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P&A FACT SHEET

HOW TO FILE A COMPLAINT UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 FOR STUDENTS IN PUBLIC SCHOOLS

Section 504 of the Rehabilitation Act of 1973 is a federal law that makes it illegal for any government or organization that gets federal money to discriminate against someone because of a disability. The law covers public schools and means they cannot discriminate against students with disabilities. The law covers all types of disabilities, including physical and mental disabilities. Section 504 can also apply to students that have Individualized Educational Plans (IEPs). This Fact Sheet has information about how to make a complaint to the U.S. Department of Education if you believe a school has violated educational rights of a student with a disability.

Under Section 504, it is discrimination if schools:

- **Do not provide accommodations** to children with disabilities that help them be a part of regular school activities. Some examples of accommodations include ramps, behavioral intervention planning, sign language interpreter, note takers, assistive technology or extra time taking tests.
- **Improperly exclude** children with disabilities from participating in educational services. Some examples of educational services include classes, field trips and school-sponsored clubs.

Parents who think a public school has discriminated against their child may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education. After reviewing the complaint:

- OCR may try to fix the problem by helping the school and the parent come to an agreement. This is called "Early Complaint Resolution," OR

- OCR may investigate further, OR
- If the school wants to resolve the complaint after the investigation has started, OCR may try to negotiate an agreement with the school, OR
- If a school does not cooperate with OCR, OCR could terminate the school's federal funding or send the case to the Department of Justice, OR
- OCR may dismiss the complaint (for example: the complaint is not filed on time or a waiver is not granted for late filing, or the complaint does not allege a problem under Section 504).

The deadline for filing a complaint is 180 days from the date your child is denied participation or denied a needed accommodation. It is important to file the complaint on time or OCR may dismiss it. (It is possible the deadline may be extended if there is a continuing pattern or practice of discrimination.) If the 180 day deadline has passed, the person making the complaint should explain the reason for delay in filing and apply for a waiver. OCR will determine whether a waiver will be granted.

Filing a 504 complaint: There are several ways to file a 504 complaint with OCR.

You may file your complaint online at:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>. When filing online, you must also mail in a signed consent form. The website provides instructions on how to complete this step.

You may also mail, e-mail, or fax your complaint to OCR. If you want to mail, e-mail, or fax your complaint, provide the information below:

- State your name, address, telephone number, and e-mail address.
- State the name and address of the person who was discriminated against.
- State the name and address of the school and school district.
- Describe the alleged discrimination (for example: state your child was denied access to a program or state your child was denied an accommodation). Make the description clear. State what occurred, when it occurred, and that it happened because of your child's disability. Provide the names of people involved, including any person suspected of discrimination and anyone who might have witnessed the discrimination.
- If the complaint is beyond the 180 day deadline, request a waiver and provide an explanation of the delay in filing.
- State whether you have tried to resolve the complaint through an internal grievance procedure with the school.¹

¹ You do not have to file an internal grievance to file a complaint with OCR. OCR will not handle complaints that are also involved in a formal grievance procedure with the school. If you do follow a formal grievance procedure you can still file a complaint with OCR, but it must be filed within 60 days after the formal grievance process is complete.

- State whether the complaint has been filed with another civil rights agency or court.
- Sign the complaint. A parent or guardian normally signs the complaint for a child under 18. If the student is 18 or older, then he or she may sign the complaint. If an advocate is assisting you, the advocate may sign the complaint.
- Review and sign a consent form (you can find this form at the OCR website below with the "Discrimination Complaint Form") or you can send in your complaint to OCR and OCR will send a consent form to you with a letter acknowledging the complaint. This form has instructions on it.

Two sample letters are attached to this fact sheet. The first letter is about denial of access to a school program. The second letter is about denial of accommodations. The address to which to mail your complaint is on the sample letters. You may also email your complaint directly to OCR at OCR.DC@ed.gov. If you wish to fax your complaint, the fax number is (202) 453-6021.

Instead of writing your own letter, you may want to use the "Discrimination Complaint Form" available from OCR. You may obtain a copy from their website: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>. You may also call OCR's Washington DC Division Office by telephone at (202) 453-6020 or (800) 877-8339 (TTY) and ask that they send you a copy of this form.

Keep some form of documentation that the complaint was sent, such as a fax receipt, email delivery receipt or a copy of the sent email, certified mail receipt, etc. for your records.

What to Say in Your Complaint: You can submit a complaint about anything related to your child's disability and school services (for example: the school not providing agreed upon accommodations). However, if the school has violated procedural rights (like not notifying you of meetings or not identifying your child's disability) please emphasize this in your complaint. Also, let OCR know if the school is treating your child differently from children who do not have a disability. OCR typically does not investigate decisions that form the basis of the 504 plan, such as placement decisions, accommodations decisions, or other educational decisions if the school district followed the procedural requirements of Section 504. Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions as long as the school district complies with the procedural requirements of Section 504.

