DEPARTMENT OF HEALTH & HUMAN SERVICES
Voice - (617) 565-1340, (800) 368-1019
TDD - (617) 565-1343, (800) 537-7697
(FAX) - (617) 565-3809 http://www.hhs.gov/ocr/

OFFICE OF THE SECRETARY
Office for Civil Rights, Region I
JFK Federal Building, Room 1875
Government Center
Boston, MA 02203-0002

JAN 29 2004

ADA Complaint Vs. DTA

Via Certified Mail

John Wagner
Commissioner
Massachusetts Department of Transitional Assistance
600 Washington Street
Boston, MA 02111

re: OCR Docket No. 03-10879

Dear Commissioner Wagner:

The Office for Civil Rights (OCR), U.S. Department of Health and Human Services (HHS), has completed its investigation of the above-referenced complaint filed against the Massachusetts Department of Transitional Assistance (hereinafter "DTA"). The Complaintant alleges that DTA discriminated against her on the basis of her children's disability in the administration of DTA's Emergency Assistance (EA) program. The purpose of our investigation was to determine whether DTA violated the Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131, et. seq. and its implementing regulations at 28 C.F.R. Part 35, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, as amended, and its implementing regulations at 45 C.F.R. Part 84, which prohibit discrimination on the basis of disability. OCR's findings are discussed below.

I. Summary

Complainant receives temporary shelter assistance from DTA. DTA placed Complainant's family in an interim placement in a motel in Tewksbury, Massachusetts. Seven months later DTA transferred Complainant's family to a congregate family shelter in Lowell, Massachusetts.

Complainant's two children have several diagnosed mental and emotional impairments for which they are under a doctor's care. Complainant alleges that the children's mental and emotional health conditions deteriorated precipitously after the transfer to the congregate shelter. On February 24, 2003, she requested that DTA transfer her family back to the previous placement in Tewksbury as a reasonable accommodation. Complainant alleges that DTA did not act on her request. Thereafter, Complainant made several requests to be transferred back to the initial motel placement. She provided medical documentation of the children's deteriorating mental health and their increased psychiatric symptoms from the children's psychiatrist and special education teacher. Four months later, DTA ultimately denied Complainant's specific request to transfer her family back to the initial motel placement. Instead, DTA offered her a "prioritized placement" for a scattered-site shelter placement in Lynn, Massachusetts.

Complainant alleges that the denial of the requested reasonable accommodation, as well as the four-month delay in making a formal determination on her request, constitutes discrimination. Complainant also alleges that DTA failed to provide meaningful notice of her right to an accommodation, the procedures for filing a reasonable accommodation request, and the procedures for grieving DTA's failure to accommodate.[1]

Based on the investigation, OCR concludes that DTA violated Title II of the ADA and Section 504 of the Rehabilitation Act. OCR also concludes that DTA utilizes methods of administration that have the effect of subjecting individuals with disabilities to discrimination.

II. Jurisdiction and Authority

OCR has jurisdiction over this Complaint pursuant to Title II of the ADA, which prohibits discrimination on the basis of disability in State and local government programs and services. OCR also has jurisdiction pursuant to Section 504, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. DTA receives Federal financial assistance from HHS, including the Block Grants to states for Temporary Assistance for Needy Families, (TANF) 42 U.S.C. §601, et seq. In FY 2003, DTA received a TANF Block Grant in the amount of $459,371,116.00.

III. Findings of Fact[2]

A. Background Information on the Emergency Assistance Program

Complainant and her two children are recipients of Emergency Assistance (EA), a program for low-income homeless families administered by DTA. The EA program provides temporary shelter and housing search assistance to eligible homeless, low-income families. DTA-approved shelter space includes congregate family shelters and scattered-site placements, as well as motels/hotels where DTA pays for such interim placements when no other approved sites are

---

[1]Complainant has also filed a complaint alleging retaliation. This complaint is being investigated separately; these findings do not address the retaliation claims.

[2]The evidence upon which OCR has made these factual findings was obtained from interviews of Complainant; Dr. Jeffrey Lynn Speller, the children's treating psychiatrist; Lorraine Woodson, DTA Director of Equal Opportunity; Dan O'Connor, Assistant Director of Lowell Transitional Assistance Office; John Augeri, DTA Regional Director; Judy Marchand, Complainant's housing worker; Ruth Greenholz; DTA attorney; Jose Rodriguez, Pawtucket House Program Manager; Louise Brandon, Pawtucket House Family Life Advocate; Janice Williams, Housing Assistance Program worker; and Holly Twiss, Director of S.P.I.N.'s Scattered Site Family Emergency Shelter program. Additional information was obtained from Complainant's Shelter and DTA case files, as well as documents that were submitted to the Division of Hearings regarding this matter.

available.

A congregate family shelter provides 24-hour on-site staff coverage and provides case management services, including supportive services, assessment, and referrals to services. As of July 31, 2003, DTA provided 742 such rooms to 704 families in 58 DTA-contracted congregate family shelters.

A scattered-site placement is usually an apartment-type setting managed by a community organization. As of July 31, 2003, DTA provided 247 such placements to 219 families through eleven DTA-contracted scattered-site agencies.

DTA places families in an interim placement, such as a motel/hotel, if DTA-approved congregate shelter space or a scattered-site placement is not available. As of July 31, 2003, DTA housed 585 families in 79 motels.

