with the requirements of UFAS or ADAAG, the University will ensure that they comply with the requirements of the 2010 ADA Standards. The University also agreed that by May 1, 2023, and each semester thereafter until the accessibility of the Southold elevator and cars to and at the Southold elevator is achieved, it shall make a written offer of weekly laundry services at no additional cost to a student who XXXX XXXXXX XXXXX (Student A), as well as to any other student the University identifies who may not be able to access laundry facilities at the University’s Southampton campus due to disability.³

The University further agreed to provide training to all University staff in its Student Accessibility Support Center responsible for the Southampton campus who are involved in evaluating and approving requests for housing accommodations regarding the University’s obligations to consider

² See *CPM* (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>.

³ By email dated XXXXX XX, 2023, an administrator in the University residential life department offered weekly laundry services to Student A, who accepted the offer by email the following day.

requests for housing accommodations based on a student's individual needs, including with respect to accessing laundry services available at the University's Southampton campus.

OCR will monitor the University's implementation of the resolution agreement. Upon the University's compliance with the terms of the Agreement, Section 504 and its implementing regulations at 34 C.F.R. Part 104, and Title II and its implementing regulations, at 28 C.F.R. Part 35, which were at issue in this case, OCR will close the case.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the University with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or David.Krieger@ed.gov; Jonathon LeBeau, Compliance Team Investigator, at (646) 428-3790 or Jonathon.LeBeau@ed.gov; and Eboné Woods, Compliance Team Leader, at (646) 428-3898 or Ebone.Woods@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

cc: Suzanne Shane, Esq.

Attachment

VOLUNTARY RESOLUTION AGREEMENT

State University of New York at Stony Brook Case No. 02-23-2035

To resolve Case No. 02-23-2035, State University of New York at Stony Brook (the University) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504) and Title II, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35 (Title II).

The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as “new construction.” Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered “new construction.” The University’s (1) Southold Hall elevator and doors to and at the elevator (collectively, the Southold elevator facilities), constructed in 2007, and automatic door openers for its common room, laundry room, and main exterior entrance (collectively, the Southold automatic door openers), installed in 2022; (2) Atlantic Hall automatic door openers for its second set of interior doors at the main entrance and first floor (including doors to two classrooms, a conference room, a student lounge, and gender neutral bathroom) (collectively, the Atlantic automatic door openers and first floor facilities), altered/installed in 2019 and 2022; and (3) Student Center automatic door openers for its designated accessible interior and exterior entrance doors and two bathroom doors on the main level (collectively, the Student Center automatic door openers), installed in or around 2022/2023, which were at issue in this case, are considered “new construction” under Section 504 and Title II.

The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing Title II contains a similar requirement at 34 C.F.R. § 35.151. The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all buildings constructed or alterations to existing facilities made after January 18, 1991, must be in compliance with UFAS, or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with AADAG. Pursuant to the regulation implementing Title II, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the Department of Justice’s 2010 Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards), 28 C.F.R. Part 36, Appendix A. The Southold elevator facilities were installed in 2007, and therefore, must comply with UFAS, ADAAG, or equivalent standards. The Southold, Atlantic, and Student Center automatic door openers, and Atlantic first floor facilities were installed in 2019 and 2022/2023, and therefore, must comply with the 2010 ADA Standards.

New and altered facilities (or the identified new or altered part) modified or installed to comply with this Agreement will be readily accessible to and usable by individuals with disabilities pursuant to the 2010 ADA Standards.

Action Item 1

By June 1, 2023, the University will ensure that the Southold, Atlantic, and Student Center automatic door openers and Atlantic doors comply with the requirements of the 2010 ADA Standards, §§ 404.3 – Automatic and Power-Assisted Doors and Gates and 404.2.9 Door and Gate Opening Force.

Reporting Requirement:

By June 15, 2023, the University will provide documentation to OCR (e.g., copies of paid invoices, photographs--including, if requested by OCR, photographs indicating measurements, videos indicating operation, etc.) confirming that the aforementioned doors and automatic door openers comply with the 2010 ADA Standards. OCR will then schedule an on-site visit to inspect the doors and automatic door openers.

Action Item 2

By August 1, 2025, if the Southold elevator facilities do not already comply with the requisite requirements of UFAS or ADAAG, the University will ensure that the elevator facilities comply with the requirements of the 2010 ADA Standards, §§ 407.4 – Elevator Car Requirements; 404.2.7 Door and Gate Hardware; and 404.2.9 Door and Gate Opening Force.

Reporting Requirements:

1. By July 15, 2023, the University will provide: (a) documentation to OCR (e.g., copies of paid invoices, permit(s) from appropriate administrative authority evidencing compliant fire door, photographs--including, if requested by OCR, photographs indicating measurements, videos, etc.) confirming that the Southold elevator facilities comply with the requisite requirements of UFAS or ADAAG; or (b) a report detailing the modifications necessary to ensure that the Southold elevator facilities meet the 2010 ADA Standards consistent with Action Item 2 above (the Initial Report) for OCR's review and approval. The Initial Report will include timeframes for the completion of any alterations, renovations, or new construction as well as an interim plan, including the service contemplated in Action Item 3, for ensuring access to each program or activity operated in Southold Hall pending completion of the modifications.
2. By August 1, 2025, upon completion of all renovations, the University will submit documentation to OCR (e.g., copies of paid invoices, photographs--including, if requested by OCR, photographs indicating measurements, videos, etc.) demonstrating the completion of the modifications or alterations identified in the Initial Report. OCR will then schedule an on-site visit to inspect the Southold elevator facilities.

Action Item 3

By May 1, 2023, and each semester thereafter until the resolution of Action Item 2, the University shall offer in writing, at no additional cost, weekly laundry services (weekly laundry services) to the student (the Student) XXXX XXXXXX XXXXX, as well as any other student the University identifies who may not be able to access laundry facilities at the University’s Southampton campus due to disability. In providing such laundry services, the University will exercise precautions to protect the identity, privacy, and laundry items of any student who receives such services.

Reporting Requirements:

1. By May 1, 2023, and the first day of each semester thereafter until the resolution of Action Item 2 or the end of academic year 2024-2025 (including the summer 2025 semester), whichever occurs sooner, the University will make written offer(s) of weekly laundry services to all students who cannot access laundry facilities at the University’s Southampton campus due to disability.
2. Within five (5) business days of receiving any request for weekly laundry services, the University shall arrange for such services and provide the student with written confirmation of same.
3. Within fifteen (15) days of any student, including the Student, electing to receive or deny weekly laundry services for academic year 2022-2023, the University will provide to OCR the student’s written response, or if the response was verbally made, the student’s name, date of the response, and name(s) and title(s) of University staff the student notified.
4. By the fifteenth (15) day of each semester beginning with the summer 2023 semester, until the resolution of Action Item 2 or the end of academic year 2024- (including the summer 2025 semester), whichever occurs sooner, the University will provide to OCR a log of all instances in which it offered and provided weekly laundry services pursuant to Action Item 3. In lieu of providing a log, the University may submit documentation evidencing the offering and provision of laundry services consistent with Action Item 3 (e.g., copies of correspondence with students evidencing all written offers regarding laundry services, invoices evidencing all occurrences when laundry services were provided, etc.).

Action Item 4

Within 45 days of the resolution of Action Item 2, the University will provide training to any University staff in its Student Accessibility Support Center responsible for the Southampton campus who are involved in evaluating requests for, and making decisions about, approved housing accommodations. The University’s training will cover the University’s obligations to consider requests for housing accommodations based on a student’s individual needs, including laundry services available at the University’s Southampton campus. The training may be provided by University personnel, so long as the staff member(s) are properly qualified to provide such training.



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May 23, 2023

By email only to: foster@tcnj.edu

Kathryn Foster
President
The College of New Jersey
P.O. Box 7718
Ewing, NJ 08628-0718

Re: OCR Docket No. 02-22-6003
The College of New Jersey

Dear President Foster:

This letter is to advise you of the resolution of the compliance review that the U.S. Department of Education (Department), Office for Civil Rights (OCR) initiated in the College of New Jersey (College). OCR investigated whether the College's online programs, services, and activities exclude qualified persons with disabilities from participation in, deny them the benefits of, or otherwise subject them to discrimination under any program or activity, in violation of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. § 104.4 and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35. In addition, OCR investigated whether the College fails to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, in violation of 28 C.F.R. § 35.160(a).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department. OCR also enforces 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 against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

OCR conducted an assessment of the College's online programs, services, and activities and noted possible compliance concerns including, but not limited to:

- Although there was an extensive navigation menu, no "skip navigation" or "skip to content" link was present, posing a barrier to those who use computer keyboards for navigation due to a disability.
- Users with disabilities who use computer keyboards for navigation due to a disability did not have access to all contents and functions.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- Users with disabilities who use computer keyboards for navigation due to a disability were unable to tell visually where they were on a page, as visual focus indicators were missing.

On May 19, 2023, the College signed the enclosed resolution agreement (Agreement) to voluntarily resolve the compliance review pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the Agreement.

This concludes OCR's compliance review. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR compliance review. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. An individual may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact me at (404) 974-9396 or Rhonda.Collins@ed.gov.

Sincerely,

/s/ **Rhonda Collins**

Rhonda Collins
Attorney

Enclosure

Courtesy copy by email only to:

xxxxxxx xxxxxxx
Deputy General Counsel
xxxxxxx@tcnj.edu

Resolution Agreement

The College of New Jersey OCR Docket No. 02-22-6003

To resolve the above-referenced compliance review brought under Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (Title II), the Office for Civil Rights (OCR) of the U.S. Department of Education and the College of New Jersey (the College) enter into the following Agreement. This Agreement is entered into voluntarily, and it does not constitute an admission of liability, non-compliance, or wrongdoing by the College.

The College will engage in the following activities to ensure its programs, services, and activities communicated or facilitated online are accessible to people with disabilities:

1. Adopt an Accessibility Standard. Within 30 days of this Agreement, the College will adopt a widely-accepted accessibility standard, such as the Web Content Accessibility Guidelines (WCAG), version 2.1, level AA, or another standard that requires an equivalent level of accessibility for people with disabilities.
 - a. Reporting Provision: Within 30 days of this Agreement, the College will submit for OCR's review and approval its chosen accessibility standard.
2. Provide Notice. Within 30 days of this Agreement, the College will prominently post a fully-accessible Notice on the College's website describing how people with disabilities can inform the College of any technology-based barriers to access they have encountered and how they can request access to the underlying College program, service, or activity.
 - a. Reporting Provision: Within 30 days of this Agreement, the College will submit for OCR's review and approval the location and content of its Notice, as well as protocols and timeframes for responding to reports of barriers.
3. Conduct an Audit. Within 120 days of this Agreement, the College shall complete an Audit to identify barriers to access to its online programs, services, and activities. The Audit shall consist of taking an inventory and engaging in manual testing to identify barriers, as follows:
 - a. Undertake an Inventory of Pages to be Tested. The inventory will consist of (1) URLs on the College's domain, including the College's home page, first-level landing pages, and all web page templates not otherwise captured, and (2) all URLs outside of the College's domain, including those on all vendor-hosted or third-party-hosted sites including social media sites and video hosting services used by the College to communicate or facilitate its programs, services, and activities to members of the public.
 - b. Engage in Manual Testing to Identify Barriers. For all pages (and associated electronic documents and videos) in the inventory undertaken pursuant to the preceding paragraph, the College will engage in robust manual testing to identify

barriers to access for people with disabilities. The testing shall, at a minimum, meaningfully incorporate the protocols and address the questions set out in Appendix A. Vendor or third-party hosted pages in its inventory will be assessed alongside those regarding which the College has full operational control.

- c. Reporting Provision: Within 120 days of this Agreement, the College will submit for OCR's review and approval the results of its Audit, including the URLs for all inventoried pages, its testing protocols, and detailed testing results for each tested URL including associated electronic documents and videos.
4. Engage in Remediation. As barriers are identified, the College will remediate those barriers; all barriers will be remediated fully within six months of the signature date of this Agreement. Barrier remediation will conform to the College's chosen accessibility standard.
 - a. Where barrier removal would impose an undue burden or fundamental alteration under Section 504 or Title II, the College will provide alternate measures that, at a minimum, afford a person with a disability the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services, programs, and activities as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use.
 - b. Where the College does not have the ability to effectuate immediate, full remediation of a vendor's or third party's technology, the College will request the vendor to complete its remediation of all barriers within six months of the signature date of this Agreement, and the College will immediately offer appropriate interim alternate measures until the technology has been verified to be barrier-free including, but not limited to, prominently posting a way for people with disabilities to request access to the same information using an alternative method. If the vendor or third party fails to remediate timely all barriers, the College will exercise all avenues for compliance, including seeking to replace the vendor or moving or duplicating the programs, services, and activities to a digital venue within the College's control. The College will continue to provide interim alternate measures until the barriers have been remediated.
 - c. If the College replaces a technology vendor, or moves from an in-house technology to a vendor-hosted technology, the College will follow these steps, at a minimum, during its procurement process to achieve compliance:
 - i. In any requests for proposals, the College will require bidders to commit to remediate noted barriers, so the technology conforms to the College's adopted accessibility standard prior to delivery and throughout the life of the contract.

- ii. Before determining a winning bidder, the College will select the product that most closely conforms to the College’s adopted accessibility standard; if there are two or more products that equally conform to such standard, the College may employ other factors to decide the winning bid. The College will engage in independent testing or otherwise confirm the validity of any vendor-offered accessibility assessment of its own product.
 - d. Reporting Provision: Each time the College determines alternate measures are required in lieu of immediate barrier removal, it will immediately submit those proposed measures to OCR for review and approval. If the alternate measures are being proposed to overcome a perceived undue burden or fundamental alteration, the College will clearly indicate the factors it considered in making such a determination, for OCR’s review and approval. No later than six months after this Agreement was signed, the College will notify OCR that it has fully remediated all barriers identified on the inventoried pages, including associated electronic documents and videos.
5. Update Testing and Remediation Protocols. Upon receipt of the notice provided in the preceding paragraph, or earlier if requested by the College, OCR will assess the effectiveness of the College’s testing protocols and remediation steps by conducting its own testing on a representative sample of the web pages, electronic documents, and videos identified by the College pursuant to paragraph 3(c), using the College-adopted standard as an appropriate measure of compliance. The College will then participate in all video conferences requested by OCR, and, when appropriate, request relevant vendors to participate in such conferences, so OCR can share concerns or violations regarding any remaining barriers that impede the ability of people with disabilities to have equal opportunities to enjoy the College’s underlying programs, services, and activities. These video conferences may also address any noted deficiencies regarding the College’s Notice.
- a. Based on OCR’s concerns or violations shared during the video conferences, the College will:
 - i. Make appropriate changes to its testing and remediation protocols, and may require its vendor(s) to engage in appropriate barrier removal;
 - ii. Re-test or engage in additional remediation tailored to address OCR’s concerns as appropriate; and
 - iii. Within thirty (30) days of the relevant video conference, notify OCR that the College is ready for OCR to re-test the original pages, along with a list of any additional URLs that the College believes are representative of barrier-free web pages, electronic documents, and videos, as appropriate, from which OCR may select for additional testing.

This process shall continue until, in OCR's judgment, the College's testing and remediation protocols result in equal opportunities for people with disabilities.

6. Develop a Plan to Maintain Accessible Features. The College will develop a Plan regarding how it intends to maintain the accessibility of the services, programs, and activities communicated or facilitated online, including updated testing and remediation protocols; revised procurement protocols and language; ongoing training for web developers, procurement officials, and content creators; designations of responsibility; and appropriate levels and sources of funding to support ongoing efforts.
 - a. Reporting Provision: Within one year of this Agreement, the College will submit for OCR's review and approval its Plan to Maintain Accessible Features.
7. Disclaimer. Nothing in this Agreement should be construed to mean that any content and functionality – including lower-priority content and functionality – is not subject to the requirements of Section 504 and Title II.
8. Technical Assistance. OCR will provide technical assistance to the College, to the extent practicable, during the College's implementation of this Agreement. The College's duty to comply with this Agreement is not altered by the availability of technical assistance.

By signing the Agreement, the College agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. During the monitoring of the Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of the Agreement.

The College understands that OCR will not close the monitoring of the Agreement until such time as OCR determines that the College is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

The College understands that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings in the event of breach. Before initiating such proceedings, OCR will give the College notice of the alleged breach and 60 calendar days to cure the alleged breach.

This Agreement will become effective upon the signature of the representative for the College, set out below.

/s/ Kathryn A. Foster

May 19, 2023

Kathryn A. Foster
President
The College of New Jersey

Date

Appendix A

For the purposes of this Agreement, testing must address these protocols and questions, which only represent a starting point, rather than a comprehensive set, for assessing digital technology to ensure access to people with disabilities. See [OCR's video series](#) for more information.

For web pages: Check the following across different browsers using different types of hardware (for documentation, please specify the browsers by version and different desktop/laptop configurations):

- Keyboard access: Can users access all functions and content, and complete all tasks, independently by using only the keyboard (<tab>, <enter>, <spacebar>, <esc>, and arrow keys)? Verify in particular:
 - There are no keyboard traps that would prevent a user from advancing through the entire page, such as an automatically-refreshing social media embedded feed (*tip: try to tab very, very slowly through any such feed to observe whether a user can close it, or move past it, at a reasonable point; if the feed keeps refreshing by automatically adding additional entries to be shown, it causes a trap for those who are unable to use quick keyboard strokes – or a mouse - to navigate*);
 - Expandable elements can not only be expanded, but can also be collapsed automatically or with a keyboard command, so they do not block other content.
- Logical reading order: Does keyboard navigation follow a logical, predictable order?
- Skip links: Can keyboard-only users bypass long navigation menus, embedded social media feeds, etc., without having to use excessive tabbing?
- Visual focus indicator: Can users visually track where they are located on the page while navigating with a keyboard?
- Alternative (Alt) text: Are all important images and graphics labelled with meaningful text, associated captions, or adjoining descriptions so, for example, people who are blind and use assistive technology will have access to the relevant information contained in the image or graphic? For linked images, does the alternative text tell users where the link will take them, rather than describe the image?
- Links: Are links well-named and unambiguous so users who are blind– without having to read nearby content – will understand the purpose and destination of each link? Common examples of ambiguous link names include “click here,” “read more,” “see all,” “http://...”-type, or “event notice,” and other ambiguous phrases.
- Color alone: Are there any instances where color alone distinguishes an object or state? If so, add another way to distinguish the object or state. For example, make sure color is not

the only way to distinguish link text from the surrounding paragraph text, and ensure color-coding is not the exclusive way used to convey important calendar dates (e.g., “no school” dates are marked in purple).

