



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
CLEVELAND OFFICE  
600 SUPERIOR AVENUE EAST, SUITE 750  
CLEVELAND, OHIO 44114-2611**

**SEP 04 2009**

Ms. Marianne E. Huff  
Director of Advocacy  
The Ability Center of Greater Toledo  
5605 Monroe Street  
Toledo, Ohio 43560

Re: OCR Docket # 15-09-1127

Dear Ms. Huff:

This is to notify you of the disposition of the above-referenced complaint that was filed by the Ability Center of Greater Toledo with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Toledo Public Schools (the District), on March 12, 2009. The complaint alleged that the District has no policies and procedures pertaining to the implementation of Section 504.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 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 from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, 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 as a public entity, the District is subject to these laws; accordingly, OCR had jurisdiction to investigate this complaint.

### Background

The complaint was filed by The Ability Center (the Center), a local disability advocacy center that provides advocacy services on behalf of persons with disabilities living in Northwest Ohio. In support of the complaint allegation, the Center advised OCR that in May 2008 when it asked the District to provide it with a copy of any Section 504 policies and procedures the District has, the District responded that it has none. Center officials further advised OCR that this response concerned them because the Center has approximately 350 active cases involving students with disabilities, of which 70% involve the District. These officials stated that in addition to providing advocacy services for its clients, the Center also provides staff to serve as surrogate parents for foster children. As surrogate parents, staff members are trained to serve in the role of a foster child's parent at various meetings for students who have or are suspected of having a disability, such as evaluation and placement meetings. Center officials explained that they have attended several meetings in this capacity and have observed that the District is not consistent in its application of Section 504 as it relates to student identification, evaluation, and placement. For instance, they contend that at several District schools, the building staff claimed that no one at the building knows how to conduct an evaluation or write a Section 504 plan. The Center officials further explained that it has been their experience that when a student has an educational plan in place under Section 504, teachers may refuse to implement it. In addition, they have found that the District does not reevaluate students with disabilities and, if a student moves from one District school to another, their educational plan does not follow the student. The Center contends that the lack of consistency and knowledge about Section 504 requirements throughout the District is the result of the District's lack of Section 504 policies and procedures and inadequate staff training.

The Section 504 and Title II implementing regulations at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b) further require recipients to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 or Title II. In addition, the Section 504 regulation, at 34 C.F.R. §§ 104.33-104.36, sets forth various requirements that a recipient school district must meet to ensure the appropriate identification, evaluation, and placement of students who have or are suspected of having a disability with appropriate procedural safeguards.

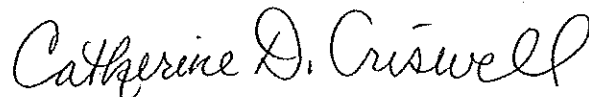
In the instant case, the District acknowledged that there are no Board-approved grievance procedures in place or policies regarding Section 504, including grievance procedures required by Section 104.7. The District did provide OCR with copies of draft policies that are currently pending Board approval. The draft policies, which consist of a total of four pages, contain an anti-discrimination statement, a notice of parent/student rights under Section 504, a 504 evaluation form report, and a Section 504 accommodations form. The District stated that these draft policies are the only policies related to Section 504 that they currently have or are developing. Before OCR could complete the investigation of this complaint, the District asked to resolve the complaint allegation.

Under OCR's procedures, a complaint may be resolved before the conclusion of OCR's investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. The provisions of the agreement must be aligned with the complaint allegations or the information obtained during the investigation and must be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces.

Based on the foregoing, on September 4, 2009, the District provided OCR with a signed agreement [copy enclosed] to resolve the complaint allegation. The agreement provides that the District will draft Section 504 policies and procedures to provide for the identification, evaluation and placement of students with disabilities, including a system of procedural safeguards, in conformance with the regulations implementing Section 504 at 34 C.F.R. §§ 104.3 and 104.33-104.36. The policies and procedures will also ensure that all parents of students with disabilities receive notice of their procedural safeguards at the time a decision is made about the identification, evaluation, placement, or reevaluation of such students. The agreement also requires the District to draft Section 504 grievance procedures in accordance with 34 C.F.R. § 104.7(b). Once the policies and procedures are drafted, the District will submit them to OCR for review. Upon notification from OCR that the policies and procedures are consistent with Section 504 and Title II requirements, the policies will be adopted by the District and notification of the existence of such policies and procedures will be distributed to the District's educational community including, but not limited to, parents/guardians, students, and teachers. In addition, the agreement requires the District to provide training to its administrators, teachers, and other school staff, who have responsibilities for referring students for evaluation and implementing Section 504 plans, regarding the District's new policies and procedures and its Section 504 obligations regarding identification, evaluation, and placement. In particular, the training will emphasize the responsibility of the District and its staff to implement the services outlined in the plan and the identity of the District employee to contact with any questions regarding the Section 504 plan.

In light of the foregoing agreement, OCR finds that the complaint allegation is resolved, and we are closing our investigation as of the date of this letter. OCR will monitor the District's implementation of the agreement. Should the District fail to fully implement the agreement, OCR will reopen the case and resume its investigation. If you have any questions, please contact Mr. Vincent Cheverine of my staff by telephone at (216) 522-2676 or by e-mail at [Vincent.Cheverine@ed.gov](mailto:Vincent.Cheverine@ed.gov).

Sincerely,



Catherine D. Criswell  
Acting Director

Enclosure

**Toledo Public Schools  
Resolution Agreement  
Complaint #15-09-1127**

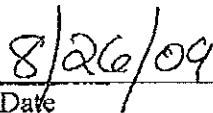
Toledo Public Schools (the District) submits this Resolution Agreement to the U.S. Department of Education, Office for Civil Rights (OCR), for the purpose of resolving complaint #15-09-1127 and ensuring compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, as amended by the ADA Amendments Act of 2008 (ADAAA); accordingly, the District agrees to take the following actions:

Action Steps and Reporting Timeframes

1. By September 30, 2009, the District will draft and submit to OCR for review Section 504 policies and procedures providing for the identification, evaluation and placement of students with disabilities, in conformance with the regulation implementing Section 504 at 34 C.F.R. §§ 104.3 (definitions), 104.33 (free appropriate public education), 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards), and with Title II and the ADAAA.
2. By September 30, 2009, the District will draft and submit to OCR for review grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504, in conformance with the Section 504 regulation at 34 C.F.R. § 104.7(b).
3. Within 120 days of written notification from OCR that the policies and procedures developed pursuant to items #1-2 above are consistent with Section 504 requirements, the District will:
  - a. adopt the procedures, publish them on its website, and notify students, parents, guardians, and staff of the procedures and where a copy may be obtained by means that are designed to reach each family and staff member. Such means could include posting at each school and sending them home with each student;
  - b. provide training to all of its administrators and teachers and any other staff at the District who have responsibilities for implementing portions of students' Section 504 plans or a role in the identification, evaluation, and placement of students that have or are suspected of having a disability under Section 504 regarding Section 504's evaluation and placement requirements and the District's new policies and procedures; and

- c. submit information to OCR documenting implementation of item #3(a-b) above, including copies of the notices issued to staff, administrators, and parents or guardians; the link to the procedures on the District's website; the means chosen to provide notice; the date of the training(s); a copy of the syllabus used; copies of training materials used; the name and qualifications of the person(s) who provided the training(s); and the name and job title of all persons who attended the training.

  
\_\_\_\_\_  
Superintendent for Toledo Public Schools or Designee

  
\_\_\_\_\_  
Date