According to EA regulations, a program participant is required to make a reasonable effort to obtain permanent housing. To that end, a program participant must cooperate in the development of and participate in the activities outlined in the program participant's plan for self-sufficiency. The Self-Sufficiency Plan usually contains activities that will lead to finding permanent housing, such as attending scheduled meetings with the Housing Assistance Program (HAP) worker and meeting DTA representatives.

B. Initial Shelter Placement for Complainant's Family

Complainant, her 12-year old daughter (hereinafter "Daughter") and 15-year old son (hereinafter "Son") were initially placed in Towne Place Suites (hereinafter "Motel"), a residential motel in Tewksbury, Massachusetts. This placement lasted from August 21, 2002 to February 1, 2003. The units at the Motel consist of a bedroom, living room with sofa-bed, full kitchen and bathroom.

Complainant's "home community" is Billerica, Massachusetts.[3] Complainant's children have attended Billerica schools for over four years. The children had a 15-20 minute van ride from the Motel to their schools in Billerica.

C. Children's Mental Disabilities

Son and Daughter are diagnosed with several mental and emotional disorders. Son and Daughter have been under the care of psychiatrist Dr. Jeffrey Lynn Speller (hereinafter "Psychiatrist") since January 2002. Son is diagnosed with Major Depression, Generalized Anxiety Disorder, Attention Deficit Hyperactivity Disorder, Bipolar Disorder, and Graves Disease. His

---

[3]Prior to becoming homeless, Complainant and her family lived in Billerica, Massachusetts.

psychiatric symptoms include impulsive behavior, sadness, anxiousness, depression, nervousness, decreased focus, decreased attention, decreased appetite, self-injury, sensitivity to noise, and difficulty sleeping. In January 2003, Son was prescribed the following medications: Adderall, Seroquel, Paxil and Trazadone. In April 2003, Neurotonin and Tabasol were added to the above medications.

Daughter is diagnosed with Major Depression Disorder, Generalized Anxiety Disorder, and Attention Deficit Hyperactivity Disorder. Her psychiatric symptoms include sadness, anxiousness, depression, nervousness, decreased focus, decreased attention, decreased appetite, difficulty sleeping, uncontrollable crying, and sensitivity to noise. In January 2003, Daughter was prescribed the following medications: Adderall, Buspar, Celexa, and Clonidine. In April 2003, Trazodone and Neurotonin were added to the above medications.

D. Transfer from Motel to Shelter

On February 2, 2003, DTA transferred Complainant and her children to Pawtucket House, a congregate shelter, in Lowell, Massachusetts (hereinafter "Shelter") because a room became available. The Shelter provided the family with one bedroom and the family shared other living space, including a bathroom, with five other families.

According to Dan O'Connor, the Assistant Director (hereinafter "Assistant Director") of the Lowell Transitional Assistance Office (hereinafter "Local Office"), Complainant expressed concern about the shelter rules, particularly the 5 p.m. curfew and limited kitchen hours, at the shelter intake conducted by DTA in January 2003. During the interview, Complainant also informed DTA that Son and Daughter have panic attacks. Assistant Director states that Complainant expressed reluctance to accept the Shelter placement because she claimed that the placement would be "disruptive" to her children's mental health.

Upon her arrival at the Shelter, Complainant gave Louise Brandon, Shelter Family Life Advocate (hereinafter "Shelter Advocate") , two letters from Psychiatrist. The letters, dated January 31, 2003, indicated that Son and Daughter were under Psychiatrist's care for the above-described disorders. Psychiatrist also listed the medications prescribed to Son and Daughter at that time.

E. Initial Deterioration of Children's Mental and Emotional Health Conditions

Subsequently, the children's mental and emotional health conditions deteriorated. Complainant witnessed her children becoming more anxious and depressed, as well as having difficulty sleeping. Both Complainant and Shelter staff witnessed that Daughter was withdrawn and did not interact with other residents. Shelter staff also witnessed that Son and Daughter were "having a hard time adjusting," and that the children isolated themselves from other residents.

On February 24, 2003, Sondra M. Lanteigne, a special education teacher (hereinafter "Teacher") at Billerica Memorial High School wrote a letter to Complainant regarding Son's recent "disturbing" behavior. In the letter, Teacher notes that Son is sleeping very heavily in class and

exhibiting impulsive behavior. Teacher states that the observed behaviors appeared to coincide with the family's change in residence to the congregate shelter.

Also in March, Complainant received the children's school quarterly progress reports. Daughter's progress report indicates that her grades significantly decreased from above-average (A-, B-, C) in December 2002 to below average (C+, F, F) in March 2003. Son's quarterly grades decreased from average (B+, D, B+, C, C+, B, D) to below average (B, D, F, F, F, D).

F. Request for Reasonable Accommodation

1. February 24, 2003 Conversation with Shelter Advocate

Complainant gave the progress reports to Shelter Advocate and expressed her concern. Complainant's Shelter case file confirms that on February 24, 2003, Complainant told Shelter Advocate that her family "was not doing well" and that the children's psychiatrist told her that "the children are deteriorating emotionally by staying in the shelter."