- Color contrast: Using an eyedropper tool or other manual method (automated testing is generally insufficient unless manually verified), is there at least a 4.5:1 contrast ratio for normal size text and a 3:1 contrast ratio for large scale text, comparing foreground and background colors of all text elements and text inside graphics? Text inside logos can be ignored for these purposes.
- Tables: Does the page avoid using layout tables? If data tables are present, are they necessary to convey information, or could a more accessible means of presentation be considered instead? If a data table is used, is it simple, so no cells span multiple columns or rows? Are column and row headers programmatically labelled?
- Buttons, form controls, and other operable elements: Are they labelled appropriately, both programmatically and visually? Do the visual labels continue to be properly associated with the elements when the screen is enlarged? If the elements have different states (such as form fields that are required for successful submission), are those conveyed by something other than color alone?
- Heading structure: Are headings programmatically labelled with a meaningful hierarchy, so people who are blind and using a screen reader can navigate a page according to its headings, listen to a list of headings, and skip to where they want to begin reading?
- Embedded videos and slide carousels: Where there are embedded videos or carousels, if they launch or rotate automatically, is that behavior necessary? If so, can a user pause or stop the video or carousel, and later replay the video or carousel, with keyboard commands? The ability to stop the video or carousel rotation can be important, not just while users are on the video or carousel, but while they are in other parts of the page.
- Magnification: Have you re-tested everything when content is magnified to the “point of reflow,” or in “responsive mode,” when the formatting changes to be more mobile-friendly (typically around 200% on standard laptop screens)? Are all contents and all functionality preserved and useful?
 - Paying particular attention to any “hamburger menus,” or expandable menus, can they be opened, navigated (including any sub-level items), and closed automatically or easily with the keyboard?
 - Is logical reading order on the page preserved, without the need to scroll right to left? If vertical scrolling is required inside windows or objects, can it be done with the keyboard?

- Do elements meant to be together (such as form labels and text entry boxes) stay together upon magnification?

For electronic documents: In addition to addressing the questions above, have you conducted an accessibility review of your documents using the software's accessibility checker (e.g., "Check Accessibility" feature in Microsoft Word, "Accessibility Check" feature in Adobe Acrobat Pro DC, etc.)?

For videos:

- Is captioning present or is a transcript available? Transcripts should only be used when the audio can be fully understood separately from viewing the video and does not reference video content.
- Does the captioning or transcript meaningfully convey the contents of the audio track (not just phonetically)?
- Does the captioning or transcript indicate the names or appropriate descriptions of the speakers, if more than one person is speaking?
- Does the captioning or transcript use capitalization and punctuation appropriately, if that is important to understanding the contents?
- Is important on-screen information also conveyed audibly, so people who are blind or have low vision have access to the contents?

For social media posts:

- If graphic images are used, are they accompanied by text that conveys the same information?
- If videos are used, are they accessible as described above?



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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BOSTON, MA 02109-3921

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September 18, 2023

Sunil Kumar
President
Tufts University
By email: president@tufts.edu

Re: Complaint No. 01-23-2011
Tufts University

Dear President Kumar:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of Tufts University (University). OCR opened an investigation after receiving a complaint alleging that the University discriminated against the Student on the basis of disability. As explained further below, before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the University receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Section 504.

OCR opened the following allegations for investigation:

- Whether the University discriminated against the Student on the basis of disability by refusing to allow the Student to take a medical leave as a result of her disability, in violation of 34 C.F.R. Sections 104.4(a) and (b), and 104.43(a); and
- Whether the University discriminated against the Student on the basis of disability by refusing to allow the Student to complete the [redacted content] with an incomplete due to her disability, in violation of 34 C.F.R. Sections 104.4(a) and (b), and 104.43(a).

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic

requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request modifications to their policies, practices, and procedures. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of their disability and the need for modifications due to the disability, the university must consider the requested modifications in a timely manner. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the individual with a disability so that he or she has a reasonable opportunity to respond and provide additional documentation that would address the university's objections. While a university must provide the student with appropriate modifications and services that are necessary to afford the student an equal opportunity to participate in a school's program, it is not required to make modifications or provide services that would result in a fundamental alteration of the university's program or impose an undue burden.

This deliberative procedure consists of a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student with a disability. Whether a university has to make modifications to its policies, practices, or procedures depends on the individual circumstances of each case, and requires a fact-specific, individualized analysis of the circumstances of the student with a disability and the accommodations that might allow the student to enjoy meaningful access to the program.

Findings of Fact

During the [redacted content], the Student attended the [redacted content] prior to beginning her [redacted content] at the University. The Student's admission letter stated that she had "been accepted to the School of Arts and Sciences as a [redacted content]" ¹ The University represented to OCR that successful completion of the [redacted content].

Almost immediately after starting the [redacted content], the Student began experiencing a number of health issues and requested assistance from the University. Beginning in [redacted content], the Student started receiving a number of non-academic accommodations. ² The University represented that these accommodations were provided as interim accommodations even though the University had not yet received the appropriate documentation from the Student, which it repeatedly requested. Throughout the [redacted content], a Student Accessibility and Academic Resources (StAAR) Accessibility Specialist and the Dean of Student Affairs' (DOSA) Associate Director reached out to the Student numerous times to provide support and follow-up. As the [redacted content] progressed, the Student stated her health significantly declined.

¹ The Student's admission letter is as a member of the [redacted content]. The Student [redacted content], which led to her attending the [redacted content].

² The Student received accommodations related to [redacted content].

On [redacted content], the DOSA Associate Director met with the Student to discuss the Student's on-going health issues. The DOSA Associate Director's notes from the meeting indicate that she asked the Student if she had "[redacted content]," but the Student said she was not interested. The DOSA Associate Director concluded the meeting by connecting the Student with other services and reiterating that if the Student changed her mind, she could reach out to "[redacted content]."

On [redacted content], the Student emailed the DOSA Associate Director and the [redacted content] Director about her health concerns over the course of the program.³ On [redacted content], the DOSA Associate Director responded offering additional support and encouragement, and stating, "[redacted content]"

On [redacted content], the Student reached out to the professor of her [redacted content] course requesting "[redacted content]," and explaining her health issues over the course of the program. The professor immediately responded that the Student could take an incomplete in the course, and stated, "[redacted content]." Later that day, the Complainant emailed the DOSA Associate Director requesting that the Student be granted an incomplete in her [redacted content] course, and a one-week extension in her [redacted content] course, "[redacted content]" to her University scholarship. After receiving the email from Complainant, the DOSA Associate Director emailed the [redacted content] Director asking that they discuss these requests and stating, "[redacted content]."

On [redacted content], the DOSA Associate Director emailed the Student stating, "[redacted content]." The DOSA Associate Director went on to state that the StAAR Center had "[redacted content]" based on the documentation submitted to that point. She concluded, "[redacted content]" There was no indication in any of the DOSA Associate Director's emails that there was a time limitation on when the Student could request a leave.

On [redacted content], the Student emailed the Director of [redacted content] and the DOSA Associate Director to inform them that she was taking an incomplete in her [redacted content] course due to her disability. The Student concluded the email by asking the Director what effect the incomplete would have on her scholarship. The University did not produce to OCR any response to this email. The Complainant provided a copy of a [redacted content] for the [redacted content] in the Student's name, signed by the Director of [redacted content].

On [redacted content], the Student contacted her [redacted content] professor asking to take an incomplete for the course due to her disability, which the professor granted.

On [redacted content], the DOSA Associate Director emailed the Student inquiring about her status for the [redacted content] and "[redacted content]." The Student responded the next day, stating that she received a medical diagnosis the day before and was requesting to be placed on medical leave for the [redacted content] semester. The Student also explained that she would provide the medical documentation once it was available. After receiving the email, the DOSA

³ The Student also copied a University mental health counselor that she had been referred to by the DOSA Associate Director.

Associate Director emailed the [redacted content] Office about the request. Notes provided from the StAAR Center indicate, “[redacted content]”

On [redacted content], the DOSA Associate Director emailed the Student informing her that medical leaves are not an option for students who have [redacted content] and that she was working to see “[redacted content]” The [redacted content] Director then emailed the Student that he had recently learned that the Student had requested to take an incomplete in her [redacted content] course, and that due to requirements for the [redacted content], he will need to convey that information “to the Tufts [redacted content].” The Student responded to the Director stating, “[redacted content]” The Student also stated that she would turn in the remaining [redacted content] course assignment that day. In the data response provided to OCR, the University represented that a medical leave of absence was not available because the request came after the [redacted content] had ended and at that point, such a leave was not available due to “[redacted content]” and because of a lack of documentation of the Student’s disability.

On [redacted content], the Complainant, the Student, and a family friend met with the Dean [redacted content] and the Director [redacted content]. Based on notes provided by the University, the Dean began the meeting by asking about the Student’s [redacted content], and continued by discussing that the Student’s [redacted content] required successful completion of the [redacted content]. The notes do not indicate that the Student’s request for a medical leave or the DOSA and StAAR Center’s proposed deferral were discussed. The Dean concluded that the Student did not satisfy the requirements for [redacted content] since her [redacted content] course was still incomplete, that he would bring the information to the [redacted content], and that the [redacted content] may be rescinded.

After the meeting, the family friend wrote a letter to the Dean explaining the Student’s disability progression over the course of the [redacted content] and stating, “[redacted content].” The following day, the Dean [redacted content] sent a letter to the Student informing her that she was “[redacted content]” as she had not fulfilled the requirements of the [redacted content]. The letter highlighted the language from the Student’s [redacted content], which included the “[redacted content]” The Dean explained that one requirement was to [redacted content], but that the Student had received an incomplete in one of her courses. There is no discussion of the Student’s request for the incomplete or for a medical leave due to her disability.

Analysis

OCR’s review of the information provided to date raises some concerns with the University’s handling of the Student’s request for a reasonable modification of [redacted content] requirements to allow her to take an incomplete in a course and ultimately a medical leave, due to her disability.

At the beginning of the [redacted content], the StAAR Center worked with the student through the interactive process to provide accommodations. The correspondence provided to OCR shows that the StAAR Center and the DOSA Associate Director repeatedly reached out to the Student to obtain additional documentation regarding the Student’s disability, and did provide “interim”

accommodations to support the Student given the Student's evolving medical issues, even before documentation was provided.

However, while postsecondary students are generally responsible for knowing and following the procedures to request a reasonable modification at their university, OCR has concerns that here the University provided the Student, at best, unclear information about the University's process. The DOSA Associate Director held herself out to the Student as a source of guidance in navigating the University's accommodation process and in fact it was she who first raised the idea of the Student taking a medical leave. While the University represented to OCR that disability-related requests for course modifications, such as the request for an incomplete in the Student's [redacted content] class and an extension in the Student's [redacted content] class, needed to go through the StAAR Center, the DOSA Associate Director told the Student to negotiate these with her professors. While the University represented to OCR that the [redacted content] ended on [redacted content] and at that point it was too late for the Student to request a reasonable modification of its requirements, the DOSA Associate Director raised the option of requesting a medical leave with the Complainant as late as [redacted content].

In addition, from the information gathered to date, OCR has concerns regarding the handling of the Student's request for a medical leave. On [redacted content] the Student told the DOSA Associate Director that she wished to request a disability-related medical leave. Two days later, the DOSA Associate Director told the Student that medical leaves are not available for students who [redacted content], but there is no indication that University personnel considered whether the University was required to modify this apparent requirement in order to avoid discriminating against an individual with a disability, or whether this requested modification constituted a fundamental alteration. Indeed, the University asserted to OCR that medical leaves are not available during the [redacted content] due to "[redacted content]" but the University did not show that it had engaged in the appropriate analysis to consider whether such a leave would fundamentally alter the program, nor did the University offer any alternatives to the Student. OCR is also concerned that the Student's request for a medical leave was routed not to the StAAR Center to engage in an interactive process. Instead, it was sent to the [redacted content], which then [redacted content] with no mention of her request for a medical leave and on the basis that she had taken an Incomplete, when it was the DOSA Associate Director who had advised the Student that she could take a [redacted content] and her professor who assured her that Incompletes were "[redacted content]" Finally, while the University also relies on the fact that the Student had not provided documentation of her disability, OCR notes that the Dean [redacted content] only six days after she requested the medical leave, and there is no mention in the Dean's letter of the Student's request for the leave or her failure to provide supporting documentation.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the University expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s
Ramzi Ajami
Regional Director

Enclosure

cc: [redacted content]

RESOLUTION AGREEMENT
Tufts University
OCR Complaint No. 01-23-2011

Tufts University (University) has voluntarily entered into this agreement to resolve the allegations in the above-referenced complaint. The University assures that it will take the following actions.

The University agreed to resolve this complaint prior to the completion of OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual*.

Action Item 1

The University will provide training to all the [redacted content] program staff and faculty, and administrators and staff who are involved in any way in either engaging in the interactive process for academic adjustments or reasonable modifications, or implementing academic adjustments, regarding the University's obligations pursuant to Section 504 concerning academic adjustments and reasonable modifications to program requirements. The training will be conducted by individual(s) knowledgeable about the laws and issues pertaining to disability discrimination and shall address, at a minimum, the following:

1. The requirement that a qualified person with a disability may not be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in any postsecondary program's aids, benefits, or services on the basis of disability;
2. The requirement that a university modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The training may also clarify that a university is not required to grant a modification that would fundamentally alter the nature of the service, program, or activity or impose an undue financial or administrative burden on the university.
3. Section 504's requirements apply to the [redacted content];
4. The University's process for a student to request academic adjustments and reasonable modifications, including applicable University policies and the interactive process;
5. An explanation that, if the University denies a request for an academic adjustment or reasonable modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the University's objections; and
6. An explanation that academic adjustments and reasonable modifications for students with disabilities are determined only by the appropriate University office, and that such academic adjustments and reasonable modifications cannot be altered by faculty or administrators.

Reporting Requirements

1. By September 30, 2023, the University will provide, for OCR's review and approval, a copy of the training materials it will use, as well as the credentials of the trainer/presenter.
2. Within 30 days after receiving OCR's approval of the materials and trainer/presenter, the University will provide to OCR:
 - a. A list of the individuals who attended the training and their titles;
 - b. The date(s) the training was conducted; and
 - c. Copies of any training materials disseminated.

Action Item 2

The University will provide additional training for incoming [redacted content] students following their admission to [redacted content] but prior to their arrival on campus regarding the disability accommodation process, including the types of documentation that may be requested via the University's process if a student were to seek an accommodation. The training will be conducted by individual(s) knowledgeable about the University's process for requesting academic adjustments and reasonable modifications. The University will also include a link to OCR's Students with Disabilities Preparing for Post-Secondary Education on the [redacted content] website.

Reporting Requirements:

- By the beginning of the [redacted content], the University will provide to OCR:
- a. The identity of the individual(s) who conducted the training;
 - b. A list of the individuals who attended the training;
 - c. The date(s) the training was conducted;
 - d. Copies of any training materials disseminated; and
 - e. Confirmation of the resource being added to the [redacted content] website.

Action Item 3

The University will review and revise as necessary its policies and procedures for [redacted content] participants. The policies and procedures will include reference to the University's disability accommodation process and an appropriate medical leave process. The University will describe the role of the Student Accessibility and Academic Resources Center (the StAAR Center) and the Dean of Students Office, including the process and timing by which to seek accommodations and/or a medical leave.

Reporting Requirements:

1. By December 1, 2023, the University will submit its policies and procedures to OCR for its review and approval.

2. Within thirty (30) calendar days of OCR’s approval, the University will adopt, implement, and publish the revised policies and procedures. The University will make this information available through the University’s website and any other additional means of notification the University deems effective to ensure that the information is disseminated to all individuals participating in the [redacted content], including [redacted content] students and administrators, faculty, and staff working with the [redacted content]. The University will provide OCR with documentation that it has completed this item, including copies of written notices to students, administrators, faculty, and staff, and a copy of any publications (such as student handbooks) or a link to any website containing the policy.

Action Item 4

The University will extend an offer to the Student to enroll in the University as a [redacted content], to include what was provided to the Student prior to her removal from the University, specifically:
[redacted content]

Reporting Requirements:

Within one week of the University extending offers to individuals to be a [redacted content], the University shall provide documentation to OCR that the Student was extended an offer. The Student shall be provided the same terms and conditions to accept or reject the offer as provided to other students.

The University 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 University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms and obligations of this Agreement. Upon the University’s satisfaction of the commitments made under the Agreement, OCR will close the case.

The University understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR shall give the Recipient written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the University’s representative below.

By: _____/s _____ Date: 9/18/2023
[redacted content]



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING
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May 8, 2023

By email only to: president@miami.edu

Julio Frenk
President
University of Miami
P.O. Box 248006
Coral Gables, FL 33124

Re: OCR Docket No. 04-19-6926
University of Miami, Florida

Dear President Frenk:

This letter is to advise you of the resolution of the directed investigation that the U.S. Department of Education (Department), Office for Civil Rights (OCR) initiated in University of Miami (University). OCR investigated whether the University's online programs, services, and activities exclude qualified persons with disabilities from participation in, deny them the benefits of, or otherwise subject them to discrimination under any program or activity, in violation of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. § 104.4.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department.

OCR conducted an assessment of the University's online programs, services, and activities and noted possible compliance concerns including, but not limited to:

- Users with disabilities who use computer keyboards for navigation due to a disability did not have access to all contents and functions.
- Users with disabilities who use computer keyboards for navigation due to a disability were unable to tell visually where they were on a page, as visual focus indicators were missing.
- The foreground and background colors of important content lacked sufficient contrast, posing a barrier to people with low vision.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

On May 8, 2023, the University signed the enclosed resolution agreement (Agreement) to voluntarily resolve the investigation pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual matter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. An individual may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, please contact Cynthia Wesley at (202) 987-1424 or cynthia.wesley@ed.gov.

Sincerely,

/s/

Judith Risch
Co-Lead, National Digital Accessibility Team

Enclosure

Courtesy copy by email only to:

Jessica Pacheco
Executive Director, Workplace Equity and Inclusion
jessica.pacheco@miami.edu

Judd Goldberg
Associate Vice President and Deputy General Counsel
jgoldberg@miami.edu

Aileen Ugalde
Senior Vice President and General Counsel
augalde@miami.edu

Resolution Agreement

University of Miami, Florida OCR Docket No. 04-19-6926

To resolve the above-referenced directed investigation brought under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Office for Civil Rights (OCR) of the U.S. Department of Education and University of Miami (the University) enter into the following Agreement. This Agreement is entered into voluntarily, and it does not constitute an admission of liability, non-compliance, or wrongdoing by the University.

