

Lindale ISD

SECTION 504

OFFICE OF CIVIL RIGHTS COMPLAINTS

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Office of Civil Rights Complaints

What is Required

The Office of Civil Rights (“OCR”), a division of the U.S. Department of Education, is responsible for enforcing Section 504 to ensure equal access to education and to promote educational excellence throughout the nation. OCR has jurisdiction over institutions that receive federal financial assistance from the U.S. Department of Education and institutions for which OCR has been delegated authority from other federal jurisdictions. Thus, OCR has jurisdiction over public elementary and secondary school districts. OCR receives complaints from parents, students, and advocates; conducts compliance reviews; and provides technical assistance to school districts, parents, and advocates.

OCR will review the District’s procedures relating to the identification and evaluation of students with disabilities and the procedural safeguards that the District provides to students with disabilities. OCR will also investigate incidents in which a student with a disability is allegedly subjected to treatment that is different than the treatment that similarly situated students without disabilities receive from the District.

Should a parent believe that the District has failed to comply with Section 504 or otherwise discriminated against the student on the basis of the student’s disability or suspected disability, the parent may file a complaint with OCR using OCR’s Electronic Complaint Form or by mailing, faxing, or emailing the OCR Discrimination Complaint Form or a personally signed letter with the required information to OCR. Should the parent submit their own letter to OCR, the letter must include the following information:

- The parent’s name, address, and if possible, a telephone number where the parent may be reached during business hours;
- Information about the student or students injured by the alleged discriminatory act(s) (names of the injured individual(s) are not required);
- The name and location of the District; and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination.

Before investigating the complaint, OCR will screen claims for substantive merit. OCR will not respond to inquiries that seek advice or information rather than action from OCR. OCR shall promptly acknowledge receiving the complaint and contact the parent by letter, email, or telephone to inform them whether OCR intends to proceed with the complaint.

While the person or organization filing the complaint need not be the victim of the alleged discrimination, an individual filing on behalf of or pertaining to another person must secure

any necessary written consent from the individual, including when a parent files for a student over the age of 18. This does not apply to a parent filing a complaint on behalf of their own child under the age of 18.

Filing a Section 504 complaint or requesting a Section 504 hearing does not interfere with a parent's right to file an OCR complaint or a civil action in federal or state court relating to the claims. See [SECTION 504 COMPLAINT] and [SECTION 504 HEARING]. However, OCR will not investigate allegations that are currently being reviewed by a state agency, local agency, or another federal agency at the time the complaint is filed. Therefore, if a parent has filed a request for an impartial hearing under Section 504 with the District, and the hearing is currently pending at the time the parent files the OCR complaint, OCR will decline to review the complaint at that time.

The District may not retaliate against any individual who has made a complaint, testified, assisted, or participated in any manner in an OCR matter or otherwise interfere with any right or privilege protected by the laws enforced by OCR. Should anyone believe that the District has retaliated against them for any of these reasons, that individual shall file a complaint with OCR.

Disputes Involving FAPE Claims

Generally, OCR will not review a Section 504 Committee's substantive decisions about a student's Section 504 services or placement. Rather, OCR will only review whether the District complied with the procedural requirements under Section 504 relating to identification and evaluation of students and due process. OCR, therefore, will not evaluate the content of a Section 504 plan. A parent seeking to address substantive issues relating to a Section 504 plan should do so by filing a Section 504 Complaint or requesting an impartial hearing under Section 504. See [SECTION 504 COMPLAINTS] and [SECTION 504 HEARINGS]. However, OCR may review substantive decisions in extraordinary circumstances where OCR determines that the failure to include certain services or accommodations in a student's plan poses a serious health or safety risk.

Timeline for Filing a Complaint

The parent must file a complaint with OCR within 180 calendar days of the date of the alleged discrimination. However, the parent may request a waiver of the 180-calendar day filing requirement in certain instances, such as the following:

- The parent could not reasonably be expected to have known the action was discriminatory within the 180-calendar day period, and the parent filed the complaint within sixty (60) calendar days after the parent could have become aware of the alleged discrimination;
- The parent could not file a complaint during the 180-calendar day because of an incapacitating illness or other incapacitating circumstances rendering the parent

physically or mentally incapable of filing a complaint or obtaining assistance to have the complaint filed on their behalf, the parent provided sufficient documentation of the lack of capacity, and the parent filed the complaint within sixty (60) calendar days after the incapacitation ended;