2. March 6, 2003 Meeting with Housing Worker

On March 6, 2003, Complainant met with her housing case worker from the Local Office, Judy Marchand (hereinafter "Case Worker"), for the first time to discuss her Self-Sufficiency Plan. Case Worker confirms that at this meeting Complainant expressed concern over her children's emotional and medical needs. Complainant expressed her belief that the deterioration of her children's mental health condition resulted from the transfer from the Motel to the Shelter. Case Worker states that she responded by asking Complainant to obtain documentation from the children's psychiatrist. The request for additional documentation was included in Complainant's first Self-Sufficiency Plan. Although Case Worker doesn't remember what she specifically told Complainant at that time, she states that based on past experience she believes she would have told Complainant that she would review the medical evidence and schedule a case conference to discuss the matter. Case Worker states that she would not have mentioned DTA's ADA process, because she was not familiar with it at that time. Assistant Director confirms that at this time Complainant requested to be transferred back to Motel.

3. March 14, 2003 Letter from Psychiatrist

On March 14, 2003, Psychiatrist wrote to Jose Rodriguez, Program Manager of the Shelter (hereinafter "Shelter Manager"), regarding the deterioration of the children's mental health condition. Psychiatrist writes that "their condition is deteriorating, and they are more anxious and depressed. I believe their reactions are a direct result of their situation at the Pawtucket House." On March 17, 2003, Shelter Advocate faxed Psychiatrist's letter to Case Worker at the Local Office. On March 17, 2003, Shelter Advocate notes in Complainant's Shelter file that Complainant "would like to go back to a motel setting due to the children. They are not doing well here."

4. March 20, 2003 Telephone Call and Fax from Shelter Manager to Assistant Director

On March 20, 2003, Shelter Manager called Assistant Director on Complainant's behalf to request that Complainant be transferred back to the Motel because the children were doing so poorly. Assistant Director informed Shelter Manager that Local Office would review Complainant's request. Also, on March 20, 2003, Shelter Advocate faxed to Assistant Director the January 31, 2003 and the March 14, 2003 letters from Psychiatrist. On March 26, 2003, Shelter Advocate faxed to Assistant Director the children's March school progress reports and a signed release form to enable DTA staff to speak with Psychiatrist.

5. April 8, 2003 Meeting with Shelter Staff and Local Office Staff

On April 8, 2003, Complainant and Shelter staff (Shelter Manager and Shelter Advocate) met with Local Office staff (Assistant Director and Ann-Louise Glenn, Case Worker's supervisor) to discuss Complainant's concerns. Assistant Director suggested that Complainant be transferred to another congregate shelter located in Lowell–the Merrimack House. Although Merrimack House is a congregate shelter, each family has its own bathroom. Complainant declined the proposed transfer to the Merrimack House because it did not meet her family's needs.[4] No other accommodations were discussed. Complainant renewed her request for a transfer back to Motel. Assistant Director requested more specific documentation from Psychiatrist regarding the children's condition and the effect of the Shelter placement and he told Complainant that he would send her request to Boston [Central Office] for consideration.

6. April 9, 2003 Letter from Psychiatrist

In a letter to Assistant Director, dated April 9, 2003, Psychiatrist writes that Son and Daughter are

> deteriorating both mentally and emotionally since they began living [at the Pawtucket House Shelter]. . . . I have recently increased their medications and have also prescribed four other medications for their anxiety, panic attacks, and depression, sleep disorder and PTSD. . . . I would highly recommend this family be sent back to the motel that they were residing in before they were assigned to the Pawtucket House Shelter. It seems these children cannot handle any more changes in their life and I am afraid the next step would be hospitalization. This should be avoided at all costs.

7. Local Office Request for Guidance

---

[4]Complainant states that she had visited Merrimack House. She states that the rooms are very small, and the shelter is noisy. She elaborates that her children cannot be in a confined space when they have panic attacks.

On April 14, 2003, Assistant Director sent an email to John Augeri, DTA's Regional Director (hereinafter "Regional Director"), requesting guidance on how to proceed with Complainant's request. Assistant Director faxed to Regional Director the "transfer request" along with the medical documentation that he had received from Complainant on the same day.

8. Accommodation Provided by Shelter

On or around April 25, 2003, Shelter Advocate instructed Shelter staff to allow Complainant and her children to go outside on the Shelter porch at any time if Complainant or her children were having a panic attack. Shelter Advocate further explained that during the panic attacks, "it sometimes feels as if the walls are closing in [on the individual having the panic attack]." Shelter Advocate entered this instruction into the Shelter log book on April 25, 2003.[5] According to Shelter Manager and Shelter Advocate, this instruction was given on the Shelter staff's own initiative without direction from DTA.

9. April 28, 2003 Memo from Shelter Manager to Assistant Director

On April 28, 2003, in a memo to Assistant Director, Shelter Manager writes, in part,

> [i]n the past few months we have seen the children's behavior worsened [*sic*] and the psychiatric symptoms exacerbate due to what appears to be a change in their environment or residence. . . . I believe this situation needs closer attention due to the deterioration of their emotional state. Any steps to improve the children's emotional and physical health will be highly beneficial for them.

10. April 30, 2003 Letter from Complainant to Assistant Director

In a letter to Assistant Director dated April 30, 2003, Complainant writes that during her stay at the Motel the children were well-behaved, happy, and received good grades. She writes of Psychiatrist's recommendation to be transferred back to the Motel, and adds

> the shelter is much too stressful for them due to all the children crying, yelling and noises all the time. It is impossible for them to sleep. Please help me alleviate their stress and try to control their anxiety.

11. May 2, 2003 Fax from Assistant Director to Regional Director

On May 2, 2003, Assistant Director faxed to Regional Director the April 30, 2003 letter from

---

[5]A log containing observations, documentation of case activity, and other pertinent information is kept for each family residing in the Shelter. Shelter staff, including night-time relief staff, review the log for case updates and instructions.