The University will engage in the following activities to ensure its programs, services, and activities communicated or facilitated online are accessible to people with disabilities:

1. Adopt an Accessibility Standard. Within 30 days of signing this Agreement, the University will adopt a widely-accepted accessibility standard, such as the Web Content Accessibility Guidelines (WCAG), version 2.1, level AA, or another standard that requires an equivalent level of accessibility for people with disabilities.
 - a. Reporting Provision: Within 30 days of signing this Agreement, the University will submit for OCR's review and approval its chosen accessibility standard.
2. Provide Notice. Within 30 days of signing this Agreement, the University will prominently post a fully-accessible Notice on the University's website describing how people with disabilities can inform the University of any technology-based barriers to access they have encountered and how they can request access to the underlying University program, service, or activity.
 - a. Reporting Provision: Within 30 days of signing this Agreement, the University will submit for OCR's review and approval the location and content of its Notice, as well as protocols and timeframes for responding to reports of barriers.
3. Conduct an Audit. Within 150 days of signing this Agreement, the University shall complete an Audit to identify barriers to access to its online programs, services, and activities. The Audit shall consist of taking an inventory and engaging in manual testing to identify barriers, as follows:
 - a. Undertake an Inventory of Pages to be Tested: The inventory will consist of: (1) URLs on the University's domain, including the University's homepage, first-level landing pages, and all web page templates not otherwise captured; and (2) all URLs outside of the University's domain, including those on all vendor-hosted or third-party-hosted sites, including social media sites and video hosting services used by the University to communicate or facilitate its programs, services, and activities to members of the public.
 - b. Engage in Manual Testing to Identify Barriers: For all pages (and associated electronic documents and videos) in the inventory undertaken pursuant to the preceding paragraph, the University will engage in robust manual testing to

identify barriers to access for people with disabilities. The testing shall, at a minimum, meaningfully incorporate the protocols and address the questions set out in Appendix A. Vendor or third-party hosted pages in its inventory will be assessed alongside those over which the University has full operational control.

- c. Reporting Provision: Within 150 days of signing this Agreement, the University will submit for OCR's review and approval the results of its Audit, including the URLs for all inventoried pages, its testing protocols, and detailed testing results for each tested URL including associated electronic documents and videos.
4. Engage in Remediation. As barriers are identified, the University will remediate those barriers; all barriers will be remediated fully within eight months of the signature date of this Agreement. Barrier remediation will conform to the University's chosen accessibility standard.
 - a. Where barrier removal would impose an undue burden or fundamental alteration under Section 504, the University will provide alternate measures that, at a minimum, afford a person with a disability the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services, programs, and activities as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use.
 - b. Where the University does not have the ability to effectuate immediate, full remediation of a vendor's or third party's technology, the University will request that the vendor complete its remediation of all barriers within eight months of the signature date of this Agreement, and the University will immediately offer appropriate interim alternate measures until the technology has been verified to be barrier-free including, but not limited to, prominently posting a way for people with disabilities to request access to the same information using an alternative method. If the vendor or third party fails to remediate timely all barriers, the University will exercise all avenues for compliance, including seeking to replace the vendor or moving or duplicating the programs, services, and activities to a digital venue within the University's control. The University will continue to provide interim alternate measures until the barriers have been remediated.
 - c. If the University replaces a technology vendor, or moves from an in-house technology to a vendor-hosted technology, the University will follow these steps, at a minimum, during its procurement process to achieve compliance:
 - i. In any requests for proposals, the University will require bidders to commit to remediate noted barriers so the technology conforms to the University's adopted accessibility standard prior to delivery and throughout the life of the contract.
 - ii. Before determining a winning bidder, the University will select the product that most closely conforms to the University's adopted

accessibility standard; if there are two or more products that equally conform to such standard, the University may employ other factors to decide the winning bid. The University will engage in independent testing or otherwise confirm the validity of any vendor-offered accessibility assessment of its own product.

- d. Reporting Provision: Each time the University determines alternate measures are required in lieu of immediate barrier removal, it will immediately submit those proposed measures to OCR for review and approval. If the alternate measures are being proposed to overcome a perceived undue burden or fundamental alteration, the University will clearly indicate the factors it considered in making such a determination, for OCR's review and approval. No later than eight months after this Agreement was signed, the University will notify OCR that it has fully remediated all barriers identified on the inventoried pages, including associated electronic documents and videos.
5. Update Testing and Remediation Protocols. Upon receipt of the notice provided in the preceding paragraph, or earlier if requested by the University, OCR will assess the effectiveness of the University's testing protocols and remediation steps by conducting its own testing on a representative sample of the web pages, electronic documents, and videos identified by the University pursuant to paragraph 3(c), using the University-adopted standard as an appropriate measure of compliance. The University will then participate in all video conferences requested by OCR, and, when appropriate, request that relevant vendors participate in such conferences, so OCR can share concerns or violations regarding any remaining barriers that impede the ability of people with disabilities to have equal opportunities to enjoy the University's underlying programs, services, and activities. These video conferences may also address any noted deficiencies regarding the University's Notice.
- a. Based on OCR's concerns or violations shared during the video conferences, the University will:
 - i. Make appropriate changes to its testing and remediation protocols, and may require its vendor(s) to engage in appropriate barrier removal;
 - ii. Re-test or engage in additional remediation tailored to address OCR's concerns as appropriate; and
 - iii. Within 45 days of the relevant video conference, notify OCR that the University is ready for OCR to re-test the original pages, along with a list of any additional URLs that the University believes are representative of barrier-free web pages, electronic documents, and videos, as appropriate, from which OCR may select for additional testing.

This process shall continue until, in OCR's judgment, the University's testing and remediation protocols result in equal opportunities for people with disabilities.

6. Develop a Plan to Maintain Accessible Features. The University will develop a Plan regarding how it intends to maintain the accessibility of the services, programs, and activities communicated or facilitated online, including updated testing and remediation protocols; revised procurement protocols and language; ongoing training for web developers, procurement officials, and content creators; designations of responsibility; and appropriate levels and sources of funding to support ongoing efforts.
 - a. Reporting Provision: Within one year of signing this Agreement, the University will submit for OCR’s review and approval its Plan to Maintain Accessible Features.
7. Disclaimer. Nothing in this Agreement should be construed to mean that any content and functionality – including lower-priority content and functionality – is not subject to the requirements of Section 504.
8. Technical Assistance. OCR will provide technical assistance to the University, to the extent practicable, during the University's implementation of this Agreement. The University’s duty to comply with this Agreement is not altered by the availability of technical assistance.
9. Scope. This Agreement shall not apply to the University of Miami Health System.

By signing the Agreement, the University agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. During the monitoring of the Agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of the Agreement.

The University understands that OCR will not close the monitoring of the Agreement until such time as OCR determines that the University is in compliance with the terms of the Agreement and the statute and regulation at issue in the case.

The University understands that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings in the event of breach. Before initiating such proceedings, OCR will give the University notice of the alleged breach and 60 calendar days to cure the alleged breach.

This Agreement will become effective upon the signature of the representative for the University, set out below.

/s/

5/8/23

Aileen Ugalde
Sr. Vice President and General Counsel
University of Miami

Date

Appendix A

For the purposes of this Agreement, testing must address these protocols and questions, which only represent a starting point, rather than a comprehensive set, for assessing digital technology to ensure access to people with disabilities. See [OCR's video series](#) for more information.

For web pages: Check the following across different browsers using different types of hardware (for documentation, please specify the browsers by version and different desktop/laptop configurations):

- Keyboard access: Can users access all functions and content, and complete all tasks, independently by using only the keyboard (<tab>, <enter>, <spacebar>, <esc>, and arrow keys)? Verify in particular:
 - There are no keyboard traps that would prevent a user from advancing through the entire page, such as an automatically-refreshing social media embedded feed (*tip: try to tab very, very slowly through any such feed to observe whether a user can close it, or move past it, at a reasonable point; if the feed keeps refreshing by automatically adding additional entries to be shown, it causes a trap for those who are unable to use quick keyboard strokes – or a mouse - to navigate*);
 - Expandable elements can not only be expanded, but can also be collapsed automatically or with a keyboard command, so they do not block other content.
- Logical reading order: Does keyboard navigation follow a logical, predictable order?
- Skip links: Can keyboard-only users bypass long navigation menus, embedded social media feeds, etc., without having to use excessive tabbing?
- Visual focus indicator: Can users visually track where they are located on the page while navigating with a keyboard?
- Alternative (Alt) text: Are all important images and graphics labelled with meaningful text, associated captions, or adjoining descriptions so, for example, people who are blind and use assistive technology will have access to the relevant information contained in the image or graphic? For linked images, does the alternative text tell users where the link will take them, rather than describe the image?
- Links: Are links well-named and unambiguous so users who are blind– without having to read nearby content – will understand the purpose and destination of each link? Common examples of ambiguous link names include “click here,” “read more,” “see all,” “http://...”-type, or “event notice,” and other ambiguous phrases.
- Color alone: Are there any instances where color alone distinguishes an object or state? If so, add another way to distinguish the object or state. For example, make sure color is not the only way to distinguish link text from the surrounding paragraph text, and ensure

color-coding is not the exclusive way used to convey important calendar dates (e.g., “no school” dates are marked in purple).

- **Color contrast:** Using an eyedropper tool or other manual method (automated testing is generally insufficient unless manually verified), is there at least a 4.5:1 contrast ratio for normal size text and a 3:1 contrast ratio for large scale text, comparing foreground and background colors of all text elements and text inside graphics? Text inside logos can be ignored for these purposes.
- **Tables:** Does the page avoid using layout tables? If data tables are present, are they necessary to convey information, or could a more accessible means of presentation be considered instead? If a data table is used, is it simple, so no cells span multiple columns or rows? Are column and row headers programmatically labelled?
- **Buttons, form controls, and other operable elements:** Are they labelled appropriately, both programmatically and visually? Do the visual labels continue to be properly associated with the elements when the screen is enlarged? If the elements have different states (such as form fields that are required for successful submission), are those conveyed by something other than color alone?
- **Heading structure:** Are headings programmatically labelled with a meaningful hierarchy, so people who are blind and using a screen reader can navigate a page according to its headings, listen to a list of headings, and skip to where they want to begin reading?
- **Embedded videos and slide carousels:** Where there are embedded videos or carousels, if they launch or rotate automatically, is that behavior necessary? If so, can a user pause or stop the video or carousel, and later replay the video or carousel, with keyboard commands? The ability to stop the video or carousel rotation can be important, not just while users are on the video or carousel, but while they are in other parts of the page.
- **Magnification:** Have you re-tested everything when content is magnified to the “point of reflow,” or in “responsive mode,” when the formatting changes to be more mobile-friendly (typically around 200% on standard laptop screens)? Are all contents and all functionality preserved and useful?
 - Paying particular attention to any “hamburger menus,” or expandable menus, can they be opened, navigated (including any sub-level items), and closed automatically or easily with the keyboard?
 - Is logical reading order on the page preserved, without the need to scroll right to left? If vertical scrolling is required inside windows or objects, can it be done with the keyboard?
 - Do elements meant to be together (such as form labels and text entry boxes) stay together upon magnification?

For electronic documents: In addition to addressing the questions above, have you conducted an accessibility review of your documents using the software's accessibility checker (e.g., "Check Accessibility" feature in Microsoft Word, "Accessibility Check" feature in Adobe Acrobat Pro DC, etc.)?

For videos:

- Is captioning present or is a transcript available? Transcripts should only be used when the audio can be fully understood separately from viewing the video and does not reference video content.
- Does the captioning or transcript meaningfully convey the contents of the audio track (not just phonetically)?
- Does the captioning or transcript indicate the names or appropriate descriptions of the speakers, if more than one person is speaking?
- Does the captioning or transcript use capitalization and punctuation appropriately, if that is important to understanding the contents?
- Is important on-screen information also conveyed audibly, so people who are blind or have low vision have access to the contents?

For social media posts:

- If graphic images are used, are they accompanied by text that conveys the same information?
- If videos are used, are they accessible as described above?



U.S. Department of Education
Office for Civil Rights

Fiscal Year 2022 | Annual Report



Report to
THE PRESIDENT
and
SECRETARY OF
EDUCATION

Under Section 203(b)(1)
of the Department of Education Organization Act

U.S. Department of Education Office for Civil Rights

Catherine E. Lhamon, Assistant Secretary for Civil Rights

2023

This report is submitted under Section 203(b)(1) of the Department of Education Organization Act of 1979, Pub. L. No. 96-88, which provides: "The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the judgment of the Assistant Secretary, adequate progress is not being made." 20 U.S.C. §3413(b)(1).

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The report's citation should be:

U.S. Department of Education, Office for Civil Rights

Report to the President and Secretary of Education Under Section 203(b)(1) of the Department of Education Organization Act, FY 2022, Washington, DC, 20202.

This report is also available on the Office for Civil Rights website at <http://www.ed.gov/ocr>.

Any updates to this report will be available at this website.

Message from the ASSISTANT SECRETARY for CIVIL RIGHTS



Fiscal Year 2022 saw an unprecedented surge of civil rights complaints to the Office for Civil Rights regarding student experiences in America's schools. I am proud of and grateful to OCR's staff for rising to that challenge, sharing their expertise and commitment and drive to deliver significant results for school communities, produce policy resources and guidance and technical assistance to help school communities fulfill federal civil rights guarantees, and support and inspire each other to maintain OCR's consistently high-quality work.

This report describes those successes, in addition to reflecting the variety and persistence of civil rights harms students continue to experience as part of their education, notwithstanding our national aspirations and guarantees to the contrary. Each complaint reflects hope that government will fulfill Congress' nondiscrimination promise, helping to make rights real in the nation's schools. We in OCR take seriously and work to honor that hope, reflecting back our best judgment about when laws we enforce are violated and what school communities need to remedy those harms. The work of civil rights includes ensuring that acts of injustice become opportunities for change, which is why we partner with schools to find solutions that work for all students.

With my thanks to OCR staff for what we achieved in FY 2022, and my own hope as a parent as well as the chief civil rights enforcer in the nation's schools for the transformation in opportunity that will follow from that work, this report offers a snapshot of the status of civil rights in education this fiscal year and of our work to support schools in fulfilling the obligations Congress has set for them for ensuring equal opportunity for all learners.

Sincerely,

Catherine E. Lhamon

Assistant Secretary for Civil Rights

EXECUTIVE SUMMARY *and* REPORT HIGHLIGHTS

In FY 2022, OCR confronted the highest volume of complaints in our history, receiving **18,804** complaints. While that number exceeded our previous record high in FY 2016 of 16,720 complaints by 12%, we worked to process those cases with approximately 18% fewer investigative staff than we had had at that time. Nonetheless, we kept pace with the high volume – resolving the second highest number of complaints in our history, at **16,515** cases – while simultaneously managing the increasing complexity of civil rights concerns in this caseload;

initiating an unprecedented and targeted 100 proactive compliance reviews; supporting school communities’ civil rights satisfaction through publication of seven sets of resources and guidance as well as the provision of 186 technical assistance presentations; developing revised regulations to propose across our jurisdictional areas; revising our case processing procedures; collecting a new national round of civil rights data with historic reporting success; recruiting, onboarding, and training 47 additional staff to manage our docket effectively; instituting core safeguards to ensure high quality of our work persists; and responding to 633 inquiries and 826 FOIA requests for information. These pages highlight and reflect the scope and impact of our work to safeguard civil rights in the nation’s schools during FY 2022 and lay a foundation for our efficient, effective, and robust assurance of civil rights still to come.



OFFICE FOR CIVIL RIGHTS: OVERVIEW *and* TRENDS

MISSION AND SCOPE

OCR’s mission is to ensure equal access to education and to promote educational excellence across the nation through the vigorous enforcement of civil rights laws. OCR safeguards the rights of students through the investigation of possible violations of civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990 (Title II), and the Boy Scouts of America Equal Access Act of 2001. In addition, OCR safeguards students’ rights by developing policy guidance to assist schools and other educational institutions receiving Federal financial assistance in understanding how OCR interprets and enforces Federal civil rights laws, disseminating information

and technical assistance about students’ rights and schools’ responsibilities, and collecting and reporting data on key education and civil rights issues in our nation’s public schools.

OCR’s mandate to eliminate discriminatory barriers in education reaches more than 79 million individuals at institutions that receive Federal funds, including all state educational agencies; approximately 18,100 local educational agencies; approximately 6,000 postsecondary institutions, including proprietary schools and community colleges; 78 state vocational rehabilitation agencies and their sub-recipients; and other institutions that receive U.S. Department of Education financial assistance, such as libraries, museums, and correctional institutions.

JURISDICTION

OCR ensures equal access to education for our nation’s students by enforcing the following Federal civil rights laws and their implementing regulations that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in all education programs and activities that receive financial assistance from the Department (see Figure 1):

Figure 1: OCR Enforcement Jurisdiction Timeline

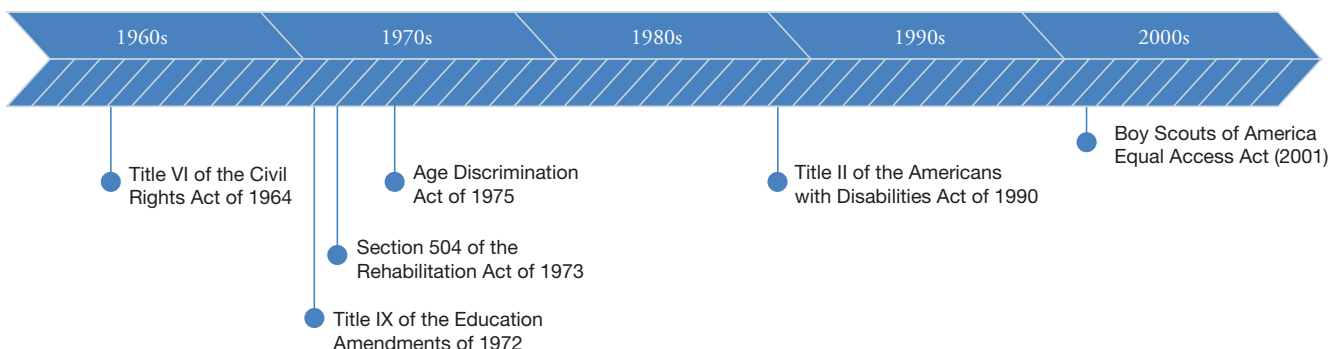


Figure 2: Map of OCR Regional Offices*



- Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination);
- Title IX of the Education Amendments of 1972 (prohibiting sex discrimination);
- Section 504 of the Rehabilitation Act of 1972 (prohibiting disability discrimination);
- Age Discrimination Act of 1975 (prohibiting age discrimination);
- Title II of the Americans with Disabilities Act of 1990 (prohibiting disability discrimination in State and local government services – regardless of whether programs receive Federal financial assistance); and
- Boy Scouts of America Equal Access Act of 2001 (prohibiting public elementary and secondary schools, local educational agencies, and state educational agencies from discriminating against, or denying equal access or a fair opportunity to meet to, any group officially affiliated with the Boy Scouts of America, or any other youth group listed as a patriotic society in Title 36 of the United States Code).