- The parent filed a complaint alleging the same or similar allegations based on the same operative facts within the 180-calendar day period with another federal, state, or local civil rights enforcement agency or federal or state court, and filed a complaint with OCR within sixty (60) calendar days after the other agency completed its processing of the complaint or, in the case of a court, after there had been no decision on the merits or settlement of the complaint allegations;
- The parent filed an internal grievance with the District or a request for a Section 504 due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, within the 180-calendar day period, and the parent filed the complaint within sixty (60) calendar days after the District concluded the internal grievance process; or
- OCR was responsible for creating unique circumstances that adversely affected the parent's ability to file the complaint within the 180-calendar day period.

Facilitated Resolution Between the Parties

OCR does not have a formal process for mediation. However, OCR may offer to facilitate mediation to resolve a complaint brought under Section 504 through the Facilitated Resolution Process Between the Parties. If both the District and the parent agree to participate in this process, OCR will work with the parties to facilitate resolution in this manner where appropriate. OCR will inform the parties of the process, review the allegations with the parents, assist both parties in understanding the pertinent legal standards and possible remedies, facilitate discussions between the parties, and provide assistance with putting a resolution in writing, where appropriate.

To participate in this process, both the District and the parent must be willing to participate in the discussions in good faith, to consider offers or suggestions with an open mind, and to work constructively to reach a mutually acceptable resolution. The parties must also agree to implement any agreement in good faith. Should the parties reach an agreement through this process, OCR does not involve itself in the agreement itself, meaning OCR does not sign, approve, endorse, or monitor the agreement.

Rapid Resolution Process

OCR may determine that a complaint is appropriate for the Rapid Resolution Process, an expedited case processing approach that can be used to resolve cases more rapidly. The Rapid Resolution Process may be used in the following situations:

- If the District has already taken action that will resolve the complaint allegations, and the complaint may be resolved without an agreement where compliance is verified and does not require monitoring by OCR;
- Upon the District's request and OCR's agreement if the District has indicated that it is willing to take action in the future to resolve the complaint, or the District has already taken action that requires monitoring; or
- If OCR obtains sufficient information from the District to make a compliance determination pursuant to the Rapid Resolution Process.

Once OCR determines that the complaint is appropriate for the Rapid Resolution Process, OCR will promptly attempt to resolve the complaint and obtain necessary information to determine whether the District has complied with Section 504. OCR will contact the District to determine if the District is interested in pursuing the Rapid Resolution Process or has taken action to resolve the allegations.

Dismissal of Complaints

OCR will dismiss an allegation and possibly even the entire complaint in various situations, including the following:

- The allegation, on its face or as clarified, fails to state a violation of one of the laws and regulations OCR enforces;
- The allegation, on its face or as clarified, lacks sufficient factual detail or is so speculative, conclusory, or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring;
- OCR cannot reasonably conclude that the District has violated a law enforced by OCR based on the facts or information provided by the parent or publicly available information;
- The parent fails to file the complaint in a timely manner and does not request a waiver or the waiver is requested but denied;
- OCR determines that a signed consent form, which has not been provided, is required to proceed with an investigation;
- OCR determines that it lacks jurisdiction over the subject matter of the allegation or personal jurisdiction over the District;
- OCR will transfer or refer the complaint to another agency for investigation;
- The same or a similar allegation(s) based on the same operative facts has been filed either by the parent or someone other than the parent against the District with another federal, state, or local civil rights enforcement agency or through the District's internal grievance procedures, including due process proceedings, and:

- OCR anticipates that all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR; or
 - OCR determines that all allegations were investigated and there was a comparable resolution process pursuant to legal standards that are acceptable to OCR.
- The same or a similar allegation(s) based on the same operative facts has been filed either by the parent or someone other than the parent against the District in state or federal court;
- OCR obtains credible information indicating that the allegations raised by the parent are currently resolved or are no longer appropriate for investigation;
- A class action with the same or similar allegation(s) with the same operative facts has been filed against the District in state or federal court;
- The complaint raises the same or similar allegation(s) based on the same operative facts that were previously dismissed or disclosed by OCR;
- OCR has recently investigated or is currently investigating the same or similar allegation(s) based on the same operative facts involving the District in a compliance review, directed investigation, or OCR complaint;
- The parent withdraws the complaint;
- The death of the parent makes it impossible to investigate the allegations fully;
- OCR determines that its ability to complete an investigation is substantially impaired by the parent's refusal to provide information that is reasonably accessible to the parent and is necessary for investigation of the complaint, or by its inability to contact the parent to obtain information that is necessary for investigation of the complaint; or
- OCR determines that the complaint is moot or unripe for review.

