



## Legal Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.33, requires that a recipient of Federal financial assistance that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34–104.36 pertaining to educational setting, evaluation and placement, and due process protections. The implementation of a Section 504 Plan is one way to comply with the FAPE requirement. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide FAPE to the same extent required under the Section 504 regulation.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that school districts are required to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. The Section 504 regulation at 34 C.F.R. § 104.35(b) further provides that tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Regarding placement procedures, the regulation implementing Section 504 at 34 C.F.R. § 104.35(c) further provides that in interpreting evaluation data and in making placement decisions, (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 104.34.

The Section 504 regulation at § 104.34(a) provides that a recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified person with a disability in its jurisdiction to the maximum extent appropriate to the needs of the person with a disability. A recipient shall place a person with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment

pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

The Section 504 regulation at 34 C.F.R. § 104.36 establishes procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of students who, because of disability, need special instruction or related services. Recipients must establish and implement a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure.

The Section 504 regulations at 34 C.F.R. §§ 104.37 (a)(1) and (a)(2), nonacademic services, provides that a recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities.

Section 504 requires a District to provide a qualified student with a disability an opportunity to benefit from the District's program equal to that of students without disabilities. The Section 504 regulation at 34 C.F.R. §104.4(a) state that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Section 504 regulation at 34 C.F.R. §104.4(b) provides that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) Deny a qualified student with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified student with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified student with a disability an aid, benefit, or service that is not as effective as that provided to others; (iv) Provide different or separate aid, benefits, or services to students with disabilities or to any class of student with disability unless such action is necessary to provide the student with a disability with aid, benefits, or services that are as effective as those provided to others; or (vii) Otherwise limit a qualified student with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. Title II of the ADA prohibits the same form of discrimination by public entities. Therefore, OCR applies the Section 504 standard when analyzing the same claims under Title II of the ADA.

In determining whether an individual with a disability was treated differently than a nondisabled person, OCR first determines whether there were any differences in the treatment of an individual and similarly situated individuals who do not have disabilities. Additionally, OCR examines whether the recipient treated the individual in a manner that was consistent with established policies and practices and whether there

is any other evidence of disability discrimination. If different treatment is present, OCR then assesses the recipient’s explanation for any difference in treatment to determine if the reasons offered are legitimate or merely a pretext for discrimination.

**Summary XXXXXXXXXXXXXXXXXXXXX**

**General**

The Student attended Doddridge High School (the School) XXXXXXXXXXXXXXXXXXXX  
XX  
XX  
XXXXXX was identified as a student with a disability and provided with a Section 504  
Plan.

XX - Paragraphs Redacted --XX

OCR would need to obtain further information to determine if the Student’s Section 504  
Plan was implemented XX  
XX  
XX.

**Request to Resolve Complaint through a Voluntary Resolution Agreement**

Under OCR procedures, a complaint allegation may be resolved before the conclusion  
of an investigation if a recipient asks to resolve the complaint allegation by signing a  
Resolution Agreement and OCR determines that such a resolution is appropriate. The  
provisions of the Resolution Agreement must be aligned with the complaint allegation,  
the information obtained in the investigation to date, and be consistent with applicable  
regulations. Such a request does not constitute an admission of a violation on the part  
of the District, nor does it constitute a determination by OCR of any violation of our  
regulations.

Consistent with OCR’s procedures, on August 30, 2018, the District requested to resolve  
XXXXXXXXXXXXXXXXXXXX through a Resolution Agreement. On February 5, 2019 the  
District signed this Agreement. When fully implemented, the Resolution Agreement  
will address XXXXXXXXXXXXXXXXXXXX. As is our standard practice, OCR will monitor  
the District’s implementation of the Agreement, a copy of which is enclosed.  
XX  
XXXXXXXXXXXX.

XX - Paragraphs Redacted --XX

This concludes our investigation of the Complainant’s allegations. This letter is not  
intended nor should it be construed to cover any other issues regarding the District’s  
compliance with Section 504 or Title II of the ADA, which may exist and are not

discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

XX – Paragraph Redacted --XX

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

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

OCR would like to thank the District, and its attorney, for the cooperation extended to us throughout this matter. If you have any questions or concerns, please contact me at 215-656-8522 or by email at [vicki.piel@ed.gov](mailto:vicki.piel@ed.gov).

Sincerely,

/s/

Vicki Piel  
Team Leader

cc: Denise Spatafore, Esq. (via email only)  
Enclosure