STRUCTURE AND FUNCTIONS

The Assistant Secretary for Civil Rights, who serves at the pleasure of the President of the United States and is appointed with the advice and consent of the U.S. Senate, leads the Office for Civil Rights. During Fiscal Year 2022, the Office of the Assistant Secretary for Civil Rights included a Deputy Assistant Secretary for Enforcement, a Deputy Assistant Secretary for Policy, a Deputy Assistant Secretary for Strategic Operations and Outreach, a Deputy Assistant Secretary for Legal Affairs, a Deputy Assistant Secretary for Management and Operations, a Chief of Staff, four Senior Counsel, and two Confidential Assistants.

OCR serves our nation’s students through a headquarters office and 12 regional offices located across the country. Our headquarters and the DC Metro regional office are located in Washington, D.C. The remaining 11 regional enforcement offices are in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, and Seattle (see Figure 2).

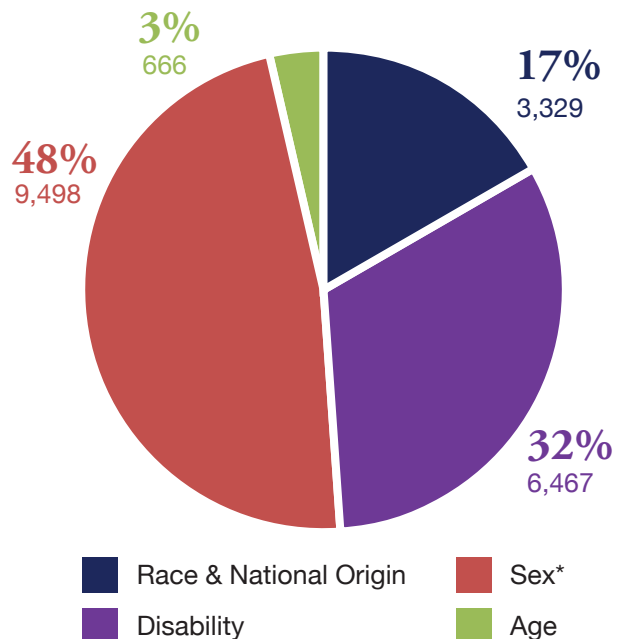
ENFORCEMENT AND STAFFING TRENDS

FY 2022 saw a massive increase in complaints filed with OCR, at 18,804 complaints received, up from 8,935 the year before and 9,719 the year before that. Typically over the years, the majority of the complaints received have raised disability concerns. In FY 2022, however, OCR received 7,339 complaints filed by a single individual, raising sex discrimination allegations; this high volume altered the ratio of complaint filings for this fiscal year. With these data, complaints of race, color, or national origin discrimination comprised 17% (3,329) of all complaints

received in the year, down from 24% in FY 2021. Complaints involving discrimination based on disability comprised 32% (6,467) of all complaints this year, down from 48% in FY 2021; sex discrimination complaints comprised 48% (9,498) up from 17% to FY 2021; and age discrimination complaints comprised 3% (666) (the majority of which were filed by a single complainant), down from 11% in FY 2021. (See Figure 3).

OCR’s overall staffing level has declined significantly over the life of the agency, falling from nearly 1,100 Full Time Equivalent (FTE) staff in fiscal year 1981 to 546 FTE staff in fiscal year 2022. This reduction in staffing comes even as the volume of complaints received has grown significantly, increasing from under 3,000 in fiscal year 1981 to 18,804 in fiscal year 2022.

Figure 3: Percentage of Complaints Received by Type of Alleged Discrimination (FY 2022)



**7,339 complaints were filed by a single individual*

FULFILLING FREEDOM OF INFORMATION ACT REQUESTS

OCR processed 826 Freedom of Information Act (FOIA) requests in a timely manner, an increase of more than 20% over the previous year.

MAXIMIZING EFFICIENCY AND EFFECTIVENESS IN ENFORCEMENT

OCR worked to maximize our efficiency and effectiveness in enforcement to meet the high caseload demand without sacrificing quality in our work. In July 2022, we revised our case processing manual to clarify our processes and to add a new tool for resolution to help manage our caseload and meet complainants' and recipients' interest in efficient resolution. For the first time, OCR began offering mediation as an option complainants can request at the time of filing, leaving an option for speedy resolution using OCR's mediation expertise where OCR has jurisdiction over a complaint and the parties are willing to mediate. To ensure ready transition to effective use of this new tool, OCR offered repeated training to OCR staff in mediation. Early results in this fiscal year suggest parties' willingness to avail themselves of this new tool for resolution. In addition to these new procedures, OCR has emphasized staff training and development during FY 2022, to support our staff to resolve cases consistently, efficiently, and effectively.



“

The revised CPM [Complaint Processing Manual] appears to be designed to bolster OCR's complaint investigation and resolution practices, so that ED's broader non-discrimination and student access to high-quality learning initiatives can succeed.”

Teri Engler, school attorney at Engler Callaway Baasten & Sraga LLC in Oak Brook, Ill, quoted in Special Ed Connection on 7/21/22

INCREASED OUTREACH, PUBLIC EDUCATION, *and* TECHNICAL ASSISTANCE

OUTREACH AND PUBLIC EDUCATION

During FY 2022, OCR strengthened outreach in person, online, and through social media to schools, families, and the general public to increase awareness of and information about the civil rights laws OCR enforces. In addition to publishing written resources for school communities regarding the laws OCR enforces, this fiscal year OCR, in partnership with the ADA National Network, produced a [20-part video series](#) sharing information about web accessibility and addressing technological barriers that can interfere with the ability of parents and students with disabilities to participate in modern American education. OCR designed these videos as tools to maximize digital accessibility for students and school community members with low vision and other disabilities, equalizing access to education consistent with the laws we enforce. Related to this video series focused on web accessibility, OCR provided 59 formal presentations on digital accessibility that reached thousands of audience members. Recognizing that schools and districts rely on private companies to provide the technology necessary for many of their digital services, OCR has also provided technical

assistance that helped dozens of companies provide more accessible products to the recipient community, making it easier for recipients to come into compliance with the law.

OCR processed 633 inquiries from the public and members of Congress, a 31% increase over last year and a 43% increase over FY 2020. Through the [Reading Room](#), OCR provided access to information to educational institutions, state and local educational agencies, parents, students, and members of the general public about complaints filed, resolution agreements, correspondence, guidance, and more.

TECHNICAL ASSISTANCE

Every year, OCR provides technical assistance to schools and communities around the country on longstanding and emerging civil rights issues. Although the COVID-19 pandemic reduced opportunities to provide technical assistance through in-person workshops and convenings, OCR's regional offices provided 186 technical assistance sessions to schools, communities, and organizations on various aspects of the civil rights laws OCR enforces.



POLICY GUIDANCE: AN OVERVIEW

During FY 2022, OCR published seven sets of policy guidance and resources addressing a wide range of civil rights topics, as summarized in

Figure 4 below. When appropriate, OCR issues guidance jointly with other civil rights offices, such as the Civil Rights Division of the United States Department of Justice, as reflected in Figure 4 and below in this Report.

Figure 4: Policy Guidance Issued in FY 2022

Statute	Issue/Release Date	Description
Section 504/Title II	Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19 October 13, 2021 (released jointly with DOJ)	Provides information about federal legal requirements governing school decisions about how to respond to students at risk of self-harm
	Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504 February 16, 2022	Clarifies the obligation for schools to provide compensatory services for students with disabilities who did not receive evaluations or services to which they were entitled to during the pandemic
	Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 July 19, 2022	Explains the nondiscrimination requirements that public elementary and secondary schools must follow with regard to the discipline of students with disabilities under Section 504
	FAQs on the Disability-Related Rights of Student Veterans with Disabilities May 23, 2022	Describes when veterans with disabilities are entitled to academic adjustments and how they may request them
	20-Part Video Series on Digital Accessibility (in partnership with the ADA National Network) May 23, 2022	Covers a variety of topics on digital access in education, including how people with disabilities use technology, applicable Federal regulations, and identifying and remediating barriers to access.
Title IX	Supporting Intersex Students October 26, 2021	Explains that federal civil rights law protects intersex students from sex discrimination
	Questions and Answers on the Title IX Regulations on Sexual Harassment June 28, 2022	Clarifies how OCR interprets schools' existing obligations under the 2020 amendments to the Department's Title IX regulations.

The CIVIL RIGHTS DATA COLLECTION

Since 1968, OCR has conducted the Civil Rights Data Collection (CRDC), a generally biennial survey of the nation’s public schools that gathers information about student access to educational opportunity from early childhood through grade 12. Public schools and school districts are required by statute¹ to submit information to this survey to assist OCR in evaluating data necessary to ensure compliance with civil rights laws within OCR’s jurisdiction, prohibiting discrimination based on race, color, national origin, sex, age, and disability. Over 17,000 school districts and nearly 100,000 schools self-aggregate and self-report their data.

¹ 20 U.S.C. § 3413(c)(1).

The CRDC gathers information about student access to educational opportunities and school climate factors, such as student discipline and sexual harassment and violence.

ADMINISTRATION OF THE 2020 – 2021 CRDC

During FY 2022, OCR administered the 2020-21 CRDC. Public school districts and schools submitted their civil rights data to OCR from December 13, 2021, through April 8, 2022. For the first time since administering the survey to all public-school districts and schools, OCR achieved a 100% response rate, meaning that all school districts submitted data. OCR plans to release the public data file and accompanying data reports for the 2020–21 CRDC in 2023.

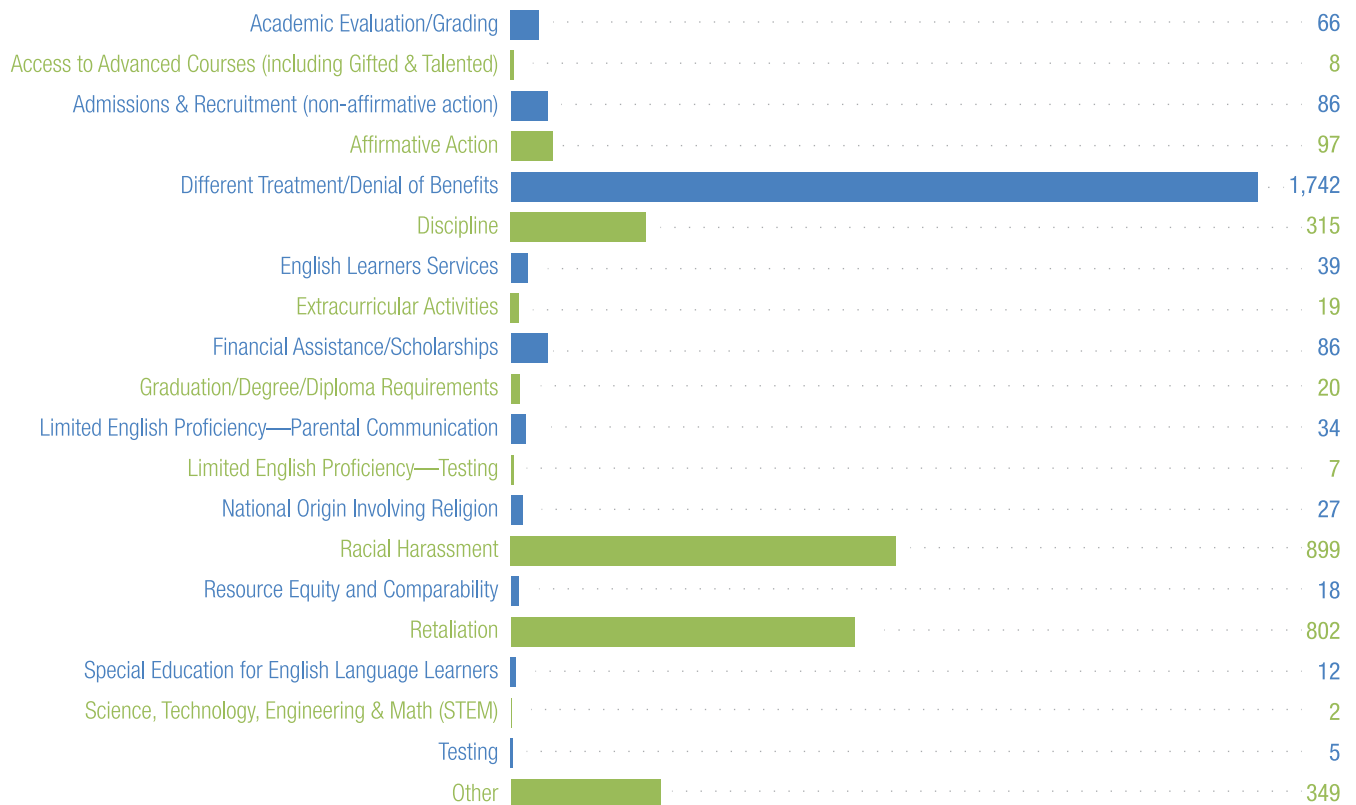


TITLE VI: *Discrimination Based on Race, Color, or National Origin*

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of Federal funds. It states: “No person in the United States shall, on the ground of race, color, or national origin, be

excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Title VI’s protections apply to all public elementary and secondary schools and to all colleges and universities—public or private—that receive Federal financial assistance. Its protections extend to all aspects of these institutions’ programs and activities. When enforcing Title VI, OCR works to ensure equal access to education services and benefits and to prevent acts of retaliation against those who report Title VI violations.

Figure 5: Title VI Complaint Allegations Received in FY 2022



Total Number of Complaints Raising Title VI Issues, **FY 2022 = 3,329**

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.



ENFORCEMENT

In FY 2022, OCR resolved **2,408** Title VI complaints that, collectively, address a broad range of Title VI-related issues in institutions across the nation (see Figure 5). These issues range from allegations of antisemitic harassment to allegations of discrimination against English Learner students and their families. The following case resolutions illustrate OCR’s investigative work over the fiscal year to enforce Title VI:

Combating Harassment Based on Race, Color, or National Origin, including Shared Ancestry

Kyrene School District (AZ): In August 2022, OCR determined that the district violated Title VI by failing to respond appropriately to notice of ongoing anti-Semitic harassment of a student by numerous classmates, both in school and on social media, for over five months. The harassment included anti-Semitic slurs and disparaging remarks about the student’s Jewish heritage. The harassment the student experienced and the district’s failure to provide

the student with a safe school environment caused the student to suffer significant and enduring academic and emotional harm. OCR also found that the harassment persisted schoolwide. Specifically, despite confirming that the anti-Semitic harassment occurred in classrooms and elsewhere on campus—including identifying nine students who engaged in anti-Semitic harassment for several months—the district failed to assess whether the verified, widespread harassment negatively impacted other students. The district also did not take any schoolwide measures to address the anti-Semitic harassment until several months after confirming its existence, which allowed a potential hostile environment to persist in the school.

“

The facts in this resolution agreement underscore the importance of training teachers and staff members to recognize discriminatory harassment and to understand their obligations to respond and report. A little bit of training can go a long way toward equipping teachers and staff members with the knowledge they need to meet reporting obligations and create a discrimination-free environment for their students.”

***Dan Fotoples**, Director of Content Development,
TNG Consulting*

To remedy the violation, the district agreed to address the student’s academic and counseling needs resulting from the harassment, review and revise its policies and clarify that its prohibition against harassment includes anti-Semitic harassment, provide training to district staff, and

provide developmentally appropriate education to students. Additionally, the agreement required the district to develop a climate survey to administer in the entire district and to plan additional steps based on the results.

Peoria Unified School District (AZ): In September 2022, OCR found that racial harassment from student peers and district employees created a hostile environment for students of color that the district had notice of and failed to adequately address. The investigation uncovered evidence of harassment by fellow students that included race-based slurs; mocking police killings of Black people; pulling eyes back to taunt Asian students; mimicking “Heil Hitler” salutes; drawing Swastikas on photographs of students’ faces; and saying that Black people “do not deserve to live” and “should die,” a student’s skin looked like “burnt” food, and another student should “go back to [their] country” and “eat dog.” Harassment by employees involved repeated touching of and comments exclusively about a Black student’s hair. The persistent, pervasive, and severe harassment and the district’s ineffective response caused significant and enduring academic, social, and emotional harm to the student who was the subject of the OCR complaint. Moreover, though the complaint was lodged by a single Black student, in its investigation OCR found that a schoolwide hostile environment existed because at least a dozen other students of color at the school were likewise harassed based on race, color, or national origin by numerous peers.

Although administrators and teachers at the school were aware of widespread harassment based on race, color, or failed to adequately investigate whether the harassment created a hostile environment for students and failed

to offer any supports or remedies to students who were harassed. OCR found that these failures allowed the harassment to continue on a consistent basis and to create a schoolwide hostile environment. OCR also found that the district failed to identify other students who may have been subjected to a hostile environment but did not report their experiences given the school’s repeated failures to respond promptly and effectively to reported harassment.

To remedy the violations, the district agreed to: provide support and remedies to affected students; conduct a climate assessment on the prevalence and school’s handling of harassment; review and revise policies, forms, and record-keeping procedures; and train staff in reporting, cultural competency, and implicit bias. The district also agreed to provide developmentally appropriate educational programs for its students about how to recognize and report harassment based on race, color, and national origin.

Also...

See **San Juan Bautista School of Medicine**, p. 22 (addressing race and sex discrimination, including harassment)

Orland Joint Unified School District (CA): In July 2022, OCR identified concerns after investigating allegations that a school principal required a Black student to remove his do-rag and then threatened to change the school’s dress code to prohibit the wearing of do-rags after the student’s mother complained that the principal’s action discriminated based on race. Although the principal stated that he associated do-rags with gang activity, OCR’s investigation indicated that the district had no information to suggest a

connection between wearing do-rags and gang affiliation. OCR's investigation also found that the principal knew the student was one of very few Black students in the school and, therefore, one of very few students to whom the policy change would specifically apply.

To resolve the complaint with OCR, the district agreed to: communicate in a letter to the parent and student the district's commitment to provide an educational environment free from discrimination, including retaliation, for all its students as well as its commitment to resolving incidents implicating race, color, or national origin in a manner consistent with its internal complaint procedures; designate a school employee to serve as a supportive contact for the student; issue a statement to parents and guardians at the school stating that the district does not tolerate discrimination, including retaliation; communicate to all students, in an age-appropriate manner, the prohibition against discrimination, including retaliation, and how to report an incident involving discrimination; issue a written guidance memorandum to school employees regarding its anti-discrimination/anti-retaliation statement on the basis of race, color, or national origin, and the steps staff should take when they witness or are told of discrimination/retaliation; provide training

for school employees on how to recognize conduct that may constitute discrimination, including retaliation; and develop a written self-evaluation plan for monitoring the climate at the school.