Determinations and Monitoring

Upon the conclusion of the investigation, OCR will determine whether, based on a preponderance of the evidence, there is sufficient evidence that the District failed to comply with Section 504. Should OCR determine that the evidence does not support a conclusion of noncompliance with Section 504, it will issue a Letter of Findings to the District and the parent, explaining its reasoning. Should OCR determine that the evidence shows the District failed to comply with Section 504, it will issue a Letter of Findings and a proposed resolution agreement to the District. The District will then have five (5) calendar days from the date of the issuance of the Letter of Findings to notify OCR of any factual errors contained in the letter. Letters of Findings should address all allegations investigated by OCR.

The parent may appeal the Letter of Findings to determine whether there is a clear error of fact and/or an error in the legal conclusion that changes the outcome of the determination. The appeal must be filed electronically, by mail, or by fax within sixty (60) calendar days of the date indicated on the Letter of Findings. OCR may grant a waiver of the 60-calendar-day time frame if: (a) the parent was unable to appeal within the time period because of an incapacitating illness or other incapacitating circumstances during that time, and the appeal was submitted within thirty (30) calendar days after the period of incapacitation ended, or (b) OCR was responsible for creating unique circumstances that adversely affected the parent's ability to file the complaint within the 60-calendar day period. OCR will send the District a copy of the parent's appeal request. The District may submit a response to the appeal to OCR within fourteen (14) calendar days of the date that OCR provided a copy of the appeal to the District. Once OCR makes a final determination on the appeal, it will issue a written decision to the District and the parent.

OCR will continue to monitor the District's compliance with resolution agreements following a finding of noncompliance. The District will be required to provide appropriate reports to OCR, as indicated in the resolution agreement, and OCR will promptly acknowledge receipt of the monitoring reports. It is possible that OCR may address a new compliance issue identified through the monitoring process. Likewise, should OCR find any deficiencies with respect to the District's implementation of the resolution agreement, it will provide the District with written notice of the deficiencies and will request appropriate action to address such deficiencies.

Enforcement and Sanctions

OCR seeks to achieve voluntary compliance with Section 504 before proceeding to more formal enforcement actions. Thus, should OCR determine based on an investigation that the District has violated Section 504, OCR will attempt to bring the District into voluntary compliance through negotiation of a corrective action agreement. If the District does not comply voluntarily, OCR will then initiate a formal enforcement action by either (1) initiating administrative proceedings to terminate the District's receipt of federal funding from the U.S. Department of Education or (2) referring the case to the Department of Justice for judicial proceedings.

Evidence of Implementation

- Participation in OCR Investigation
- Participation in Mediation
- Participation in Rapid Resolution Process
- Dismissal of OCR Complaint
- Compliance with Resolution Agreement
- Submission of Monitoring Reports to OCR
- Action to Address Deficiencies in Letter of Findings
- Voluntary Compliance with Section 504
- Compliance with Corrective Action Agreement

Resources

[Title 34, Section 104 of the Code of Federal Regulations \(“Section 504 Regulations”\)
- Electronic Code of Federal Regulations](#)

[Technical Assistance: 504 - Texas Education Agency](#)

[Section 504 Fact Sheet for Parents - Texas Education Agency](#)

[OCR Case Processing Manual - U.S. Department of Education \(Aug. 26, 2020\)](#)

[Disability Rights Enforcement Highlights - U.S. Department of Education \(Oct. 2012\)](#)

[OCR Complaints Form - U.S. Department of Education](#)

[Electronic Appeals Form - U.S. Department of Education](#)

[How to File a Discrimination Complaint with OCR - U.S. Department of Education](#)

[Questions and Answers on OCR's Complaint Process - U.S. Department of Education](#)

[How OCR Handles Complaints - U.S. Department of Education](#)

CITATIONS

Board Policy FB; 29 USC 794; 34 CFR 104.34-104.36, 110.33