



# Using OCR to Address Disability Discrimination in Public Schools

by Paul D. Grossman, JD

**IN LIGHT OF THE SURVEY** just completed by CHADD, it is evident that many children with ADHD are subject to disability discrimination in our public schools. This injustice must be addressed on many fronts including advocacy in the courts, the halls of Congress, and with the US Department of Education, Office for Civil Rights (OCR). The continuing support of CHADD by its members for these activities will be critically important. It is also the case that parents can do more to directly assert the rights of their children to attend public school free from disability discrimination.

*OCR can be a very useful free tool for resolving allegations of discrimination against students with ADHD who are enrolled in public elementary or secondary schools—or, it can be of no help at all.* The purpose of this article is to assist parents and advocates in understanding when to file a complaint with OCR and when it would be an unwise strategy for redressing discrimination.

## Scope of OCR's legal authority

OCR has jurisdiction to investigate and remedy discrimination on the basis of race, color, national origin, sex, age, or disability. (OCR lacks jurisdiction to address discrimination on the basis of religion or sexual orientation but may be able to address some elements of these forms of discrimination.) When OCR finds discrimination, it generally resolves the problem by requiring the school district to cease its discriminatory policies and practices and giving the student what is necessary to receive an appropriate evaluation and services. OCR rarely obtains monetary damages to address discrimination.

The scope of OCR's legal authority to investigate and remedy claims of discrimination against students with disabilities is not always easy to sort out. The most important thing to understand is that a parent or advocate can call one of OCR's twelve enforcement offices, explain his or her concern, and get an informal (nonbinding) opinion from an OCR "Information Of-

ficer of the Day" (IOD) as to whether OCR has the authority to investigate the claim. Furthermore, a parent or advocate can file a signed complaint with OCR in writing or online.

If OCR reviews the complaint and decides that OCR lacks the authority to proceed, OCR does not reveal the existence of the complaint to the school district. (If a parent or advocate is concerned about retaliation by a school district, they should specifically raise this concern with OCR.) On the other hand, OCR is required to resolve, free of charge, generally within 180 days, any complaint, that, if true states a violation of Section 504. Resolution may require an investigation but might instead involve some form of alternate dispute resolution, such as facilitated mediation-like negotiations between the parents and the district. Parents and advocates interested in alternate dispute resolution should make their interest known to OCR at the outset, but ultimately OCR will decide whether to use alternate dispute resolution.

With regard to disability, OCR enforces Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (ADA). OCR does not enforce the Individuals with Disabilities Act (IDEA). However, both the IDEA and the regulations implementing Section 504 require the provision of a Free Appropriate Public Education (FAPE). Nonetheless, as to many issues, particularly due process, the IDEA is more specific than Section 504.

"Except in extraordinary circumstances," OCR is not the place to file a complaint stating that a 504 or IEP team reached the wrong conclusion about whether a student qualifies to have a 504 plan or that an IEP team or 504 team made the wrong placement decision, like refusing to provide a student with extended time on homework. The better course of action in these circumstances is to seek reconsideration by the district, make use of IDEA or Section 504 due process (appeal) procedures, make use of state department of education civil rights procedures including alternate dispute resolution processes, or file a complaint in federal court.

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### **What OCR can resolve**

Given the foregoing, is anything important left for OCR to address? Actually, the range of issues appropriate for resolution by OCR is considerable. The following are examples of appropriate claims for OCR investigation:

- A material failure by a district to implement the provisions an IEP/504 Plan, as written.
- A refusal to grant a parental request to convene a 504 due process hearing when the parents are dissatisfied with: a refusal to evaluate a student, the content of an evaluation, a 504 team placement decision, or implementation of the placement decision.
- The District has relied on an unsupportable legal standard:
  - “We can’t evaluate a student with ADHD until he/she has been properly medicated.”
  - “We’re a charter school. The student must disenroll from the charter school to receive an evaluation.”
  - “We won’t evaluate the student because the student is still in a response to intervention (RTI) program.
  - “Students on 504 plans are not entitled to FAPE, only reasonable accommodation.”
  - “Manifestation determinations are not available to ‘504 only students’ or students in charter schools.
  - “A student with a disability on an inter-district transfer is a ‘guest’ and may be dismissed at any time, for any reason, without due process.”

With regard to evaluation and placement, OCR’s jurisdiction is not always clear cut. However, many important issues arise concerning the treatment of students with disabilities, including students with ADHD, that have little or nothing to do with evaluation or placement. Indeed, students with disabilities are protected from certain forms of discrimination, such as a hostile environment on the basis of disability, even if the student is not receiving services under the IDEA or a 504 Plan. Additional examples of such issues include:

- Retaliation against students or parents because the parents have

filed a complaint of discrimination with the district, OCR, the state, the courts or are requesting that a district convene a due process hearing.

- On the basis of disability, excluding a student from a district program, such as:
    - Pre-Kindergarten services.
    - Before and after school care programs.
    - Class trips, field trips, summer camps.
    - Prom and graduation.
  - Facilities comparable to those provided to “regular education students” are not provided to programs for students with disabilities
  - Parents of students with disabilities are not given an equal opportunity to participate in the programs of their children through the PTA and similar activities
- Issues that involve race or national origin discrimination in addition to disability discrimination may be uniquely within OCR’s experience and authority:
- Discriminatory discipline on the basis of race and disability.
  - Placement on the basis of race.
  - Parent due process notices are not in home language of national origin minority families.

Complaints with OCR may be filed through conventional mail or online. The home page for OCR may be found at [www.ed.gov/ocr](http://www.ed.gov/ocr). Calling OCR for advice on how to put together a complaint is often advisable. A call to OCR for advice may be anonymous if the caller wishes. 🗣️

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**Paul D. Grossman, JD**, worked for OCR for over forty years before retiring and is currently an adjunct professor of disability law. With Ruth Colker, JD, he authored *The Law of Disability Discrimination, Eighth Edition* (Lexis-Nexis 2013 with annual update). Grossman is a nationally recognized lecturer on the topic of disability discrimination in education. However, he does not represent individual students. The content of this article is provided for informational purposes only and must not to be construed as legal advice. Readers should seek independent counsel to resolve any legal issues that they need addressed.