Combating Discriminatory Discipline

Victor Valley Union High School District (CA):

In August 2022, OCR found that this district violated Title VI by disciplining Black students more frequently and more harshly than similarly situated white students. OCR identified a pattern of disparate disciplinary actions across types of discipline (e.g., suspensions, expulsions, truancy, law enforcement citations), across schools, and across grade levels that imposed greater harms—including in significant lost learning time—on Black students than on their white peers. For example, OCR identified instances in which Black students received harsher discipline than similarly situated white students for cutting class, wearing their pants low or “sagging,” engaging in a mutual altercation, or making disruptive noises. This reported discrimination was consistent with statistical evidence of racial disparities in student discipline, as well as with district records reflecting specific instances of harsher discipline of Black students as compared to white students who

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We commend the Office for Civil Rights for its work to hold the Victor Valley Union High School District accountable for violating the Civil Rights Act and the rights, dignity, and futures of numerous children who were disproportionately targeted and harshly disciplined because they are Black. As we applaud the OCR for this essential work, we hope the news of the agreement between the government and the Victor Valley Union High School District puts other school districts engaged in discriminatory discipline practices on notice that such conduct is unlawful and will not be tolerated.”

Janai Nelson, President and Director-Counsel, NAACP Legal Defense Fund

engaged in similar behavior. OCR's investigation also revealed that some of the district's discipline practices that disproportionately harmed Black students departed from district policies and state law. Additionally, OCR also found that the district failed to maintain and produce timely, complete, and accurate records regarding student discipline to demonstrate its compliance with Title VI.

To remedy these violations, the district committed to: examine the causes of racial disparities in the district's student discipline practices and to develop and implement a corresponding corrective action plan; establish a stakeholder equity committee to inform the district's implementation of the plan and agreement; revise its discipline policies and procedures, including regarding law enforcement involvement in student discipline; ensure accurate and complete student discipline record-keeping and reporting; regularly analyze student discipline data and other information to address possible areas of discrimination; clarify prohibited discipline practices through a memorandum to appropriate staff; provide training for staff on the revised discipline policies, practices, and record-keeping; conduct student and parent information sessions regarding student discipline policies; publicly report disaggregated discipline data; conduct school climate surveys to assess perceptions of fairness and safety in the district; and provide compensatory education to students subjected to discriminatory discipline policies and practices.

Ensuring Equal Opportunities for English Learners

Pecatonica Area School District (WI): In March 2022, after investigating whether the district discriminated against an eighth-grade student on the basis of national origin by not providing her

with appropriate English Learner (EL) services, OCR determined that the district violated Title VI by failing to take affirmative steps to address the student's language needs, determine what services were appropriate, and track or monitor her progress to ensure that she was not left with academic deficits. Additionally, the District did not have procedures in place to effectively monitor the student's progress.

To resolve the violations, the district agreed to review and revise or develop policies for identification and assessment, as well as monitoring, of EL students and provide responsive training to staff; develop a recordkeeping system that identifies and tracks all EL students in the district; designate a staff member responsible for the assessment and evaluation of the district's EL program; and provide individual relief for the student, including by providing the results of her language testing to her parent(s), identifying any need for academic support, and ascertaining the need for and if so providing compensatory services to the student.



Shelton SD No. 309 (WA): In investigating a complaint alleging that the district discriminated against limited English proficient (LEP) parents on the basis of national origin, OCR identified concerns that the district may not have been providing LEP parents with effective access to school-related information comparable to English-speaking parents during the school's parent-teacher conferences or in attempts to raise concerns with the principal. The investigation yielded evidence that the district also may not have had a consistent process to ensure interpreters were qualified to provide effective services, or a process to provide school staff consistent notice about the variety of interpretation services available to parents.

To remedy the concerns, the district agreed in November 2021 to review and revise its policies and procedures to ensure that LEP parents and guardians are notified of school activities and other matters in a language they can understand. The district also agreed to notify LEP parents of the availability of free language assistance services with respect to school programs and activities, as well as information on how this assistance may be obtained, and provide LEP parents with a contact person who can answer any questions regarding parental communication and assist parents to access interpreter services or translated documents. Finally, the district agreed to provide training for all school administrators and other staff members involved in the provision of interpreter and translation services.

Fulton County Schools (GA): In December 2021, OCR resolved a complaint alleging that the district discriminated against limited English proficient (LEP) parents when it failed to provide interpretation services during a virtual meeting held for parents. OCR's investigation indicated

that the district did not provide meaningful communication (i.e., interpretation or translation of documents) to LEP parents and guardians during the virtual meeting. The information provided by the district also raised a concern about whether the district had a process to ensure meaningful communication with LEP parents and guardians at meetings organized by the district's central office, or whether the district notified LEP parents and guardians, in a language the parents and guardians can understand, about the availability of language assistance services and about the process for requesting such services at these meetings. OCR was also concerned that the district's written procedures did not address requests for interpretation services that could not be submitted five business days before the scheduled service date.

To resolve the complaint, the district agreed to develop and submit to OCR for review and approval a written plan to provide language assistance to LEP parents and guardians that ensures they have meaningful access to meetings (virtual and in-person) organized by the district's central office; adopt and implement the language assistance plan upon OCR's approval; and train the superintendent and central office staff on the language assistance plan.

Leadership Learning Academy (UT): In August 2022, OCR resolved a complaint alleging the academy discriminated against English Learner (EL) students based on disability and national origin. OCR's investigation yielded evidence that school staff may have required that EL students receive three years of English instruction before school staff would refer them for special education evaluation. Additionally, OCR was concerned that staff members who had not been trained to provide translation and interpretation

assistance sometimes provided such assistance. To resolve this investigation, the academy agreed to provide staff training regarding EL students and special education services, including training to explain that delaying special education referrals and evaluations of EL students based on EL status is impermissible; provide training for staff who provide oral interpretation and/or written translation for parents/guardians; and determine whether any EL students should be referred for special education evaluations.

Logan City School District (UT): In September 2022, OCR resolved a complaint alleging the district discriminated against English Learner (EL) students based on national origin and disability. OCR's investigation yielded evidence of confusion among staff about whether EL students had to have three years of English instruction before being referred for special education evaluation. Additionally, OCR noted concerns related to the district's treatment of a particular LEP parent and student, including that the district did not ensure meaningful communication with the LEP parent, did not properly conduct a manifestation determination review meeting for the student to determine if the student's behavior was a manifestation of disability, and failed to provide educational services during the time the student was suspended. The resolution agreement requires the district to expunge the student's disciplinary record of one incident, develop and implement a communication plan with the parent, convene an IEP meeting to discuss compensatory services for the student, develop and implement a district plan for providing interpreter services and written translation to LEP parents/guardians of students, disseminate a memorandum to all administrators, teachers, and special education staff regarding the district's

obligations under Section 504/Title II, provide training to all administrators, teachers and special education staff on Section 504/Title II, and revise the district's disciplinary policy and form letter notifying parents/guardians of a long-term suspension.

Protecting the Equal Rights of All Students to Attend Public School Regardless of Immigration or Citizenship Status

Deer Park ISD (TX): In September 2022, OCR resolved a complaint alleging the district discriminated against students on the basis of national origin when it issued letters to parents requiring them to provide Social Security cards to enroll their children in the district. OCR's investigation revealed concerns that the district's requests for Social Security cards and state-issued birth certificates to register new students could have barred or deterred non-citizens who did not have such documentation from enrolling their children in the district's schools.

To resolve the complaint, the district agreed to revise and disseminate its enrollment policy and related addenda, per OCR's review and approval; publish a statement about the revised enrollment policy in both English and Spanish, targeted to parents and guardians who may have previously been discouraged from enrolling their children under the district's prior enrollment policy; and provide training on their updated policies, practices, and procedures for all staff involved in the student enrollment process.

TITLE IX: *Discrimination Based on Sex*

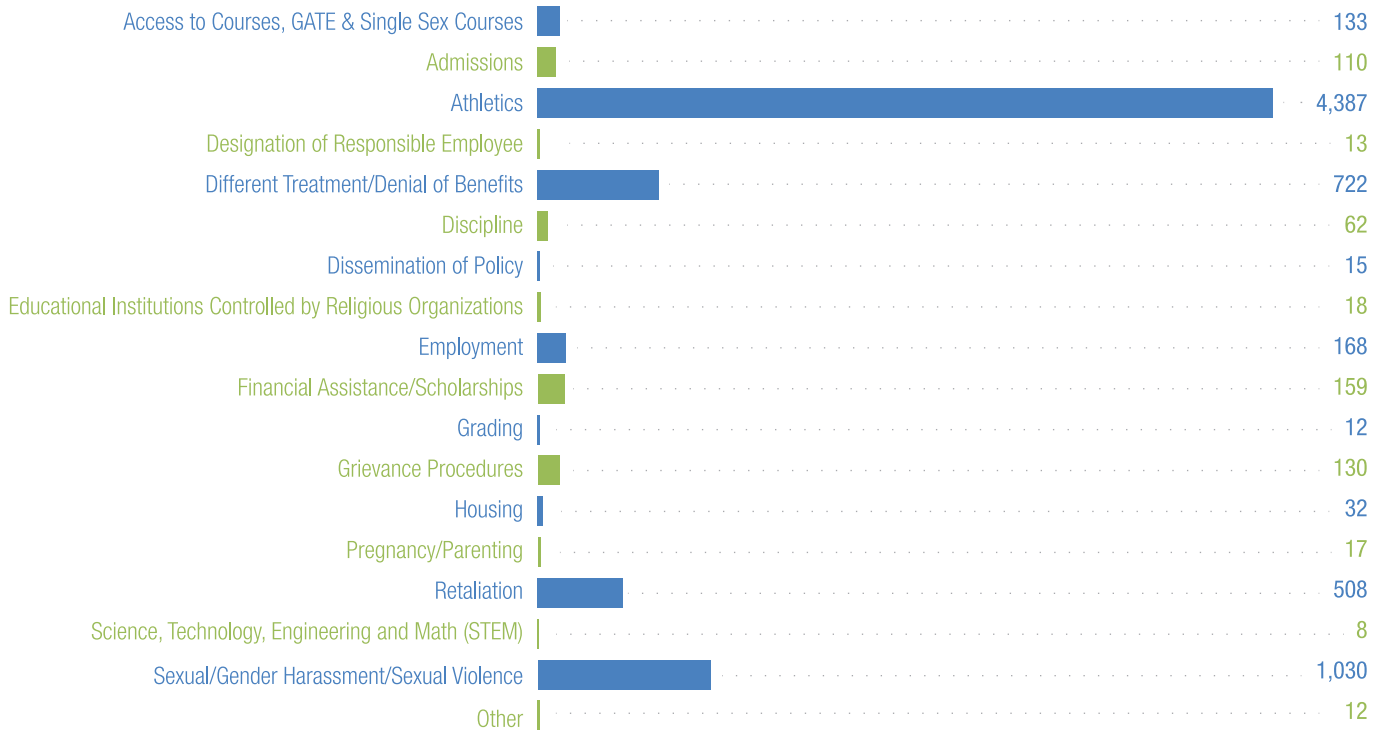
Title IX of the Education Amendments of 1972 (Title IX) states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Title IX applies to recipients of Federal financial assistance, including colleges, universities, and public-school districts. OCR enforces Title IX to ensure equal access to educational opportunities.

PROPOSED RULEMAKING AND POLICY RESOURCES

During FY 2022, OCR issued the following proposed rulemaking and resources to support full implementation of Title IX, including:

- [Proposed Amendments to Title IX Regulations.](#) In June 2022, the Department proposed amendments to its regulations implementing Title IX. The proposed regulations would, among other things, require schools to take prompt and effective action to end any sex discrimination in their education programs or activities, prevent its recurrence, and remedy its effects. They would also require schools to address complaints of sex discrimination with a fair and reliable process and provide

Figure 6: Title IX Complaint Allegations Received by OCR in FY 2022



Total Number of Complaints Raising Title IX Issues, **FY 2022 = 9,498**

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.

supportive measures to those affected. Finally, they would clarify that Title IX protects against discrimination based on sexual orientation, gender identity, and sex characteristics, as well as pregnancy and pregnancy-related conditions. The Department received public comments for 90 days between June and September 2022, and will review and respond to submitted comments before issuing a final rule in 2023.

- In June 2022, OCR issued this update in light of the Federal district court ruling in *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), appeals pending (1st Cir), which vacated the part of the regulation at 34 C.F.R. § 106.45(b)(6)(i) that prohibited a decision-maker at a postsecondary school from considering statements not subject to cross-examination.
- [Supporting Intersex Students: A Resource for Students, Families, and Educators](#). Released in October 2021, this fact sheet lists key issues intersex students may face in schools, including bullying, harassment, or other discrimination related to their physical characteristics or because they do not conform to sex stereotypes. The resource offers suggestions on ways schools can best support intersex students, such as using inclusive language in school mission statements and affirming students' rights to be free from all forms of sex discrimination at school. The fact sheet also includes steps to take if students believe that they, or others, have been discriminated against at school based on sex.

ENFORCEMENT

The following cases illustrate OCR's Title IX resolutions in FY 2022.



Combating Harassment on the Basis of Sex, Including Sex Stereotypes

Hickory City Schools (NC): In April 2022, OCR resolved a complaint alleging that the district discriminated on the basis of sex at a district middle school in its enforcement of the school's dress code. OCR's investigation indicated that the district held assemblies only for girls but not boys to discuss hygiene issues and dress code enforcement and that a school employee commented during one of these assemblies about girls needing to "sav[e] leggings for marriage." The evidence also reflected that school staff issued warnings during the girls-only assemblies that students would be suspended for dress code violations, whereas the district dress code stated that schools should require compliance with the code "with the least amount of disciplinary action."

To resolve the complaint, the district agreed to revise its dress code to include a statement that the district will not discriminate on the basis of sex in the administration of its dress code and a

statement that students, parents, and staff may contact the district's Title IX Coordinator to file a complaint if they believe that the dress code has been administered in a discriminatory manner. Additionally, the district agreed to provide training to staff regarding the revised dress code and the school's responsibilities under Title IX; revise the School's Handbook/Code of Conduct; and monitor to ensure that the school is enforcing the dress code in a manner that does not discriminate on the basis of sex.

Wayne Highlands School District (PA): In July 2022, OCR resolved a complaint that alleged the district discriminated against a male student when it prohibited him from wearing an earring in school. OCR was concerned that the district's dress code policy relied on sex stereotypes that prohibited boys but not girls from wearing earrings. To resolve the investigation, the district agreed to revise its dress code to comply with Title IX; distribute a memorandum to all staff, students, parents and guardians in the district advising them of the revised dress code policy; and issue a formal apology to the student and his parent, including a copy of the revised dress code policy, and advising the student that he may wear an earring to school.

Eradicating Sexual Harassment and Sexual Violence

Chino Valley Unified School District (CA): In April 2022, OCR found that the district violated Title IX by failing to respond promptly and effectively to notice of sexual harassment of students on a high school athletic team by some of their teammates. OCR's investigation uncovered repeated and pervasive harassment by some team members on the team bus, in locker and weight rooms, and in the physical education

classroom. Some team members subjected others to harassment that was so serious that it limited their ability to access the athletics program. The harassing conduct included videotaped assaults of teammates, students forcibly physically overpowering other students and sharing photos of their genitals among the team and on social media, and students placing their genitals on and near other students' faces and bodies. The response from administrators, including coaches, to these incidents was insufficient to end the harassing conduct and did not prevent its recurrence. Additionally, the district's response following its investigations did not address the conduct adequately and failed to consider interim supportive measures to protect student athletes from sexual harassment.

To remedy these violations, the district agreed to contact all former athletes from the school's fall 2017 team and offer counseling services or reimbursement for such services received to address the effects of the district's failure to address known sexual harassment on the team; conduct a climate survey for the school's athletics team; train district leaders, school administrators, and coaches about their responsibilities for responding effectively to sexual harassment; conduct Title IX education for student athletes; and report to OCR on the district's training and responses to complaints of sexual harassment through the end of the 2022-2023 school year.

San Juan Bautista School of Medicine (PR): In May 2022, OCR resolved complaints of sex and race discrimination in the school's handling of Title IX investigations. OCR determined that the school failed ever, over more than four years, to investigate a student's report that another student sexually assaulted her. OCR also found that the school's procedures for resolving complaints

of sexual harassment did not comply with Title IX. OCR also identified compliance concerns regarding both the promptness and equity of the school's investigation of allegations of race and sex discrimination, including because school records reflected that the school did not follow its own procedures for investigating discrimination complaints and that the school predetermined an investigation outcome before contacting the complainant to schedule an interview.

To resolve the complaints, the school agreed to conduct the missing sexual assault investigation, reimburse the complainant for specified coursework, train relevant employees, and update its grievance procedures to comply with Title IX.

Also...

See **Peoria Unified School District**, p. 15 (investigation of racial harassment)

Tamalpais Union High School District (CA):

In June 2022, OCR determined that this district violated Title IX by failing to respond promptly and effectively to repeated notice of ongoing sex-based harassment of a transgender student by another student, predicated on sex stereotyping. During the investigation, OCR found that the district failed to investigate allegations that the other student had repeatedly harassed the transgender student about her appearance, her voice, her body, her name, and her pronouns the school year OCR investigated. OCR found that this failure to investigate, in addition to the district's failure to respond promptly or effectively to later notice of continuing harassment, permitted the student to be subjected to a hostile environment

that was sufficiently serious to deny or limit her ability to participate in or benefit from the school's program.

The resolution agreement committed the district to reimburse the student and her family for counseling costs incurred because of the harassment, review and revise district policies and procedures to clarify that harassment based on sex includes harassment based on sex stereotyping, train school staff and contractors on their obligations under Title IX, and document to OCR that the district's responses to complaints of sex-based harassment during the most recent two school years complied with the resolution agreement and with Title IX.

Eastern Mennonite University (VA):

In February 2022, OCR resolved an allegation that the university discriminated against a university faculty member by failing to respond appropriately to a report of sexual harassment made against him. The evidence reflected that although the university found the faculty member not responsible for sexual harassment after a student in the faculty member's class alleged he engaged in inappropriate and sexually suggestive behavior, the university had not answered his request for interim measures during the investigation, including switching his class and office hours to Zoom so that he would not be face-to-face with the complaining student, getting a third party to audit his grading practices, and eliminating the requirement that he be a student advisor during the investigation.

