

Resolution Agreement
Kentucky Department of Education
OCR Docket No. 03151196

In order to resolve the allegations in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (Title II), the Kentucky Department of Education (KDE) commits to implement the provisions set forth in this Resolution Agreement (Agreement).

Action Steps

1. KDE acknowledges its obligation under Section 504 and Title II to ensure that no person, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity. KDE further recognizes its obligation under the regulations implementing Section 504 and Title II not to implement policies or practices which would cause recipient local education agencies to be in violation of Section 504 or Title II.
2. Effective upon the signing of this Agreement, KDE agrees to cease its policy and practice of requiring students with disabilities to initiate requests for testing accommodations during the administration of statewide assessments. KDE will immediately direct all Local Educational Agencies (LEA) in the Commonwealth to cease this practice and will inform the LEAs that accommodations and related aids and services for students with disabilities shall: 1) be determined by the student's placement team; 2) be determined in advance of the administration of the statewide assessments; and 3) shall be done in conformance with the legal requirements of Section 504 and Title II.

Reporting Requirement: Within 30 days of the signing of this agreement, KDE will provide to OCR documentation of its notice to all LEAs, including the methods by which this notice was provided (i.e., written, electronic or otherwise).

3. Within 45 days of the signing of this Agreement, KDE will submit to OCR for its review and approval revisions to the Kentucky Administrative Regulation, 703 KAR 5:070. Specifically, KDE will remove the requirement that accommodations be student-initiated. KDE will ensure that the regulation provides that students with disabilities will be provided with necessary accommodations and related aids and services as determined by a student's placement team in advance of the Kentucky statewide assessment, in accordance with the requirements of Section 504 and Title II.
4. Following written approval from OCR that the revised regulation (703 KAR 5.070) is consistent with the requirements of Section 504 and Title II, KDE will adopt and implement the regulation and will provide written notice to all District-level superintendents, District-level statewide assessment coordinators, and the public regarding the revised regulation.

Reporting Requirement: Within 90 calendar days after OCR’s approval of the revised regulation, 703 KAR 5.070, KDE will provide OCR with documentation that it has adopted and implemented the regulation, and provide copies of the written notices provided to District-level superintendents, District-level statewide assessment coordinators, and the public regarding the new regulation and a description of how the notices were distributed; copies of its revised regulation manuals and any other publications where the regulation is published; and a link to its webpage where the revised regulation is located.

5. By February 29, 2016, KDE will provide training to all individuals responsible for administering statewide assessments to students with disabilities. Specifically, this training will address the changes to the regulation, 703 KAR 5:070, including each LEA’s responsibility to ensure that students with disabilities are provided with necessary accommodations and related aids and services as determined by a student’s placement team.

Reporting Requirement: By March 31, 2016, KDE will provide OCR with documentation demonstrating that the trainings specified in action step #5 were provided, including the method by which trainings were done, the dates of trainings, copies of sign-in sheets and/or completion certificates from the training(s), materials distributed at the training(s), and a description of the substantive material covered during the training(s).

KDE agrees to comply with the terms of this Agreement until OCR has released it from monitoring. OCR will not close the monitoring until it determines that the District has fulfilled the terms of this Agreement and is in compliance with the provisions of Section 504, at 34 C.F.R. Sections 104.4(a) and 104.33(a), and Title II, at 28 C.F.R. Section 35.130, which were at issue in this complaint.

KDE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, KDE understands that during the monitoring of this Agreement, OCR may visit KDE, interview staff, and students and request such additional reports or data as are necessary for OCR to determine whether KDE has complied with the terms of this Agreement and the provisions of Section 504, at 34 C.F.R. Sections 104.4(a) and 104.33(a), and Title II, at 28 C.F.R. Section 35.130, which were at issue in this complaint.

KDE understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give KDE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/

11/2/15

Commissioner
Kentucky Department of Education

Date