Complainant and the April 28, 2003 letter from Shelter Manager. Assistant Director followed up with an e-mail asking how to proceed with the request, because it required a change in DTA policy.

12. May 2, 2003 Referral to EO Director/Initial Denial of Request for Accommodation

According to Regional Director, he advised Assistant Director to deny the transfer request. He then forwarded the information to Lorraine Woodson, DTA's Director of Equal Opportunity (hereinafter "EO Director") . He requested her opinion as to whether the case should be treated as an accommodation request under the ADA guidelines, and noted that he had advised Assistant Director to deny the request. He states that at that time it was concluded by himself and the EO Director that Complainant needed time to adjust to the shelter, and that the request for transfer would not be treated as an ADA accommodation request.

EO Director confirms that she learned of Complainant's case around May 2, 2003. She states that it was her understanding that there was no reason for her to be involved at that point because the Local Office had handled the request. She states that in early May, Complainant's request was not a "formal" ADA request. She states that at that time Complainant had not requested to be transferred to Motel; rather, it was her understanding that Complainant wanted a quiet place to address her children's needs.

On May 29, 2003, Assistant Director sent an e-mail to the EO Director asking about the status of Complainant's request. In the e-mail, Assistant Director writes that both Complainant and Shelter Manager had made inquiries regarding the status of the request.[6]

G. DTA's Formal Denial of Complainant's Accommodation Request

1. DTA's Initial Review of Complainant's Request

EO Director states that on June 10, 2003, she "officially" started working on the case. First, on June 11, 2003, EO Director spoke to Complainant's sister-in-law at the request of Assistant Director because the sister-in-law had requested information about the possibility of Complainant securing permanent housing. Then, on June 11, 2003, EO Director spoke to Shelter Manager. She requested information about the children, the Shelter's curfew and the noise level at the Shelter. She states that Shelter Manager told her that the children appeared to be getting better. Shelter Manager told her that the shelter would accommodate Complainant by allowing her to go outside when her children had panic attacks.

In a conversation with Assistant Director on or around June 12, 2003, EO Director denied

---

[6]On May 12, 2003, Case Worker's supervisor informed Complainant that her transfer request had been transferred to the EO Director at Central Office.

Complainant's request to be transferred back to the Motel.[7] According to EO Director, she denied the Complainant's request because she concluded that the Shelter had been accommodating Complainant by allowing her to take the children to go outside during panic attacks. She also determined that it was more reasonable for Complainant to stay in the shelter where there was staff supervision and other support services. In addition, she states that the noise level was controlled by the 11 p.m. curfew under which adult residents are required to go to their family's rooms.

2. Complainant Files Complaint with OCR

On June 18, 2003, Complainant, through an attorney, filed a written request for a reasonable accommodation, a motion for a temporary restraining order in Northeast Housing Court, and a complaint alleging disability discrimination with OCR. Complainant's attorney simultaneously notified DTA of the OCR Complaint and the motion.

3. June 20, 2003 Letters from Shelter Manager and Shelter Advocate to Assistant Director

On June 20, 2003, at the request of Assistant Director for updated information regarding Complainant's children, Shelter Manager writes:

> On April 28, 2003 I wrote a letter on behalf of [Son and Daughter]. It appeared that both [Son and Daughter's] behavior was worsening due to the change in their environment. For the past two months, it appears that both [Son and Daughter] are doing much better then [*sic*] when they first moved in. They seem to be adjusting well to their new environment. Staff members have not observed any significant problems with social isolation, withdrawal, or any other social problem.
>
> [Complainant] has not reported any significant change within their behavior based on their disability until June 19, 2003. [Complainant] states that [Daughter] had two panic attacks. However, this was never reported to staff. [Complainant] also stated that [Son] is now staying with her brother because he has a hard time being here. When [Son and Daughter] are in the shelter they seem to fit well with other children and adults. They seem to engage in normal small talk with others and they do not seem to have problems following the rules of the shelter.

On June 20, 2003, Shelter Advocate, upon the same request from Assistant Director, writes:

> During their first month here the children did not seem to associate with anyone at the shelter. It was reported by Relief Staff that they would come down to eat meals and go right back up to their room. They did not mingle with the other children at

---

[7]Shelter Manager confirms that Complainant's request for an accommodation was denied in mid-June.

> first. Now [Daughter] plays outside with the other children and comes down to watch tv in the main living room. She seems very friendly towards everyone and seems to be well adjusted to the shelter.
>
> I very seldom see [Son]. Mother states he is at the boys Club every day from early in the AM until 8 or 9 PM. Mother also states he has been staying in Billerica since school got out. But he was at the shelter on one occasion and greeted me with a big smile and hugged me. I cannot make an honest observation of [Son's] mental health due to the infrequency of our visits.
>
> Their Mother is constantly saying they are having anxiety and panic attacks. I have not been present when they are experiencing any one of these attacks. They have always been friendly and outgoing when they are around me.
>
> Living at any shelter is extremely difficult for everyone especially children of this age, teenagers. I have not observed any discomfort. At times [Daughter] has shown her unhappiness with the rules but so does every teenager that has lived here.

4. June 27, 2003 Interview at Lynn Scattered-Site Placement

On June 24, 2003, DTA arranged for an intake interview on June 27, 2003, with the Serving People in Need (S.P.I.N.) scattered-site program in Lynn. Holly Twiss, Director of the S.P.I.N. Scattered Site Family Emergency Shelter program, confirms that at the time of the interview there were no openings in the Lynn scattered-site program. Nonetheless, Complainant told Ms. Twiss that she would not accept a scattered-site placement in Lynn because of her children's disabilities.