To resolve OCR's concerns regarding equitable treatment for the faculty member, the University agreed to conduct a Title IX training with an emphasis on interim measures and retaliation and to develop a plan to assess the

appropriateness of the university's response to the faculty member including, if necessary, consideration of remedial options.

Equal Access to Athletic Opportunities and Benefits

Santa Maria Joint Union High School District (CA): In February 2022, OCR resolved a complaint alleging the school district discriminated on the basis of sex in, among other things, the provision of locker rooms, scheduling of games and practice time, transportation, and per diem allowance in the district's athletic program. During the investigation, OCR identified concerns about equal opportunity and facilities, including that, during two school years, the school's varsity girls' athletic teams: had fewer regular season competition opportunities than its varsity boys' teams; had fewer opportunities for practice and travel; and were provided equipment, facilities (including locker room), and coaching that were not equivalent to what the boys' teams received.

To resolve these concerns, the district agreed to provide training on the district's Title IX responsibilities to its Title IX coordinator, the school's athletic director, principal, and all coaches; take steps to ensure that its girls' athletic teams have equivalent competitive opportunities, practice hours, equipment and supplies, and opportunities to use school vans for travel; use an equivalent ratio of coaches per student for the girls and boys athletic teams; ensure that male and female student athletes are treated the same with respect to fundraising requirements; and provide equivalent team rooms and locker rooms to girls and boys.



Western Illinois University (IL): In February 2022, OCR resolved an investigation that had identified concerns that the university did not effectively accommodate the interest and abilities of female students and did not provide equal athletic opportunity based on sex in connection with the opportunity to receive coaching and the recruitment of student athletes. To resolve the complaint, the university agreed to conduct a full assessment of how it can equally and effectively accommodate the athletic interests and abilities of female students to the extent necessary to provide equal opportunities for female students in its intercollegiate athletic program and to accommodate the athletic interests and abilities of its female students equally and effectively by no later than the 2024-2025 academic year. The agreement requires the university to assess the opportunity to receive coaching and assignment and compensation of coaches for its female athletes and create a plan to provide equal opportunities in this component by no later than the 2023-2024 academic year; to conduct a full assessment of its recruitment of student athletes and create a plan to provide equal opportunities for male and female students in this component by the 2022-2023 academic year.

Preventing Discrimination Based on Pregnancy or Parental Status

Bryant & Stratton College, Virginia Beach Campus (VA): In January 2022, OCR resolved a complaint alleging the college discriminated on the basis of pregnancy when it denied the complainant's request to finish her last scheduled class early to accommodate her estimated due date. While OCR was conducting its investigation, the college allowed the complainant to complete the program early as initially requested, but OCR remained concerned that college staff may not have sufficient guidance to respond appropriately to a request for a reasonable adjustment due to pregnancy status.

To resolve these concerns, the college agreed to adopt policies and procedures that ensure students are not unlawfully excluded from the college's educational programs or activities based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, including with respect to any student requests for reasonable adjustments on these bases. The college also agreed to train its employees on these policies and procedures.

Salt Lake Community College (UT): In June 2022, OCR resolved a student's complaint of pregnancy discrimination after learning in its investigation, among other things, that the student reported to the college that a professor had encouraged her to drop a course due to her pregnancy, that college administrators did not appropriately address the student's report, and that the college had not provided the student with accommodations during her pregnancy. OCR determined that the college violated Title IX by failing to respond promptly and equitably to the student's complaint of pregnancy discrimination,



failing to excuse her pregnancy-related absences or allow her to submit work following those absences, and failing to engage in an interactive process to provide her with academic adjustments or necessary accommodations during her pregnancy. OCR also found that the college violated Section 504 by failing to consider whether her pregnancy caused a temporary disability requiring academic adjustments.

To remedy these violations, the college agreed to revise its nondiscrimination notice and grievance procedures to comply with Title IX; publish information on its website for pregnant students about their Title IX rights and how to seek academic adjustments, special services, or excused absences; train its Title IX coordinator, Disabilities Resource Center staff, and other school employees regarding Title IX's and Section 504's protections for pregnant students and the academic adjustments and special services available to pregnant students; complete and document its investigation of the student's complaint of pregnancy discrimination; and take other measures to remedy the discrimination against the student.

SECTION 504 and TITLE II: DISCRIMINATION BASED ON DISABILITY

OCR protects the rights of persons with disabilities under two Federal laws in the education context. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of Federal funds. It states: “No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his 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...” Title II of the Americans with Disabilities Act of 1990 (Title II) prohibits discrimination based on disability by public entities, regardless of whether they receive Federal financial assistance. It states: “[N]o 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.” With regard to educational institutions, OCR shares compliance with Title II with the Department of Justice. 28 C.F.R. § 35.190(b)(2).

POLICY GUIDANCE AND RESOURCES

During FY 2022, OCR issued five sets of resources that describe recipients’ obligations to protect the civil rights of students with disabilities, including

innovating in a new format for the first time to provide a 20-part video series breaking down elements of fulfilling digital accessibility for students and school community members with low or no vision, who are deaf or hard of hearing, or who have other disabilities that affect their digital access.

- [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline](#). In July 2022, OCR issued a Dear Colleague Letter along with a related [Fact Sheet](#), which describes schools’ responsibilities under Section 504 to ensure that they do not discriminate against students based on disability when imposing student discipline. The documents summarize public schools’ obligation to provide a free appropriate public education to K-12 students with disability-based behaviors; make reasonable modifications to disciplinary policies for students with disabilities necessary to avoid disability discrimination; and administer student discipline requirements in a nondiscriminatory manner.

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This new guidance is worth celebrating. It offers concrete strategies for districts and schools”

Rachael Goeler, high school special education teacher and member of Educators for Excellence’s National Teacher Leader Council

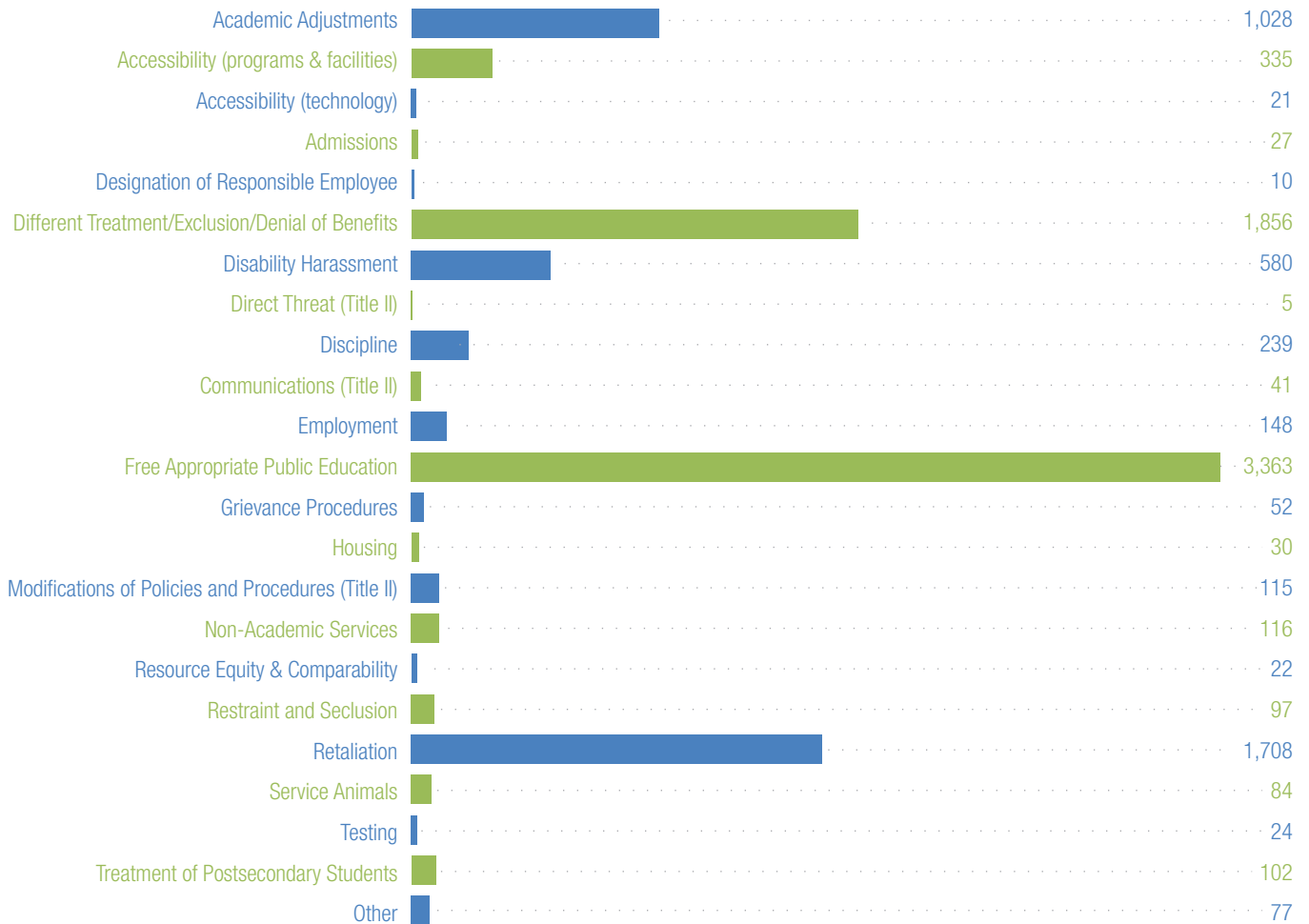
- [Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19](#). OCR issued this fact sheet jointly with the Department of Justice’s Civil Rights Division in October 2021, recognizing that the stressors associated with the COVID-19 pandemic may have caused some students to experience a mental health disability for the first time, while for others, an existing



mental health disability may have worsened. The fact sheet reiterates that students with mental health disabilities are protected by Section 504 and Title II and that these laws require K-12 schools and postsecondary institutions to provide students with an equal opportunity to learn, free from discrimination, including during public health crises.

- [Supporting College Success: FAQs on the Disability-Related Rights of Student Veterans with Disabilities](#). In May 2022, OCR issued this resource to help students and administrators in postsecondary institutions understand how Section 504 covers veterans with disabilities who apply to or attend college. The FAQ highlights that the legal standards used to determine disability status under Section 504 are not the same as the standards used by the U.S. military and the U.S. Department of Veteran Affairs, and describes when veterans with disabilities are entitled to academic adjustments and how they may request them.
- Also in May 2022, in partnership with the ADA National Network, OCR released a [20-part video series](#) covering topics such as applicable Federal laws, how people with disabilities use technology, and how to identify and remediate different types of technological barriers that can interfere with the ability of parents and students with disabilities to participate in modern American education. The intent of the series is to provide a basic instruction to many different digital accessibility concepts, such as fundamental manual testing techniques, use of color, logical reading order, meaningful video captions, and others. The videos are designed for a wide range of audience members, including school website managers, parents and students with disabilities, and educational app developers, and other IT vendors.
- [Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504](#). Issued in February 2022, this document confirms that students with disabilities retain their right to FAPE during the COVID-19 pandemic and summarizes elementary and secondary public schools' obligations under Section 504 to provide appropriate evaluations and services to students with disabilities during the COVID-19 pandemic, including schools' responsibility to provide compensatory services. It goes on to explain that if a student with a disability did not receive appropriate evaluations or services, including the services that the school had previously determined the student was entitled to, then the school must convene a group of knowledgeable persons to make an individualized determination

Figure 7: Section 504/Title II Complaint Allegations Received in FY 2022



Total Number of Complaints Raising Disability Issues, **FY 2022 = 6,467**

Note: A single complaint can raise multiple issues; therefore, the total number of issues raised will exceed the number of complaints received.

of whether, and to what extent, compensatory services are required to remedy any educational or other deficits that resulted.

In May 2022, OCR [announced](#) our intention to propose amendments to the Department’s regulations implementing Section 504. OCR set up an email address to receive input regarding potential amendments to these regulations, in addition to listening sessions with interested

parties, and has incorporated input received so far while developing proposed amendments.

ENFORCEMENT

In FY 2022, OCR resolved **5,187** Section 504/ Title II-related complaints, addressing the generally broad range of issues raised with OCR in complaints under these laws (see Figure 7). In addition, OCR initiated 100 compliance reviews focused on web accessibility and based on

concerns about potential violations of disability laws. The following cases illustrate OCR's enforcement work related to disability.

Ensuring Appropriate Educational Supports for Students with Disabilities

Los Angeles Unified School District (CA): In April 2022, OCR resolved a directed investigation of whether the district provided the free appropriate public education (FAPE) to which federal civil rights law entitles students with disabilities during the COVID 19 pandemic. OCR's investigation found that during remote learning, the district limited the services provided to students with disabilities based on considerations other than the students' individual educational needs; failed to accurately or sufficiently track services provided to students with disabilities; directed service providers to include attempts to communicate with students and parents—including emails and phone calls—as the provision of services, documenting such attempts on students' service records; informed staff that the district was not responsible for providing compensatory education to students with disabilities who did not receive FAPE during COVID-19-related school closures because the district was not at fault for the closure; and failed to develop and implement a plan adequate to remedy the instances in which students with disabilities were not provided FAPE during remote learning.

The district agreed to resolve these violations by creating and implementing a comprehensive plan to address the compensatory education needs of students with disabilities due to the COVID-19 pandemic. Through implementation of the resolution agreement, the district agreed to develop and implement a plan to appropriately assess and provide compensatory education to

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The National Center for Learning Disabilities applauded Los Angeles schools for entering the resolution and the federal Education Department for sending a signal that it takes its 'watchdog role' seriously by taking such a large school district to task.”

*Lindsay Kubatzky, Director of Policy and Advocacy,
National Center for Learning Disabilities*

students with disabilities who did not receive FAPE during the COVID-19 pandemic; designate a plan administrator to implement the plan for assessment of compensatory education; convene IEP and Section 504 teams to determine whether students were not provided the regular or special education and related aids and services designed to meet their individual needs during remote learning and determine compensatory education; track and report to OCR the implementation of the plan for compensatory education; and conduct outreach to parents, guardians, students, and other stakeholders to publicize the plan for compensatory education and the roles of the plan administrator and independent ombudsperson.

Rapid City Area Schools 51-4 (SD): In December 2021, OCR resolved an investigation that had revealed evidence that the district limited the total number of students who could be evaluated for learning disabilities, delayed provision of services to students who have or are suspected to have disabilities while using Response to Intervention services, and sometimes served an even smaller number of students with disabilities than the systemic cap the evidence showed the district had placed on students who could receive services, even when the district had reason to believe a

larger number of students should be evaluated and served. Although the district revised its program during the course of the investigation, it did not communicate in writing to district staff or train staff regarding the claimed discontinuation of the cap on the number or percentage of students who could receive Response to Intervention services and the district did not identify students who may have been denied or delayed in receiving evaluations or services. To resolve the investigation, the district committed to the discontinuation of any practice or policy of limiting the number of students who could be identified or evaluated for learning disabilities; timely identification, referral, evaluation, and placement at each district school of students suspected of having learning disabilities; policy evaluation and reporting to OCR regarding revisions; relevant training for district employees; and district review of student educational records from 2015 through 2021 to determine whether students should be provided compensatory services.

Also...

See **Leadership Learning Academy**, p. 18 (imposing language requirements on English Learner students with disabilities before becoming eligible for special education services)

Oakland City University (IN): In August 2022, OCR determined that the university failed to comply with Section 504 and Title II when it prohibited a student from attending in-person instruction without following proper procedures to make an individualized threat assessment using the best objective evidence

that the student posed an imminent risk of substantial harm that could not be reduced or eliminated with mitigating measures. The university excluded the student from in-person classes because administrators were concerned that he might harm others on campus and disparage the university's reputation. During the investigation, OCR found no evidence that the student attempted to harm or made threats to any university personnel or students and found that the university made the determination to exclude the student prior to meeting with him and giving him an opportunity to explain himself. The university also did not consider possible mitigating measures to address its concerns. The evidence indicated that the decision was based on disability-based generalizations and stereotypes, rather than an individualized assessment, including assuming that the student's statement regarding emotional outbursts since leaving the military, in light of his anxiety, was an admission that he was a threat to the university community.

To remedy the violation, the university entered into an agreement that requires it to establish a policy and procedures for identifying, evaluating, and addressing student threats, potential threats or safety concerns; provide training to all individuals involved in identifying, evaluating, and addressing student threats, potential threats or safety concerns; assess the effectiveness of the training and provide additional training if the training provided was not effective; maintain records of all threat assessments including all documents relied on in making the threat assessment and all mitigating measures considered to reduce or eliminate the threat; and reimburse the student for the monetary loss of his Veteran Affairs stipend for the time in which he was prohibited from attending the university in-person.

Triton School District (MA): In June 2022, OCR resolved a complaint that alleged the district discriminated on the basis of disability. The complainant requested that her son be evaluated for a Section 504 plan after missing several days of school for a diagnosed medical reason. During the investigation, OCR identified two compliance concerns – first, that instead of evaluating the student, the district paused the 504-evaluation process in order to attempt supportive measures, and second, that the district ultimately convened a Section 504 meeting and determined that the student was ineligible using a checklist with a limited number of potential major life activities and no option to add any others. In particular, OCR was concerned that teams completing this checklist may have been given the mistaken impression that they need not consider other potential major life activities not already listed. To resolve the complaint, the district agreed to revise its Section 504 Eligibility Determination Form to make clear that the major life activities list is non-exhaustive and provide a space to write in others; provide training on Section 504 and Title II to any staff directly involved in the evaluation process, focusing on eligibility standards; re-evaluate the student in a team meeting using the revised eligibility form; and determine whether there are any other students district-wide whose evaluations were delayed or who were evaluated using the inaccurate checklist, consider whether these students are suspected of having a disability under correct standards, and if so, conduct a team meeting to determine eligibility.

