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DEPARTMENT OF EDUCATION
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KEVIN HUFFMAN
COMMISSIONER

MEMORANDUM

TO: Tennessee Director of Schools

FROM: Lesley Farmer, Assistant General Counsel for Civil Rights

DATE: May 4, 2012

RE: Section 504 of the Rehabilitation Act of 1973

In May 2011, you were notified of a complaint with the United States Department of Education Office for Civil Rights - Atlanta filed against Tennessee school districts regarding Section 504. The complaint alleged that Tennessee LEAs failed to develop and disseminate a system of procedural safeguards, including provisions regarding Section 504 impartial due process hearings with respect to evaluation, eligibility, and placement of students.

As part of the Resolution Agreement with OCR-Atlanta, each participating LEA agreed to adopt either the department's version or their own version of the due process procedures. Within the Section 504 manual, you will find the sample due process policies and procedures on pages 42, 43, and 55-59. The manual will be available on the department's web site at:
<http://www.tn.gov/education/civilrights.shtml>.

Each LEA will also be required to post the due process procedures on its web site, if applicable, and/or student handbooks. Once you have posted the materials on your website, you will need to forward the link to Lesley Farmer, Assistant General Counsel for Civil Rights at Lesley.Farmer@tn.gov. Please ensure that this information is forwarded to your respective Section 504 Coordinators.

If you have any additional questions or concerns, please do not hesitate to contact Ms. Farmer at (615) 253-1550.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 19, 2012

Dear Colleague:

This year, we will celebrate the 22nd anniversary of the landmark Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213. We at the Office for Civil Rights (OCR) in the United States Department of Education (Department) recognize the progress our country has made toward ensuring that educational opportunities are provided free from disability discrimination. As Secretary Arne Duncan has stated, the Department is "strengthening our efforts to ensure that all students, including those with disabilities, have the tools they need to benefit from a world-class education that prepares them for success in college and careers."¹

Pursuant to a delegation by the U.S. Attorney General, OCR shares in the enforcement of Title II of the ADA (Title II). 28 C.F.R. § 35.190(b)(2). Title II prohibits discrimination on the basis of disability by public entities, including public elementary, secondary, and postsecondary schools, regardless of whether they receive Federal financial assistance. Title II requires that qualified individuals with disabilities, including students, parents, and other program participants, are not excluded from or denied the benefits of services, programs, or activities of a public entity, or otherwise subjected to discrimination by a public entity, by reason of disability. OCR also enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance. Recipients of this Federal financial assistance from the Department include public school districts, other state and local educational agencies, and institutions of higher education.

Through our civil rights enforcement activities, and in responding to requests for technical assistance, OCR has learned that additional guidance on the requirements of the ADA and Section 504 in the elementary and secondary school context would be helpful, especially in light of changes to the law made by the ADA Amendments Act of 2008 (Amendments Act).² To that end, OCR has prepared the attached "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools" (Amendments Act FAQ). With passage of the Amendments Act, Congress intended to ensure a broad scope of protection under the ADA and to

¹ For more of Secretary Duncan's remarks regarding the ADA, see Press Release, U.S. Dep't of Educ., 20th Anniversary of the Americans with Disabilities Act a Cause for Celebration and Rededication to Equal Educational Opportunity for Students with Disabilities (July 26, 2010), available at <http://www.ed.gov/news/press-releases/20th-anniversary-americans-disabilities-act-cause-celebration-and-rededication-e>.

² You can review the text of the Amendments Act on OCR's website at <http://www2.ed.gov/policy/rights/guid/ocr/disability.html> (see bullet entitled "The Americans with Disabilities Act Amendments Act of 2008"). The law went into effect January 1, 2009.

convey that the question of whether an individual's impairment is a disability under the ADA and Section 504 should not demand extensive analysis. To effectuate the ADA's purpose, the Amendments Act:

- directs that the ameliorating effects of mitigating measures (other than ordinary eyeglasses or contact lenses) may not be considered in determining whether an individual has a disability;
- expands the scope of "major life activities" by providing nonexhaustive lists of general activities and major bodily functions;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
- clarifies how the ADA applies to individuals who are "regarded as" having a disability.

The attached Amendments Act FAQ:

- addresses the broadened definition of disability and the changes made by the Amendments Act;
- discusses how the Amendments Act affects Section 504;
- explains various obligations of school districts under Section 504 and Title II; and
- addresses how OCR evaluates compliance with Title II and Section 504 in light of the Amendments Act.

Since the ADA's enactment, measurable progress has been made, but more can be done. OCR will continue to work to eliminate disability discrimination in public elementary, secondary, and postsecondary schools by investigating complaints, conducting compliance reviews, issuing policy guidance, providing technical assistance, and working closely with the Department of Justice.

OCR is committed to providing technical assistance to States, school districts, service providers, and individuals to ensure that students with disabilities have equal educational opportunities. To that end, OCR has other documents that provide guidance on Title II and Section 504, which can be found at <http://www.ed.gov/about/offices/list/ocr/publications.html#Section504>. If you need additional information or technical assistance in complying with Title II, Section 504, or the other civil rights laws that OCR enforces, please visit <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm> for the contact information for the OCR enforcement office that serves your state or outlying area. Technical assistance regarding the ADA and other resources can also be found on the Department of Justice's website at www.ada.gov.

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Thank you for joining me in our continuing efforts to realize the full potential of Section 504 and the ADA by ensuring nondiscrimination for students with disabilities.

Sincerely,

/s/

Russlynn Ali

Assistant Secretary for Civil Rights