5. Additional Information Provided by Son's Teacher

In the affidavit prepared on June 23, 2003,[8] Teacher writes that Son "does not transition well to new settings or schedules." She writes, in pertinent part,

> [b]eginning in February 2003, [Son] deteriorated dramatically. His disability-related symptoms worsened in intensity, duration, and frequency. His impulsivity grew out of control, so that he started touching other students inappropriately, saying inappropriate things, and acting out, and he became unable to sit still. He started failing his course, and seemed unable to concentrate on work or even hold onto his belongings. [Son] had lost weight . . . . He fell asleep in his early morning class each day for two weeks and stated to me that he could not get to sleep where he was living . . . . I and the other special education teachers grew concerned and reconvened the TEAM to conduct a Manifest Determination to decide if his behaviors

---

[8]This affidavit was prepared for ancillary state court litigation of this matter, and was provided to DTA on June 24, 2003.

> were a result of his disability and/or if his program needed modification. . . . The TEAM determined that [the transition to a congregate shelter] had been traumatic for [Son] and was causing a significant disruption in his life and his ability to function during the school day. A behavior plan was drafted to include more support from the resource staff and consultation with the school psychologist.
>
> In the fourth quarter, [Son]'s behavior has continued to worsen. During the past few months, we have had to put him into an almost entirely self-contained educational setting, because his behavior problems prevent him from staying in mainstream classes. He cannot concentrate, sit through a class period, or do course work or home work. He leaves his things everywhere, and behaves inappropriately with other students. While grades have not been finalized yet for the fourth quarter, [Son] has been doing very poorly and I already know that he failed at least one class this term. I have not seen any improvement in his symptoms, but rather believe that he is continuing to deteriorate.

6. July 1, 2003 Interview of Psychiatrist

On July 1, 2003, DTA conducted a telephone interview with Psychiatrist to ascertain more information about his medical opinion and the condition of the children.[9]

7. DTA's Written Denial of Reasonable Accommodation Request and Offer of a Prioritized Scattered-Site Placement

On July 1, 2003, DTA denied Complainant's specific request for a reasonable accommodation. Instead, DTA offered a "prioritized placement" at the next available scattered-site shelter placement in Lynn, Massachusetts. A scattered-site placement located in Lynn is the scattered-site placement closest to Complainant's home community in Billerica.[10] DTA later estimated that a placement in Lynn would become available between one week and one month.

H. Psychiatrist's Medical Opinion

1. Information Provided to DTA Prior to June 12, 2003 Decision

On March 14 and April 9, 2003, Psychiatrist wrote letters regarding the children's emotional and mental health conditions. These letters are discussed in Sections III. F. 3. and 6, supra.

---

[9]Despite OCR's request for notes or a summary from this conference call, DTA declined to produce it, stating that the call was made in preparation for litigation.

[10]DTA's regulations state that the family shelter shall be located within 20 miles of the EA assistance unit's home community. See 106 C.M.R. § 343.090.

2. Information Provided to DTA Prior to July 1, 2003 Decision

Prior to DTA's July 1, 2003 decision, Psychiatrist wrote two affidavits regarding the status of the children. In an affidavit dated June 19, 2003, Psychiatrist states

> when [Son and Daughter] were moved to [Shelter] in February 2003, their condition worsened considerably. They both became sadder, more hopeless, more impulsive, less able to concentrate, and less able to function in school. They deteriorated to the extent that I had to add medications and increase medication dosages. It is my opinion that the lack of privacy, the amount of noise, the early curfews, and the chaos inherent to living in a congregate setting contributed [to] the children's deterioration.

Psychiatrist reiterates that he had requested that the family be transferred to Motel where the family had lived for seven months and the children remained stable. He states that Son and Daughter

> have continued to deteriorate while at the shelter. Their symptoms have not improved. I recently had to increase their medication dosages again. It is my opinion that they both are still close to needing hospitalization due to the severity of their symptoms, and that they need to move out of the [Shelter] immediately.

Psychiatrist opines that a scattered-site placement in Lynn

> would be detrimental to [Son and Daughter], because it would require that they adjust to living in a new town and would disrupt their ability to continue with medical providers and their current school. Starting a new school or needing to be bused a long distance to remain in the Billerica school would be very difficult for these children due to their impairments.

He concludes by stating that

> the only shelter placement likely to halt [Son and Daughter's] deterioration is the [Motel]. This is due to the fact that it is a private setting without the problems of a congregate shelter, it is a place where they have already lived and were stable and successful, and it would allow them to maintain their medical services in the area and keep attending schools with minimal busing.

In a second affidavit, dated June 28, 2003, Psychiatrist reports that Son and Daughter

> are currently deteriorating psychiatrically due to their current placement resulting in rising levels of sadness, anxiety, panicky feelings, poor impulse control, poor judgment, decreased attention, poor concentration and thoughts of self-harm.

To prevent further psychiatric harm and possible hospitalization Psychiatrist advises that the children be immediately transferred to Motel. He also warns that

> [a]ny negative altercation between the children and the other residents at the shelter would definitely trigger hospitalization.

Finally, in reference to a possible scattered-site placement, Psychiatrist states that Son and Daughter would be

> in yet another strange and unknown environment in which they would have to adjust to a different physical setting and different group of individuals. Each transition to a new and different environment increases their psychiatric symptoms.