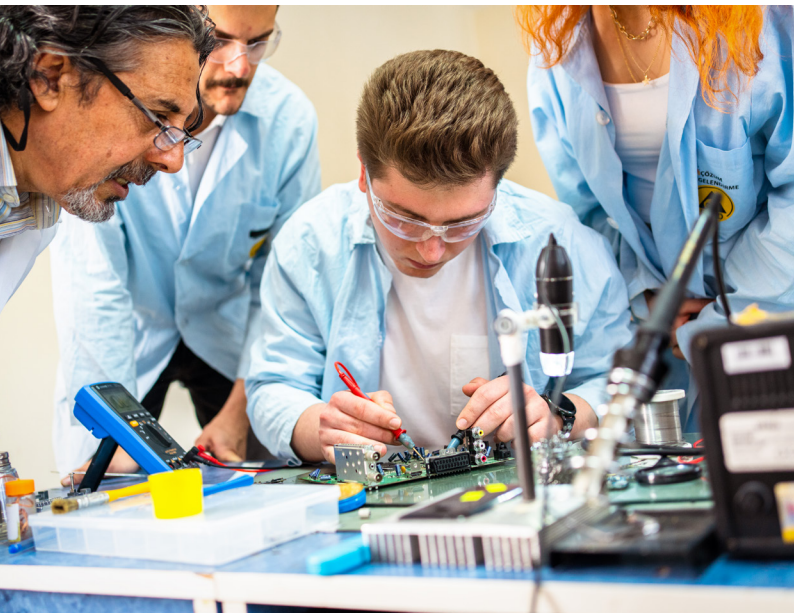
Pasadena Unified School District (CA): In November 2021, OCR determined that the district denied a FAPE by failing to provide counseling services to students whose IEPs entitled them to such services. OCR reviewed data from the 2019-

2020 school year and found that almost 80% of district students with IEPs received partial or none of the counseling services to which they were entitled, and in the 2020-2021 school year almost 55% of students similarly received partial or none of the counseling services to which they were entitled. In addition, the district's data-keeping practices and its training for psychologists during this time period were both inconsistent.



To remedy these violations, the district agreed to review IEPs for the 2020-2021 school year to identify students who were entitled to counseling services they did not receive, determine whether it would be appropriate to provide compensatory counseling services, and if necessary, provide those services. Additionally, the district agreed to: review IEPs for the 2021-2022 and 2022-2023 school years to ensure all IEPs providing for counseling services are implemented and to correct any discrepancies; review its process for providing counseling services to special education students entitled to such services and create a plan to ensure the timely provision of counseling services; provide annual training to school psychologists both on the district's obligations to

implement students' IEPs and on the system used to maintain data on its provision of counseling services; and issue a guidance memorandum to district employees responsible for securing counseling services to remind them of the district's obligations and procedures to provide these services in full.



Ensuring Equal Access to Comparable Educational Opportunities: Recruitment, Admissions, and Enrollment

Colorado Charter Schools: In October 2021, OCR resolved 29 complaints against 22 Colorado school districts alleging that charter schools authorized by the districts discriminated against students with disabilities because the charter schools requested information about the disability status of prospective students as part of the application process. The Section 504 regulations generally prohibit pre-enrollment inquiries because they represent unnecessary different treatment on the basis of disability.

OCR worked with each district to discontinue the practice of pre-enrollment inquiry and verified that requests for disability-related information were removed from the charter schools' application materials. OCR also received documentation showing that each charter school's application materials were updated to include a notice of nondiscrimination. Each school district provided information to charter school leaders about the rights of students with disabilities in charter schools. In the course of resolving these complaints, OCR provided technical assistance to state officials who were in the process of revising state standards for charter schools. The relevant state standards now prohibit pre-enrollment inquiries for charter school admissions.

Puerto Rico Department of Education (PR):

In May 2022, OCR resolved a complaint alleging that the Puerto Rico Department of Education (PRDOE) discriminated on the basis of disability by requiring students with disabilities enrolled in a multi-grade self-contained special education classroom at a PRDOE school to wear orange shirts as part of their school uniforms rather than the shirt in the color that corresponded to their grade levels, like all other children in the school wore. During the investigation, OCR found that the school's Facebook page included images of uniform shirts in different colors based on grade level, assigning the students in the multi-grade self-contained special education classroom the same color as the pre-kindergarten students, while assigning students in other grades shirts in various colors. The investigation also reflected information that directors of other PRDOE schools required students with disabilities to wear uniform shirts that are different in color from those worn by students without disabilities.

To address the concerns OCR identified, the PRDOE agreed to notify all school directors and boards that they must not discriminate on the basis of disability in their uniform policies; notify school staff, parents/guardians, and students that the schools will not assign students' school uniforms based on disability and provide information about how to file a complaint if needed; and train all school directors and boards about their obligations under Section 504 and Title II.

Washoe County School District (NV): In October 2021, OCR resolved a complaint alleging that a school district discriminated based on disability by requiring that, in order to enroll in the district's adult education program and earn an adult diploma only available through its RISE Academy, students with IEPs must first revoke their right to special education services.

To remedy concerns raised by OCR's investigation, the district committed to revise the RISE Academy requirements to ensure that students with disabilities, including those with IEPs, are not excluded; review the records of all current RISE Academy students to determine whether any received special education services under an IEP at another district high school and provide written notice to them about the process to access disability-related services while enrolled at RISE Academy; provide training to RISE Academy administrators, school counselors, and teachers about their responsibilities to support the students' IEPs and Section 504 plans; and train all district high school administrators, school counselors, and special education case managers about how students with disabilities can access RISE Academy to pursue an adult diploma.

California State University, Monterey Bay (CA): In June 2022, OCR resolved an investigation after

finding that the university had provided a student with a disability a double bedroom without a roommate and with an accompanying bathroom as a disability accommodation but that the university violated Section 504 and Title II when it charged the student a higher rate for a single-occupancy bedroom.

To remedy this violation, the university agreed to develop a written housing policy to ensure that students with disabilities who require private housing features as a means of accommodating their disability are appropriately accommodated and not charged a higher (single) housing rate. The university also agreed to provide training to relevant university staff and contractors on the revised housing policy and reimburse the student any amount paid in excess of the cost for a double bedroom with a bathroom.

Ensuring Accessibility of Programs, Services, and Facilities

Northshore School District (WA): In August 2022, OCR resolved a complaint alleging that the district discriminated based on disability by failing to communicate effectively with people with disabilities during public school board meetings that are livestreamed and posted online. OCR's investigation yielded evidence that the district had not provided effective real-time captioning to the public since March 2021.

To resolve this complaint, the district agreed to revise its policies, procedures, and practices to ensure that the district provides effective real-time captions during all school board meetings as they are live streamed to the public, including captions that effectively identify each speaker and convey the content delivered orally. The district also agreed to submit a report to OCR that

documents its use of real-time captioning and its revised policies, procedures, and practices.

Jefferson County School District (CO): In December 2021, OCR resolved a complaint alleging that the district denied students with mobility disabilities access to programs and activities at an elementary school by failing to provide an accessible route connecting the school's main entrance to designated accessible parking spaces, a temporary building used for classrooms, and a field area used for recess and physical education. OCR identified slope concerns with two temporary routes that did not comply with Section 504 and Title II.

The resolution agreement requires that the district incorporate the necessary accessibility requirements into its final plans for school expansion and submit the plans to OCR for review before implementation. Further, the agreement requires that the district develop and immediately implement an interim plan that ensures exterior routes from the main building to parking spaces, recreation fields, and auxiliary buildings are accessible to and usable by persons with mobility disabilities until permanent construction is completed.

Ensuring Appropriate Educational Support for Students with Disabilities

Wake County Public Schools (NC): In September 2022, OCR resolved an investigation that had raised concerns that a student with a disability, who played on two sports teams, did not receive necessary accommodations to support his participation in these extracurricular activities.

To resolve this investigation, the district held a Section 504 meeting to discuss the student's participation in extracurricular sports, conducted



an individualized inquiry regarding the student's disability-related needs, and offered to provide reasonable modifications and services to allow the student an equal opportunity to participate in extracurricular activities.

Francis Marion University (SC): In October 2021, OCR resolved a complaint alleging that the university discriminated based on disability by not providing an individualized assessment of a student's request for a disability-related testing accommodation. OCR's investigation yielded concerns that the university applied a blanket prohibition on the specific accommodation the student requested rather than engaging in the individualized assessment required by Section 504 and Title II.

To resolve the complaint, the university agreed to develop or revise its policy to ensure that the needs of students with disabilities requesting academic adjustments are assessed on an individual basis, and that the university does not maintain a blanket prohibition on adjustments to testing conditions as an accommodation. The agreement also required that the university issue a letter to the student informing her that if she chooses to take courses at the university in the

future, the university will reconsider her disability accommodation requests on an individualized basis.

Also...

See **Salt Lake Community College**, p. 25 (individualized assessment of pregnant students for academic adjustment)

Denver Public Schools (CO): In June 2022, OCR resolved a complaint alleging the district discriminated on the basis of disability because the district failed to provide services in a student's IEP for two months. OCR's investigation revealed that the two special education teachers at a school resigned around the same time as each other, suggesting that other students also may not have received needed services.

To resolve the investigation, the district agreed to provide documentation showing that it had hired two special education teachers to replace the two who had resigned; compile a list of all students at the school who did not receive services or accommodations to which they were entitled under IEPs or Section 504 plans during the time the district did not have special education teachers in place, as well as compile dates and amounts of services and accommodations that were not provided for each student; and offer in writing to the parent or guardian of each student an opportunity to meet to discuss compensatory or related services.

Bloomfield School District (NM): In April 2022, OCR resolved a complaint alleging that the school district had discriminated against a student based on disability when it failed to reevaluate the student, implement the student's IEP, and educate

the student in the least restrictive environment. According to the student's IEP, his team determined that the least restrictive environment for him was 27%-81% of his time in general education and the remainder in the Bloomfield Behavioral Intervention Program (BBI). During investigation, OCR found that the student spent no time in the general education environment and had no access to peers without disabilities. Additional evidence OCR gathered suggested that the district failed to re-evaluate the student before significantly changing his placement in BBI to full-time; did not re-evaluate the student even after he remained in BBI on a full-time basis for multiple years, had failing grades, failed to make progress toward his IEP goals, and continued engaging in behaviors for which he was disciplined in school; failed to provide him with a FAPE by not providing the services specified in his IEP, including special education from a special education teacher, any services in a "regular classroom," and all of his required weekly psychological and social work services; and by failing to educate him in the least restrictive environment or demonstrate that satisfactory education could not be achieved in the regular environment with the use of supplementary aids and services.

The district entered into a resolution agreement with OCR committing to develop and disseminate policies and procedures for BBI; train staff about policies and procedures approved by OCR; convene team meetings for each student in BBI to discuss whether the student had been denied a FAPE and, if so, create a plan for compensatory services or other remedial measures; and report to OCR about each student placed in BBI during the following school year.



ADDRESSING CIVIL RIGHTS RELATED TO RESTRAINT AND SECLUSION

Saco Public Schools (ME): In November 2021, OCR resolved a compliance review of the district's use of restraint and seclusion to assess whether its use denied students with disabilities a FAPE. OCR's investigation raised several concerns, including incidence of restraint and/or seclusion as high as 61 times in a single school year for a single student, whether students who experienced frequent or lengthy restraints and/or seclusion received a FAPE, the district's practice of sending students home early or requiring them to stay home for a few days following certain incidents of restraint or seclusion, and inaccurate reporting of restraint data to the CRDC. Notably, OCR found the district dramatically changed its restraint and seclusion practices during the course of OCR's review to focus on de-escalation practices and using least restrictive responses (such as remaining in the seclusion space with the student), resulting in a more than 80% reduction in the use of restraint and seclusion in the second year OCR reviewed, and an additional 33% decline in the third year OCR reviewed.

To address the concerns OCR identified and build on the improvements the district began during the course of the review, the district committed to assess whether students with disabilities who were subjected to restraint or seclusion during the three-year period OCR reviewed require additional remedies or services, including compensatory education; develop or revise its policies regarding non-disciplinary behavior-related dismissals or stay-home directives to ensure students do not unnecessarily lose instructional time; assess the appropriate involvement of a school resource officer in incidents involving student behavior and provide school resource officers with specialized training, including training on responding to incidents involving students with disabilities; comply with CRDC obligations to submit correct data; and provide training related to restraint and seclusion to district staff.

Huron Valley Schools (MI): In January 2022, OCR resolved a compliance review examining whether the district's use of restraint and seclusion denied students with disabilities who participated in the district's programs a FAPE. During the investigation, OCR identified compliance concerns regarding inconsistent recordkeeping and whether the district was providing students with disabilities subjected to restraint and seclusion the opportunity to recoup lost instructional time.

To resolve the compliance review, the district agreed to review its use of restraint and seclusion; assess whether students with disabilities who were subjected to restraint and seclusion required additional remedies or services, including compensatory education; and develop new systems for documenting the use of restraint or seclusion.

Horry County Schools (SC): In May 2022, OCR resolved a compliance review of the district's use of restraint or seclusion. OCR's investigation yielded concerns that district staff restrained or secluded students not for emergency reasons but to address behavioral issues such as disrupting class, walking out of class, or refusing to follow directions, which unnecessarily caused students to lose instructional time. Of the seclusion and restraint incidents the district recorded for the 2017-2018 school year, all involved students with disabilities. The evidence showed that the district did not conduct necessary reevaluations for students who were repeatedly restrained or secluded and used generally identical standardized language to document restraints or seclusion, suggesting that the district may not have reviewed the incidents in an individualized manner. Additionally, the district did not consistently report all incidents of restraint or seclusion, incorrectly viewed shortening a student's school day as a permissible alternative to restraint or seclusion without factoring in that such a change would first require an individualized assessment and reported inaccurate data to the CRDC.

The district agreed to change its practices and examine and remedy prior instances where restraint and seclusion of its students may have denied those students a FAPE. Additionally, the district agreed to revise its procedures and guidance documents on the use of restraint and seclusion; clarify the roles and responsibilities of those involved in monitoring and oversight of the district's use of restraint or seclusion; modify its recordkeeping system; create a plan to accurately report data to the CRDC; train staff on the district's procedures and new recordkeeping system; review files of currently enrolled students

who were restrained or secluded since the start of the 2017-2018 school year to determine, in part, whether any student requires compensatory education for educational services missed due to incidents of restraint or seclusion; and implement a monitoring program to assess the district's use of restraint or seclusion.

WEB ACCESSIBILITY

Highland Community College (IL): In April 2022, OCR resolved a complaint that alleged technological barriers on the college's website discriminated against individuals with disabilities. OCR's investigation identified concerns such as missing captions on videos, no alternative text to describe images, and multiple barriers to access for people who use screen reader technology, among others.

To resolve the complaint, the college committed to adopt an accessibility standard; post a fully accessible notice on the college's website describing how people with disabilities can inform the college of any technology-based barriers to access they have encountered and how they can request access to the underlying college program, service, or activity; complete an



audit of its website to identify barriers to access to its online programs, services, and activities; remediate barriers; assess the effectiveness of the college's testing protocols and remediation steps and make appropriate changes to its testing and remediation protocols until, in OCR's judgment, the college's testing and remediation protocols result in equal opportunities for people with disabilities; and develop a plan for maintaining the accessibility of the services, programs, and activities communicated or facilitated online. The resolution agreement also includes a checklist for testing digital technology to ensure access to people with disabilities.



North Slope Borough School District (AK):

In November 2021, OCR resolved this directed investigation after having identified compliance concerns regarding inaccessible PDFs, non-captioned videos, and the inability for some users with disabilities to access all the content on the district's website.

The resolution agreement required the district to develop and implement a strategy to ensure that individuals with disabilities have an equal opportunity to participate in the district's

programs and activities offered through its website. In addition, OCR and district staff delivered several joint informal technical assistance presentations on digital access issues to the district's web design vendor. Because the vendor works in multiple states, several accessibility improvements to its web design template that resulted from these presentations also will positively impact website accessibility in other school districts throughout the country.

RETALIATION

Brookline PS (MA): In February 2022, OCR found, after an investigation, that the district's Special Education Parent Advisory Council (SEPAC) retaliated against parents who have advocated for students with disabilities by amending its bylaws to prevent individuals who filed complaints against the district from occupying SEPAC Board positions. During the investigation, SEPAC revised its bylaws to remove the provisions at issue. OCR's resolution agreement required that the district send a notice to all families of students in the district about the district's obligation not to retaliate, nor to provide significant assistance to an entity that retaliates, and specifically informing them that the notice is being sent because of an OCR complaint. The agreement also required the district to offer OCR-approved trainings open to all SEPAC-eligible families on these topics.

ENFORCEMENT ACTIVITY UNDER OTHER STATUTES

OCR also has jurisdiction over two additional civil rights laws: the Age Discrimination Act of 1975 and the Boy Scouts of America Equal Access Act (2001).

THE AGE DISCRIMINATION ACT OF 1975

The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities that receive Federal financial assistance. This prohibition extends to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive Federal financial assistance from the U.S. Department of Education. Programs or activities that receive such funds must provide aids, benefits, or services in a nondiscriminatory manner. These include, but are not limited to, admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics,

and housing. Though the Act does not limit protections against discrimination to a certain age group, it does allow for exceptions, such as when colleges offer programs that are geared toward providing special benefits to children and the elderly.

In FY 2022, OCR resolved **592** complaints under the Age Discrimination Act. Common remedies in OCR resolutions under this law include provisions that require training for staff, updating and disseminating nondiscrimination policies, and investigation by the institution into the specific incidents that resulted in the allegation of age discrimination.

THE BOY SCOUTS OF AMERICA EQUAL ACCESS ACT

OCR also enforces the Boy Scouts of America Equal Access Act. Under this Act, no public elementary school, public secondary school, or state or local education agency that provides an opportunity for one or more outside youth or community groups to meet at the school, before or after school hours, shall deny equal access or a fair opportunity to meet or otherwise discriminate against any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society. In FY 2022, OCR resolved **43** complaints under the Boy Scouts of America Equal Access Act.

LOOKING AHEAD

This report summarizes and encapsulates OCR's efforts through this fiscal year to fulfill our charge to ensure civil rights satisfaction among all recipients of federal funds, so no student will experience discrimination based on race, color, national origin, sex, or disability, or age or in violation of the Boy Scouts of America Equal Access Act. OCR looks forward to continuing to meet those challenges for the nation's school communities in the coming years.





May 19, 2023

Dear Colleague:

We write to make you aware of the Justice Department and Department of Education’s ongoing efforts to address barriers that prevent people with disabilities from participating in online services, programs, and activities that colleges, universities, and other postsecondary institutions make available to students and the public.

Online Accessibility Challenges

Many colleges, universities, and other postsecondary institutions increasingly rely on their websites and third-party online platforms to provide services, programs, and activities to members of the public. This includes courses on learning platforms like edX, Coursera, and Kadenze, as well as podcasts and videos featuring lectures, conferences, sporting events, admissions information, graduation ceremonies, and other events on social media and third-party platforms like YouTube, Spotify, and Apple Podcasts. This online content is a service, program, or activity of the college, university, or other postsecondary institution, but much of it is often inaccessible to individuals with disabilities.