The OCR website has helpful "Questions and Answers on OCR's Complaint Process" at <http://www2.ed.gov/about/offices/list/ocr/qa-complaints.html> and "Frequently Asked Questions About Section 504 and the Education of Children with Disabilities" at: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>

RETALIATION PROHIBITED: No one should take any action against you or your child because you (1) are trying to get his or her rights enforced under Section 504 or (2) have filed an OCR complaint. You may file a complaint if there has been any retaliation by the school district or any individual.

More information: You can find more information about OCR on their website: <http://www.ed.gov/about/offices/list/ocr/index.html>. The regional OCR office for South Carolina is located in Washington DC; you may contact them at (202) 453-6020 (voice) or (800) 877-8339 (TTY) or email at OCR.DC@ed.gov. You may also contact the OCR National Headquarters of the Office for Civil Rights at 1 (800) 421-3481 (voice) or (800) 877-8339 (TTY) or email at OCR@ed.gov.

NOTES:

1. Students who are in special education with an IEP, may use the US Department of Education 504 complaint process described in this fact sheet. However, students in special education can also use the complaint procedures of the SC Department of Education Office of Exceptional Children. See P&A Fact Sheet: Filing a Complaint with the South Carolina Department of Education. Their complaint form is on line at: <http://ed.sc.gov/agency/programs-services/173/ParentResourcesonSpecialEducation.cfm>. It is only for special education issues and cannot be used for 504 plans.
2. College students with disabilities are also protected by Section 504 of the Rehabilitation Act of 1973 if their school receives federal funding. If these students have disputes about classroom or campus accommodations they can also make 504 complaints with OCR, U.S. Department of Education using the procedures in this fact sheet.

Sources for the information in this fact sheet:

Section 504 of the Rehabilitation Act of 1973, 29 USC 794

OCR website: <http://www.ed.gov/about/offices/list/ocr/index.html>

This publication provides legal information, but it is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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P&A does not discriminate on the basis of disability, race, color, creed, religion, sex, age, national origin, ancestry, citizenship, veteran status, sexual orientation, or any other class protected by law in the provision of its programs or services. Pete Cantrell is P&A's designated coordinator for Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. EDUCATION September 2013

SAMPLE LETTER
(About School Not Allowing Access to a Program)

September 4, 2013

Washington DC (Metro)
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1475

Dear Ma'am/Sir:

I am a parent of a four-year-old child, Lisa Marie House, who has Down syndrome. I tried to enroll my child in her school district's early childhood development program. This program is offered to four-year-old children in my school district who are not ready for school. My daughter is not ready for school, but I was told I could not enroll my child in this program. The school said the program was not appropriate for a child with Down syndrome. Therefore, I believe the school is discriminating against my daughter based upon her disability in violation of Section 504 of the Rehabilitation Act of 1973. The school **[has/has not]** offered any internal grievance procedure. **[IF THERE HAS BEEN SOME OTHER INTERNAL PROCEDURE, DESCRIBE IT WHAT THE OUTCOME WAS]**. I **[have/have not]** filed this complaint with any other government agency or court.

I live in Anywhere, South Carolina. My daughter attends Anywhere Elementary School in Anywhere County School District. You can contact me at (803) 555-1111. Other persons you may wish to contact are Mr. John Jones, Superintendent of Education for Anywhere School District, and Ms. Jane James, who is the Special Services Coordinator for Anywhere School District. Both of these individuals can be reached at 147 Anywhere Lane, Anywhere, South Carolina 29222, or by calling (803) 555-9999.

Thank you for your assistance in this matter.

Sincerely,

Betty Jo House
123 Somewhere Lane
Anywhere, SC 29222
(803) 555-1111
BJHouse@xyz.net

SAMPLE LETTER
(About School Not Giving an Accommodation)

September 4, 2013

Washington DC (Metro)
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1475

Dear Ma'am/Sir:

I am a parent of an eight-year-old child, Samuel Smith, who is diagnosed with ADHD. Because of this condition, he has problems focusing and often is unable to complete tests on time. I informed my son's school in late September 2012 that he has ADHD. I asked the school to give him the accommodation of having extra time to complete his tests. The school refuses to allow my son to have this extra time. Therefore, I believe the school is discriminating against my son based upon his disability in violation of Section 504 of the Rehabilitation Act of 1973.

The school **[has/has not]** offered any internal grievance procedure. **[IF THERE HAS BEEN SOME OTHER INTERNAL PROCEDURE, DESCRIBE IT WHAT THE OUTCOME WAS]**. I **[have/have not]** filed this complaint with any other government agency or court.

I live in Anywhere, South Carolina. My son attends Anywhere Elementary School in Anywhere County School District. You can contact me at (803) 555-3333. Other persons you may wish to contact are Mr. John Jones, Superintendent of Education for Anywhere School District, and Ms. Jane James, who is the Special Services Coordinator for Anywhere School District. Both of these individuals can be reached at 147 Anywhere Lane, Anywhere, South Carolina 29222, or by calling (803) 555-9999.

Thank you for your assistance in this matter.

Sincerely,

Sarah Smith
456 Someplace Drive
Anywhere, SC 29222
(803) 555-3333
SSmith6@xyz.net