3. Information Provided to DTA After July 1, 2003 Decision[11]

According to Psychiatrist, the children's "severe psychiatric diagnoses make [them] highly unstable clinically and at risk for psychiatric decompensation in an unknown and unstable environment." Psychiatrist opines that the children will become a risk of harm to themselves or others should the children's psychiatric symptoms continue to worsen. He states that hospitalization should be avoided because the children would be separated from their mother as well as current treating professionals and exposed to other chronically mentally ill individuals. Psychiatrist notes that it is difficult to predict at what point they would qualify for hospitalization.[12] Psychiatrist acknowledges that the medication has ameliorated some of the symptoms, but he adds that there has been no stabilization. The long-term treatment goal is to decrease the children's medications.

It is Psychiatrist's medical opinion that a transfer to the Motel is the only placement likely to halt the children's deterioration, because it is a place where the children have already lived and were stable and successful. His reasons for recommending the Motel over a scattered-site placement in Lynn are both the location of the Motel and the actual residence itself. First, he states that a placement at the Motel is near schools, peer groups, extended family, and the treating psychiatrist. He states that any increased commute would engender resistance to treatment. The social structure and support of school and peer groups is medically necessary to prevent further psychiatric deterioration.

---

[11]This summary is based on an interview of Psychiatrist conducted by OCR on September 2, 2003, as well as additional affidavits submitted to DTA dated August 4, 2003 and August 5, 2003.

[12]In fact, Psychiatrist adds that he was concerned that the children would deteriorate even further when school ends in June 2003, because they would be spending more time at the shelter. He recommended that the children stay out of the shelter as much as possible by attending Boys Club, staying with relatives, and going camping with Complainant's brother.

Second, in his professional opinion the setting itself has therapeutic value–the psychiatric term for this is "milieu placement." According to Psychiatrist, placement at the Motel is not just an issue about the location of housing, it is an issue of treatment of the children. Psychiatrist states that familiarity is very important because the children's psychiatric symptoms are exacerbated by environmental changes or unpredictable environments. Psychiatrist does concede that if all things were equal, *i.e.*, if there were a scattered-site placement in Billerica, the familiarity of a particular placement would be less of an issue. If this were the case, the environment would hold steady and the location would not require long commutes to school, to the Boys and Girls Club, to the homes of extended family members, and to medical appointments. Psychiatrist states that Motel is the ideal situation because it is 100 percent the same. He states that because there are strong implications for the children's psychiatric health, a placement in Motel is necessary for both stabilization and continued treatment.

Psychiatrist acknowledges that it is likely that the children would have some difficulty regardless of the placement; however, the increased number of changes and stressors have a direct impact on the children and the likelihood that they will decompensate is greater. He states that an increase in the amount of stressors on the children have a direct impact on their psychiatric condition. Furthermore, from a medical point of view, he states that the length of time the children were at the Motel does not make a difference in terms of their attachment and familiarity to the Motel. He states that Motel did not have many of the stressors that trigger an increase in psychiatric symptoms and the children were stable there. He states that there are ongoing stressors at the shelter, and the children deteriorated markedly while there.

Psychiatrist states that the children's panic attacks manifest in ways different than adult panic attacks. Adult panic attacks tend to have definite triggers, whereas the triggers of panic attacks in children are varied. Moreover, unlike panic attacks experienced by adults, the panic attacks experienced by children have neither a defined end nor beginning. Symptoms of a panic attack include increased fear, increased anxiety, increased breathing, crying, and inappropriate behavior. He states that children's panic attacks may not be easily observed by untrained professionals, and oftentimes the children are seen as "acting out."

I. DTA's ADA Policy

DTA Field Operations Memo 98-50, dated October 23, 1998, sets forth DTA's ADA policy utilized in handling Complainant's request for reasonable accommodation.[13] The Memo outlines DTA's obligation to "provide reasonable accommodations to qualified disabled recipients that will allow them to meet Department requirements and to utilize Department services." The Memo further explains that

---

[13]At the time of Complainant's allegations, Field Operations Memo 98-50 was current procedure. DTA subsequently issued Field Operations Memo 2003-19 on August 15, 2003 which outlines DTA's current policies and procedures in compliance with the ADA.

> [i]f a recipient communicates to you, or you otherwise become aware, that a recipient has a physical or mental condition that is preventing him or her from meeting Department requirements or from utilizing Department services, you should contact the Department's Director of Equal Opportunity [name and address]. [The Director of EO] will investigate the issue and assist in resolving it.

J. DTA's Notice of ADA/Section 504 Requirements

1. Poster

DTA posts signs in reception areas of the local Transitional Assistance Offices. The sign publishes DTA's non-discrimination policy. There are no such signs in temporary emergency shelters.[14] The Poster states

> Public Notice
>
> The Americans with Disability Act Title II regulations require that all state agencies notify applicants, participants and interested persons of their rights under the law.
>
> Americans With Disabilities Act Requirements
>
> Massachusetts Department of Transitional Assistance advises applicants, participants and the public that it does not discriminate on the basis of disability in admission or access to, or treatment or employment in its programs, services and activities.
>
> Massachusetts Department of Transitional Assistance has designated the following person to coordinate efforts to comply with these requirements. Inquiries, requests and complaints should be directed to:
>
> Director of Equal Opportunity
> Department of Transitional Assistance
> 600 Washington Street
> Boston, MA 02111
> Telephone (617) 348-8490
>
> Massachusetts Department of Transitional Assistance Grievance Procedure
>
> The Following Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices

---

[14]DTA has informed OCR that it has drafted new ADA and Section 504 posters. It is OCR's understanding that these posters have not been finalized.

and policies or the provision of services, activities, programs and benefits by the Massachusetts Department of Transitional Assistance.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, telephone number of complainant and date, location and description of the problem. Reasonable Accommodation, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities who are unable to submit a written complaint.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to :

[address of Director of Equal Opportunity]

Within 15 calendar days after receipt of the complaint the Director of Equal Opportunity will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting the Director of Equal Opportunity will respond in writing, and where appropriate in a format accessible to the complainant, such as audiotape or Braille. The response will explain the position of the Department of Transitional Assistance and offer options for substantive resolution of the complaint.