Many individuals with disabilities, including those who have vision or hearing disabilities, need auxiliary aids and services to access and interact with online content. For example, in order to access online content, people who have vision disabilities or reading disabilities may use screen readers, which are devices that speak the text that appears on a screen. People who are deaf or hard of hearing may use captioning to access information conveyed in a video with sound. And people whose disabilities affect their ability to grasp and use a mouse or touchpad may use voice recognition software to control their computers and other devices with verbal commands, or they may use keyboard commands to navigate online content.

Legal Framework

Two Federal laws, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504), require colleges, universities, and other postsecondary institutions to provide equal opportunities to people with disabilities in all their operations, including equal opportunities to participate in and benefit from online services, programs, and activities.

Title II of the ADA prohibits public colleges, universities, and other postsecondary institutions from denying qualified individuals with disabilities the opportunity to participate in or benefit from their aids, benefits, or services, including online programming and services, or providing an unequal opportunity to benefit.¹ Title III of the ADA prohibits private undergraduate, postgraduate, and other private places of education from, among other things, denying individuals with disabilities the opportunity to participate in or benefit from their goods, services, privileges, or advantages, or providing an unequal opportunity to benefit.² Public and private colleges, universities, and other postsecondary institutions must take appropriate steps to ensure

¹ 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(1)(i) and (2).

² 42 U.S.C. § 12182(b)(1)(A)(i) and (ii); 28 C.F.R. § 36.202(a) and (b).

that communications with individuals with disabilities are as effective as communications with others, including providing appropriate auxiliary aids and services.³ Auxiliary aids and services include qualified interpreters, open and closed captioning, and accessible electronic and information technology, among other methods.⁴ Public and private colleges, universities, and other postsecondary institutions must also make reasonable modifications in policies, practices, and procedures where necessary to avoid discriminating on the basis of disability, and where necessary to afford their goods and services to individuals with disabilities.⁵

Likewise, Section 504 provides, in part, that no otherwise qualified individuals with a disability shall, solely by reason of their 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.⁶ Most public and private colleges, universities, and other postsecondary institutions are recipients of financial assistance from the Department of Education, and all of their operations, including all their online programs and activities, are covered by Section 504.⁷ These recipients must likewise provide appropriate auxiliary aids to ensure students with disabilities are not denied the benefits of the recipients' programs or activities.⁸

The ADA and Section 504 apply not only to the services, programs, and activities that postsecondary institutions offer to students, but also to those that they offer to the public. When colleges, universities, and other postsecondary institutions offer their online programming to the general public, *all* members of the general public are qualified to avail themselves of those online programs and services.⁹

Enforcement Actions

The Departments of Justice and Education have used their enforcement authority to address inaccessible online services, programs, and activities provided by colleges, universities, and other postsecondary institutions.¹⁰ For example, on December 2, 2022, a Federal district court approved a [consent decree](#) between the Justice Department and the Regents of the University of California that requires the University of California at Berkeley (UC Berkeley) to make public online content on its websites and other online platforms accessible to people with disabilities. This includes BerkeleyX courses, university websites, and videos and podcasts on its YouTube, Apple Podcasts, and other third-party platforms. UC Berkeley will also revise its policies, train relevant personnel, designate a web accessibility coordinator, conduct accessibility testing of its online content, and hire an independent auditor to evaluate the accessibility of its content. More information about this case, including the Justice Department's letter of findings, complaint, and

³ 42 U.S.C. § 12132; 28 C.F.R. § 35.160; 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

⁴ 28 C.F.R. § 35.104; 28 C.F.R. § 36.303(b).

⁵ 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(7); 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.

⁶ 29 U.S.C. § 794(a).

⁷ 29 U.S.C. § 794(b); 34 C.F.R. § 104.3(k).

⁸ 34 C.F.R. § 104.44(d).

⁹ *See* 42 U.S.C. § 12131(2); 34 C.F.R. § 104.3(l)(4).

¹⁰ The Departments of Justice and Education share responsibility for enforcing these laws. The Departments of Justice and Education both have enforcement authority under Title II of the ADA. The Department of Justice is responsible for enforcement and implementation of Title III of the ADA. The Department of Education enforces Section 504 with respect to public and private colleges, universities, and other postsecondary institutions that receive financial assistance from the Department of Education.

consent decree, can be found at [U.S. v. Regents of the University of California | CRT | Department of Justice](#).

The Department of Education's Office for Civil Rights (OCR) has also used its enforcement authority to address the inaccessibility of the online services, programs, and activities of colleges, universities, and other postsecondary institutions. Resolution agreements that OCR has secured following investigations provide clear steps to remedy digital barriers to access and ensure recipients have policies and trainings in place to proactively ensure their online programs are accessible in compliance with Title II and Section 504 going forward. OCR has resolved and monitored more than 1,000 cases in recent years related to digital access that were triggered by complaints of discrimination by members of the public. These agreements address the accessibility of public-facing websites, learning management systems, password-protected student-facing content, and mass email blasts of colleges, universities, and other postsecondary institutions.

In May 2022, OCR proactively launched 100 compliance reviews regarding digital accessibility. The reviews look at digital accessibility in public- and student-facing websites and educational platforms maintained by public and private colleges, universities, and other postsecondary institutions, as well as State departments of education, school districts, charter schools, and public libraries. In less than a year, OCR has resolved more than 50 of these compliance reviews. More information about the resolved complaints and compliance reviews can be found at [OCR's Recent Resolution Search website](#).

Guidance and Regulations

The Justice Department has also published resources and information regarding web accessibility to fulfill the congressional charge to provide technical assistance to the public. In March 2022, the Justice Department issued guidance involving web access for individuals with disabilities. The guidance describes how State and local governments and businesses can make sure that their websites are accessible to people with disabilities as required by the ADA. It identifies common website accessibility barriers, educates readers on when the ADA requires web content to be accessible, and explains how to achieve accessibility. It also provides a list of resources for readers. This publication may be found at [Guidance on Web Accessibility and the ADA | ADA.gov](#). Further, the Justice Department has announced that it intends to publish a Notice of Proposed Rulemaking (NPRM) to amend its Title II ADA regulation to provide technical standards to assist public entities in complying with their existing obligations to make their websites accessible to individuals with disabilities.¹¹

OCR has also engaged in substantial technical assistance to bring online services, programs, and activities of colleges, universities, and other postsecondary institutions into compliance with the law. In March 2022, OCR released a [20-part video series](#) covering topics such as how people with disabilities use technology, applicable Federal laws, and how to identify and remediate different types of technological barriers that can interfere with the ability of parents and students with disabilities to participate in modern American education. The intent of the series is to provide a basic introduction to many different digital accessibility concepts, such as fundamental

¹¹ Office of Info. & Regul. Aff., Office of Mgmt. & Budget, Exec. Office of the President, *Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions*, RIN 1190-AA79 (Dec. 20, 2022), available at [RIN 1190-AA79 \(reginfo.gov\)](#) (last visited May 10, 2023).

manual testing techniques, use of color, logical reading order, and meaningful video captions. Further, the Department of Education has announced that it intends to publish an NPRM to amend its Section 504 regulation to strengthen and protect rights for students with disabilities.¹²

Where to Find Help

The Justice Department operates a toll-free ADA Information Line where specialists are available to answer questions regarding Federal laws protecting the rights of individuals with disabilities. The ADA Information Line can be reached by calling 800-514-0301 (1-833-610-1264 (TTY)). For more information on the ADA, please also visit [ADA.gov](https://www.ada.gov). For more information about the Justice Department's Civil Rights Division, Disability Rights Section, please visit [justice.gov/crt/disability-rights-section](https://www.justice.gov/crt/disability-rights-section). Colleges, universities, students with disabilities, and other stakeholders can also contact the Department of Education's OCR for technical assistance by emailing OCRWebAccessTA@ed.gov. For more information about OCR, please visit [ed.gov/ocr](https://www.ed.gov/ocr).

Online accessibility for people with disabilities cannot be an afterthought. The Justice Department and Department of Education will use the ADA and Section 504 as tools to ensure that members of the disability community are able to fully participate in every education program. We appreciate your attention to this essential educational and civil rights issue and look forward to working with you to ensure that our nation's colleges and universities are fully accessible to individuals with disabilities.

Sincerely,



Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice



Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

¹² [U.S. Department of Education Announces Intent to Strengthen and Protect Rights for Students with Disabilities by Amending Regulations Implementing Section 504 | U.S. Department of Education \(RIN: 1870-AA19\)](#).



Protecting Students With Disabilities

Frequently Asked Questions About Section 504 and the Education of Children with Disabilities

This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).

INTRODUCTION

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED).

Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his 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"

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

This resource document clarifies pertinent requirements of Section 504.

For additional information, please contact the [Office for Civil Rights](#).

INTERRELATIONSHIP OF IDEA AND SECTION 504

1. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

2. How does OCR get involved in disability issues within a school district?

OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.

3. Where can a school district, parent, or student get information on Section 504 or find out information about OCR's interpretation of Section 504 and Title II?

OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website, at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

4. What services are available for students with disabilities under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

5. Does OCR examine individual placement or other educational decisions for students with disabilities?

Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process.

Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

6. What protections does OCR provide against retaliation?

Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

7. Does OCR mediate complaints?

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

8. What does noncompliance with Section 504 mean?

A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

9. What sanctions can OCR impose on a school district that is out of compliance?

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

10. Who has ultimate authority to enforce Section 504?

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

11. What is a physical or mental impairment that substantially limits a major life activity?

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.

Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

12. Does the meaning of the phrase "qualified student with a disability" differ on the basis of a student's educational level, i.e., elementary and secondary versus postsecondary?

Yes. At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

13. Does the nature of services to which a student is entitled under Section 504 differ by educational level?

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

14. Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

15. Are current illegal users of drugs excluded from protection under Section 504?

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

16. Are current users of alcohol excluded from protection under Section 504?

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

EVALUATION

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

17. What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability.

The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose 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. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

18. How much is enough information to document that a student has a disability?

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation 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, and adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

19. What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

20. May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must not consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: 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; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

21. Does OCR endorse a single formula or scale that measures substantial limitation?

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

22. Are there any impairments which automatically mean that a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

23. Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

24. Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

25. How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

26. What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

27. Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

28. Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

29. Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement.

OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

30. What is reasonable justification for referring a student for evaluation for services under Section 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

31. A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

32. A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

33. How should a recipient school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time.

The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

34. Is an impairment that is episodic or in remission a disability under Section 504?

Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

PLACEMENT

Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

35. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

36. Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being “regarded as” disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures.

The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

37. What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

38. What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

39. What is the difference between a regular education intervention plan and a Section 504 plan?

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school.

School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

PROCEDURAL SAFEGUARDS

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

40. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

41. If so, in what form is consent required?

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

42. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

43. What procedural safeguards are required under Section 504?

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

44. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

45. Is there a mediation requirement under Section 504?

No.

TERMINOLOGY

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to 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 is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation

OCR Announces Resolution Agreement of Disability Discrimination Investigation of Allegheny Valley School District in Pennsylvania

Andrea Stagg | Sep 28, 2023

On September 21, 2023, the U.S. Department of Education's Office for Civil Rights announced it had resolved a complaint of disability discrimination filed against the Allegheny Valley School District.

Specifically, the investigation concerned (1) whether the District failed to respond appropriately to notice of ongoing disability-based harassment that a student experienced, and (2) whether the district failed to ensure that the student received a free appropriate public education (FAPE) when they experienced bullying and harassment of which the District had notice.

OCR's letter to the District recounts (with many redactions) the history of the student's experience, how concerns were raised, and how OCR investigated the steps the District took to respond. Although redacted, the conduct seems to have included name calling as well as physical violence between peers.

Regarding the first allegation, the OCR determined that the district violated Section 504 and Title II of the Americans with Disabilities Act (ADA) because the District did not investigate all incidents reported, nor conducted limited investigations. OCR found that the District had notice that the student experienced physical and verbal actions by peers that were likely related to his disability, including physically threatening conduct. Such conduct constituted a hostile environment that impacted the student's ability to participate in and benefit from the education program or activity. OCR also found that the district failed to consider the accumulation of evidence, instead treating each incident as isolated. OCR determined that the District's response did not promptly or effectively address the hostile environment nor did they stop the harassment.

Next OCR concluded that, in violation of Section 504 and Title II, the District failed to assess for any FAPE-related impacts from the bullying and harassment experienced by the student. Although updates to the student's IEP were made as requested, these changes were considered and implemented outside of the multidisciplinary team process that should have been used to determine whether the harassment was impacting the student's receipt of FAPE services.

There are a number of reminders and suggestions that institutions might take away from reading OCR's letter to the District, including the following:

- Consider how multiple incidents accumulate to constitute harassment.
- Avoid putting the burden on a student to avoid future harassment.
- Engage the appropriate team when considering IEP adjustments for a student impacted by harassment, to address FAPE-related concerns.

The resolution agreement between OCR and the district requires individual remedies to the impacted student in this matter, training for all employees with required educational content, a review of bullying incidents for a time period, and a climate assessment.

As always, this resolution agreement is not binding on other schools, and is specific to these particular facts. Still, school and college or university professionals addressing discrimination and harassment on campus (on any protected status) may find the requirements useful while considering best practices on training and ongoing case review.

The training includes required twelve(12) required elements, including information about the laws that prohibit disability discrimination and the school's obligations to respond. The training requirement is followed up with a mandatory survey; all staff who took the training must be surveyed about their awareness and understanding of their obligation to report disability harassment, as well as the process for responding to and investigation complaints.

In reviewing bullying incidents over a particular timeframe, the District must assess, among other things, whether the student targeted by the bullying was a student with a disability, and if so, whether the District considered if the bullying or harassment impacted the affected student's receipt of a FAPE.

The climate assessment will be for students in certain grades, and will address at minimum the prevalence of disability-related harassment in the school, their willingness to report those incidents, their perception of the District's handling of reports/complaints, and suggestions for reducing such harassment in the school and improving the District's response.

OCR's letter to the district is [here](#), and the resolution agreement is [here](#).

A Closer Look at the Title IX Proposed Rules: Coordination Between Title IX and Disability/Accessibility Services

Andrea Stagg | Sep 6, 2022

As keen readers may have noticed, the Department of Education included many references to disability throughout its 2022 [proposed Title IX regulations](#) and in the 500+ page preamble that explains why certain changes or additions are being proposed. While some of the suggested language – like adding a definition of disability – is relatively technical, other provisions have practical implications that institutions of higher education should be prepared to implement.

One such proposal requires a Title IX Coordinator in the K-12 context to consult with the IEP team, and says Title IX Coordinators in the post-secondary context may consult with the disability services office, “as appropriate.” [On page 227 of the preamble](#), the Department is clear that the Title IX Coordinator should “honor the student’s request regarding whether to involve disability services office staff.” Of course, this raises complex questions such as: how do you find out if a student has an existing relationship with the disability services office; when is it appropriate for a Title IX Coordinator to consult with disability services; what is the Title IX Coordinator permitted/prohibited from asking during their consultation; what is the scope of disability services’ role in the consultation and thereafter?

Title IX and Section 504 of the Rehabilitation Act are both enforced by the Office for Civil Rights and have some natural overlap, but surprisingly this type of language was never included in previous iterations of the regulations or in (now-rescinded) guidance. Where previous guidance noted that students with disabilities may require additional support, the proposed guidance says the Title IX Coordinator should provide the party with information about available resources.

Yet even without an existing requirement to consult, such interactions have long been necessary and appropriate when disability issues arise in Title IX or student conduct matters. For example, a participant in an investigation or hearing process who has a disability may need a sign language interpreter, or request investigation questions in writing, a quiet room for their interview, or extra time to review interview notes or evidence.

It's critical that Title IX personnel recognize requests for accommodations for what they are and involve the appropriate personnel to conduct the close, individualized assessment required under Section 504.

With experts in Title IX, ADA, and Section 504 compliance, Grand River Solutions is uniquely situated to provide consulting services and assist clients in the development of policies and protocols needed to successfully navigate the intersection of these critical equity laws. Contact us to learn more about our disability and accessibility compliance solutions.

Autism Training for Sexual Assault Counselors – A Free Course Now Available Through Boston University

Sep 14, 2023

Grand River Solutions partnered with Boston University to produce a new online training about autism and providing counseling services to autistic college students. The training was designed for college sexual assault counselors who work with survivors of sexual assault and harassment. Therapists and other school personnel will also find the training helpful. [Autism Training for Sexual Assault Counselors](#) is now available free of charge from Boston University.

There is an urgent need for autism-focused, trauma-informed training because research demonstrates that autistic people are at higher risk for interpersonal aggression victimization in their lifetimes than non-autistic people. It can also be more difficult for autistic college students to receive support on campus. The new training is designed to improve the likelihood that college students who experience sexual assault will access high quality services from the counselors and other campus school personnel.

The project was funded by the Organization for Autism Research and was led by Principal Investigator Dr. Emily Rothman. The leadership team included Gina Scaramella, a sexual assault prevention expert and consultant, and Dr. Laura Graham Holmes, an autism researcher. They collaborated with six autistic people who had experience on college campuses and who also had experience with issues of sexual violence or harassment. Together with the Innovation Team from Grand River Solutions, the group developed a 90-minute, self-delivered, online learning experience.

The training walks through critical elements of best practices for college counselors who may provide services to autistic college students who have experienced sexual assault or harassment. The training modules build on foundational information about autism, demystify and address certain stereotypes about autistic people, and describe what to do and not to do when serving impacted students.

Emily Rothman: “We could not be more pleased to be able to offer this training resource to college sexual assault counselors, particularly because autistic people were part of the co-creation process. Autistic college students, like all students, need and deserve excellent counseling support options when they experience sexual assault.

There is a lot of interest in this training, both from college professionals and other community-based sexual assault advocates. It is very meaningful for us all to have worked together on this.”

The modules of the course build upon each other and are intended to be taken in order. Upon completion of each module, there is a mini quiz that assesses understanding of the concepts. Participants will learn:

- Foundational knowledge about autism
- Understanding of the sexual assault prevention and response barriers that exist for disabled students/students with disabilities on campus, and potential solutions to some of those
- Strategies and tools for providing more responsive and accessible counseling services to autistic survivors of sexual assault on campus

Grand River Solutions, the Title IX and Equity Firm that helped produce the training, believes that all students and employees, from every level and size institution, deserve equal access to their learning and working environments, free from harassment and discrimination. “Ensuring that students and employees with autism can access high-quality, responsive, and trauma-informed support systems is a vital part of our work,” said Dr. Cherie Scricca, Co-Founder and Managing Director of Grand River Solutions. “It was a pleasure for us to be a part of this project. Our Innovation Team will continue to focus on solutions that promote positive change and support our partners such as Boston University and the multitude of counselors and equity professionals who will undoubtedly benefit from this training.”

To take the course or learn more, <https://sites.bu.edu/autismsa/>