



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

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**REGION V**  
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October 7, 2015

Dr. Brenda Cassellius  
Commissioner  
Minnesota Department of Education  
1500 Highway 36 West  
Roseville, MN 55113-4266

RE: OCR # 05-15-4043  
Minnesota Department of Education

Dear Dr. Cassellius:

This is to advise you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Minnesota Department of Education (MDE) on April 10, 2015. Specifically, the complaint alleged that MDE discriminated against a grade 8 student (Student A) on the basis of disability (Type 1 diabetes) when in spring 2015 it refused a request for a disability-related modification to the eligibility requirements of MDE's Post-Secondary Enrollment Options Program (PSEO) so as to allow Student A to participate in the program for the 2015-16 school year.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, MDE is subject to the Section 504 and Title II.

During the complaint investigation, OCR reviewed documents provided by the Complainant and MDE. OCR also interviewed the Complainant. Prior to the completion of OCR's investigation, MDE expressed an interest in resolving the complaint. The following is a summary of the information obtained to date in OCR's investigation.

### Postsecondary Enrollment Options Regulations

According to MDE's website,

Postsecondary Enrollment Options (PSEO) is a program that allows 10th-, 11th- and 12th-grade students to earn college credit while still in high school, through enrollment in and successful completion of college-level courses. With traditional PSEO, these courses are generally offered on the campus of the postsecondary institution; some courses are offered online. Postsecondary institutions are not allowed to charge students for tuition, books or fees for items that are required to participate in a course.<sup>1</sup>

PSEO is authorized by Minn. Stat. §124D.09.<sup>2</sup>

While the PSEO is primarily intended for 11th and 12th-grade students, the program also provides an opportunity for eligible 10<sup>th</sup>-grade students to enroll in college-level courses. According to MDE and the PSEO website:

Legislation allows eligible 10th-grade students to enroll initially in one Career and Technical Education (CTE) course through PSEO. If the student earns a "C" or higher grade in this first course, she/he is eligible to take additional CTE courses while in 10th grade. In order to be eligible, a 10th-grade student must have taken the 8th-grade [Minnesota Comprehensive Assessment (MCA)] reading test or another reading assessment accepted by the enrolling postsecondary institution, and have met the composite proficiency level of "meets or exceeds".<sup>3</sup>

MDE is responsible for the administration of PSEO.

Shortly after the above-referenced complaint was filed with OCR, Minn. Stat. §124D.09 was amended to provide that:

A current 10th grade pupil who did not take the 8th grade Minnesota Comprehensive Assessment in reading may substitute another reading assessment accepted by the enrolling postsecondary institution.<sup>4</sup>

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<sup>1</sup> <http://education.state.mn.us/MDE/StuSuc/CollReadi/PSEO/>

<sup>2</sup> <https://www.revisor.mn.gov/statutes/?id=124d.09>

<sup>3</sup> <http://education.state.mn.us/MDE/StuSuc/CollReadi/PSEO/>

<sup>4</sup> <https://www.revisor.mn.gov/statutes/?id=124d.09>

The amendment provides that any student who was not enrolled as a Minnesota student in the 8<sup>th</sup> grade, e.g. transferred to the school district after the 8<sup>th</sup> grade, or who did not take the Minnesota Comprehensive Assessment as an 8<sup>th</sup> grader could be deemed eligible for the PSEO using an alternative means of reading assessment. MDE asserted that this modification does not affect Student A's eligibility for the PSEO because he took the MCA as an 8<sup>th</sup> grade student but did not achieve a "meets or exceeds" proficiency level.

### Facts

During the 2013-14 school year, Student A, then an 8th-grade student, sat for the MCA. Student A did not score a "meets or exceeds" proficiency level on the MCA reading assessment. Pursuant to the legislation authorizing PSEO, Student A's failure to achieve a "meets or exceeds" proficiency level on the reading assessment rendered him ineligible for PSEO participation as a 10th-grade student. According to the Complainant, on the day of the MCA, Student A took the MCA but experienced health difficulties related to his disability that affected his performance on the test. The Complainant and Student A did not request a modification based on his disability for the test prior to taking the test and did not challenge the score thereafter. Because students are not assessed for the PSEO in the 9<sup>th</sup> grade, Student A did not take another reading assessment.

On April 9, 2015, the Complainant emailed MDE to request the eligibility requirement for 10th-grade participation in PSEO be waived for Student A. In the email, the Complainant stated she was aware of the requirement that students interested in participating in PSEO have scored a proficiency level of "meets or exceeds" on the 8th-grade MCA reading assessment. In explaining Student A's failure to achieve the required proficiency level on the reading assessment, the Complainant stated that Student A is a Type 1 diabetic and was experiencing high blood sugar on the day he took the 8th-grade reading MCA, which she asserted caused him to perform poorly. As such, the Complainant asserted the use of Student A's MCA reading assessment score to exclude him from 10th-grade participation in PSEO was a violation of both Section 504 and Title II.