If the response by the Director of Equal Opportunity does not satisfactorily resolve the issue, the complainant, and/or his/her designee, may appeal the decision of the Director of Equal Opportunity, after receipt of the response, to the Department's Division of Hearings in accordance with 106 C.M.R. 343, et seq.

2. "Your Right to Know" Brochure

When an individual applies for EA, he or she is given the "Your Right to Know" brochure which explains an individual's rights and responsibilities as a program participant of the EA program. The section entitled "Civil Rights" includes the non-discrimination statement as follows:

. . .[T]he Commonwealth of Massachusetts Department of Transitional Assistance does not discriminate on the basis of age, race, sex, sexual orientation, national origin, handicap, religious creed or political belief in admission or access to or treatment or employment in its programs or activities.

Enforcement action may be brought under applicable federal law. Title IV [sic] complaints shall be processed in accordance with 7 CFR Part 15 and 7 CFR Parts 80 and 84.

The Director of Equal Opportunity has been designated to help coordinate the Department's efforts to comply with the U.S. Department of Health and Human

Services (45 CFR Parts 80 and 84) and the U.S. Department of Agriculture, Food and Nutrition Service regulations.

For further information about the regulations and the Department's grievance procedure for resolution of discrimination complaints, contact:

[Address/phone number of Director of Equal Opportunity]

Individuals applying for or receiving food stamp benefits who believe that they have been subject to discrimination may file a written complaint with the Secretary or the Administrator, Food and Nutrition Service, Washington, DC 20250 and/or with the Department.

Your worker will explain the complaint process of both the Food and Nutrition Service and the Department to any individual who requests the information.

K. Additional Information

Lynn is approximately 20 miles from Complainant's home community of Billerica. Depending on where a scattered-site placement is located in Lynn, it may be more than 20 miles from Billerica.

The children are transported to school by a van provided by the Billerica School District. According to information provided by the Billerica School District, if the children lived in Lynn they would have to begin the commute to school at 5:45 a.m. The estimated travel time for each way is between one hour and one hour and twenty minutes. The estimated cost to the Billerica School District for the daily round-trip from Lynn to Billerica is $167.00 per day.

Complainant uses her car to transport her children to medical appointments, to conduct her housing search, and to occasionally pick her son up from Boy's Club. Complainant's car has 230,000 miles on it, and it has broken down recently.

IV. Statutory and Regulatory Framework

A. Prohibition Against Discrimination on the Basis of Disability

1. Equal Access

Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504"), as amended, 29 U.S.C. § 794(a) provides that

> [n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or

activity receiving Federal financial assistance . . . .

In 1990, the Americans with Disabilities Act (hereinafter "ADA") was enacted to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12201(b). Title II of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12132, provides that

> no qualified individual with a disability shall, by reason of such 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 such entity.

A "qualified individual with a disability" is an individual with a disability

> who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. §12131(2).

For our purposes, the statutory framework of Title II of the ADA and Section 504 are interchangeable.[15] See Ballard v. Rubin, 284 F.3d 957 (8th Cir. 2002); Weixel v. Bd. of Ed., 287 F.3rd 138, 146 n. 6 (2nd Cir. 2002).

The ADA and Section 504 regulations specifically prohibit a public entity from, directly or through contractual or other arrangements, utilizing

> criteria or methods of administration (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or (iii) that perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State. 28 C.F.R. § 35.130(b)(3); see also, 45 C.F.R. § 84.4(b)(4).

The regulations also provide that a public entity

> 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 modifications would fundamentally alter the nature of the service, program or activity. 28 C.F.R. § 35.130(b)(7).

---

[15]The major difference is that Title II of the ADA applies to public entities, whereas the Rehabilitation Act applies solely to recipients of Federal financial assistance.

B. Affirmative Obligations of a Public Entity/Recipient of Federal Financial Assistance

1. Notice

In addition to the non-discrimination provisions, the ADA and Section 504 regulations enumerate other affirmative obligations of a public entity. For example, a public entity

> shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing . . . that it does not discriminate on the basis of [disability] . . . . The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to. . .its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 84.7(a). 45 C.F.R. § 84.8; see also, 28 C.F.R. § 35.106.

2. ADA Coordinator/Grievance Procedure

A public entity is required to designate a responsible employee to coordinate its efforts to comply with and carry out its obligations pursuant to the ADA and Section 504. The responsibilities include "investigation of any complaint communicated to it alleging noncompliance with [the ADA and Section 504] or alleging any actions that would be prohibited by [the ADA and Section 504]." 28 C.F.R. § 35.107(a); see also, 45 C.F.R. § 84.7(a). A public entity is also required 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 [the ADA and Section 504]." 45 C.F.R. § 84.7(b); see also, 28 C.F.R. § 35.107(b).