On April 10, 2015, a high school specialist (High School Specialist) from MDE's Office of Career & College Success responded to the Complainant's April 9 email. In the email response, the High School Specialist wrote:

The law currently states that the 8<sup>th</sup> grade MCA reading test score of "meets or exceeds" is the only way to be eligible to access state-funded PSEO via the 10<sup>th</sup> grade CTE option. As it stands, any student who missed or did not perform well on the test cannot participate according to the current statute (124D.09).

After receiving the response from the High School Specialist, the Complainant emailed MDE's Division of Compliance and Assistance to again request the waiver of the PSEO eligibility requirement for Student A pursuant to Title II and Section 504. In the email to the Division of Compliance and Assistance, the Complainant noted the response she received from the High School Specialist and stated "[The High School Specialist] did not respond to my email other than repeating the statute -- of which we are already aware."

On April 13, 2015, a due process specialist (Due Process Specialist) from the Division of Compliance and Assistance responded to the Complainant's email in which she requested permission from the Complainant to contact Student A's school district and asked to schedule a time to speak with the Complainant. The Complainant told OCR that, when she spoke with the Due Process Specialist, the Due Process Specialist, similar to the High School Specialist, simply repeated the statute's eligibility requirements for 10th-grade participation in PSEO and failed to address her Section 504 and Title II claims.

There is no evidence indicating MDE considered, or analyzed, the Complainant's request for a waiver of the PSEO eligibility requirements for Student A as a request for a disability-related modification pursuant to Section 504 or Title II.

MDE told OCR the April 9, 2015 modification request from the Complainant was the first request it had received seeking a disability-related modification to the eligibility requirements of PSEO. MDE told OCR it currently does not have any adopted policies or procedures for processing such requests.

To date, Student A remains ineligible for tenth-grade participation in PSEO based on the MCA 8<sup>th</sup> grade assessment. At the time the complaint was filed in April 2015, the Complainant reported that Student A's grade point average was 3.76.

### Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states 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 or benefits from Federal financial assistance.

The Title II implementing regulation at 28 C.F.R. § 35.130(a) provides that no qualified individual with a disability may, on the basis of 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 public entity.

The Title II implementing regulation at 28 C.F.R. § 35.130(b)(7) provides that a public entity shall 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.

Under the applicable regulations, a public entity may require a student to follow reasonable procedures to request and document the need for disability-based modifications. Generally, upon receiving documentation of a disability and a request for modifications, a public entity's evaluation of a request requires a fact-specific, case-by-case inquiry. This evaluation process should be interactive, with information exchanged between the individual and the public entity to arrive at a conclusion about the modifications requested. If the request for a modification is not initially granted, the individual and the public entity should engage in an interactive process to determine what, if any, modification will be made, and the appropriate scope of the modification. The interactive process may be brief, with an individual requesting a modification and an institution granting it with minimal documentation requirements or it may be more protracted, with various exchanges between the individual and the institution about the nature of the modification.

Finally, requirements that can be demonstrated by the public entity to be essential to its program of instruction need not be changed. With regard to whether a requested modification would fundamentally alter an essential program requirement, OCR gives deference to an entity's reasoned decision making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options.

In determining whether a recipient discriminated against an individual on the basis of disability, OCR examines whether there were any apparent differences in the treatment of similarly situated students on the basis of disability. If the recipient subjected the individual to different treatment, OCR determines whether the recipient can provide a legitimate, non-discriminatory reason for the different treatment and whether the proffered reason is a pretext for discrimination. OCR also examines whether there is any evidence to suggest that the recipient treated the individual in a manner that was inconsistent with its established policies and procedures, or whether any other evidence of disability discrimination existed.

### Resolution

In accordance with Section 302 of OCR's *Case Processing Manual*, allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. Discussions with MDE resulted in the execution of the enclosed Resolution Agreement, which when fully implemented, will resolve the issue raised by the complaint.

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The Resolution Agreement is aligned with the complaint allegation and the information obtained during the investigation so far and is consistent with applicable regulations. OCR will monitor MDE's implementation of the Agreement until it is in compliance with the Section 504 and Title II regulations at issue in this complaint.

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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that MDE 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.

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.

If you have any questions or concerns, you may contact Jason Frazer, OCR Attorney, by phone at (312) 730-1653 or by email at [jason.frazer@ed.gov](mailto:jason.frazer@ed.gov).

Sincerely,

Ann Cook-Graver  
Supervisory Attorney

Enclosure