V. Analysis and Findings

A. Did DTA fail to make reasonable modifications necessary to avoid discrimination on the basis of disability?

Complainant's Position

Complainant argues that DTA was obligated to transfer her family back to Motel as a reasonable accommodation pursuant to the ADA and Section 504. Complainant further argues that the specific requested accommodation is necessary, reasonable, and does not constitute a fundamental alteration to the EA program. Specifically, Complainant argues that the accommodation requested is the only one likely to put Son and Daughter in a position where they can benefit from the EA program. Furthermore, Complainant argues that a transfer to Motel would not be a fundamental alteration given that approximately 700 families at any given time are residing in motels through the EA program.

DTA's Position

DTA states that on July 1, 2003, it denied Complainant's specific request to be transferred to the Motel because the children's condition had improved since March such that they had successfully adjusted to the Shelter. DTA bases its determination on letters written by Shelter Manager and Shelter Advocate on June 20, 2003. Despite this notification of improvement, DTA recognizes that the evidence continued to indicate that the children, because of their disabilities, would benefit from a quieter and more private environment. However, DTA disputes Psychiatrist's opinion that the Motel is the most appropriate placement for the children and offered, instead, a "prioritized" place on the waiting list for a scattered-site placement.

DTA first argues that the family was at the Motel for seven months, and the Pawtucket House Shelter for five months. From this, DTA draws the conclusion that

> not enough difference exists in the duration of each shelter stay to support a claim that the children have formed a very strong and still extant attachment to the Town Place Suites over Pawtucket House. Furthermore, seven months would not seem enough time to develop such a familiarity with and attachment to a place such that residence anywhere else is deemed harmful. Additionally, it appears that the children are not entirely adverse to change in their living conditions since it is our understanding from the shelter that [Son] has largely been living with his uncle since school ended and [Complainant] was planning to take the children on a camping trip over the July Fourth weekend.

DTA also states that the Motel is not a stable environment because DTA does not contract with the Motel, and that the Motel may decide to stop accepting EA program participants at any time.

DTA states that it instead offered Complainant an accommodation of a "prioritized placement" in a scattered-site shelter in Lynn.[16] DTA states that a Lynn scattered-site placement would be 20 miles from Billerica, and EA regulations permit placements within 20 miles from the home community. DTA submits that this is an appropriate accommodation because Complainant has a car to drive the children to medical appointments and to school and, such a placement, therefore, will not result in a disruption of the children's schooling or medical services.

DTA states furthermore that the EA program is a shelter program, and only places families in motels as a last resort when no shelter space is available. DTA argues that a placement in a motel could be made as a reasonable accommodation only after all possibilities for a shelter placement have been exhausted.

As to the comparison between the location of the Motel and a scattered site placement in

---

[16]On July 31, 2003, DTA also arranged for an intake interview for a scattered-site placement in Malden on August 11, 2003.

Lynn, DTA states that it is not persuaded that the convenience and familiarity elevates the placement in Town Place Suites to an entitlement. Although DTA recognizes that Complainant presented evidence that her children may have more difficulty handling new situations, the evidence is not so strong as to compel a placement in the Motel. It is DTA's opinion that the evidence appears stronger that the children need a more private, quieter environment which can be addressed by the closest scattered site placement.

OCR's Findings: DTA failed to make a necessary reasonable accommodation to Complainant.

For the following reasons, OCR finds that DTA failed to make a necessary reasonable accommodation to Complainant. Title II of the ADA and Section 504 of the Rehabilitation Act place upon a public entity an affirmative duty to make reasonable accommodations in the public entity's policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. See 28 C.F.R. § 35.130(b)(7). The Acts require "an affirmative obligation to ensure that facially neutral rules do not in practice discriminate against individuals with disabilities." Henrietta V. v Bloomberg, 331 F.3d 261, 275 (2nd Cir. 2003)(citing Dopico v. Goldschmidt, 687 F.2d 644, 652 (2nd Cir. 1982)). However, a public entity is not required to make an accommodation that is not reasonable. An "[a]ccommodation is not reasonable if it either imposes 'undue financial and administrative burdens' on a grantee or requires 'a fundamental alteration in the nature of the program.'" School Board of Nassau County v. Arline, 480 U.S. 273, 288, n. 17 (1987)(citing Southeastern Community College v. Davis, 442 U.S. 397, 410-412 (1979)).

Complainant alleges that DTA failed to provide a reasonable accommodation to her, thereby discriminating against her and her family. Three theories of discrimination are available to individuals alleging a violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act: (1) intentional discrimination; (2) discriminatory impact; and (3) a refusal to make a reasonable accommodation. Tsombandis v. City of West Haven, 180 F. Supp. 2d 262, 283 (D.Conn. 2001); see also, Henrietta V., 331 F.3d at 275 (holding that a claim of discrimination based on a failure to reasonably accommodate is distinct from a claim of discrimination based on disparate impact). To establish discrimination under the ADA and Section 504 for failure to make a reasonable accommodation, the preponderance of the evidence must demonstrate that 1) Complainant's children are qualified individuals with disabilities; 2) Complainant requested an accommodation and the request was reasonable; and 3) DTA denied the request. D'Amico v. New York State Board of Law Examiners, 813 F.Supp. 217, 221 (W.D.N.Y 1993).

1. Complainant's children are qualified individuals with disabilities.

DTA concedes and OCR finds that Complainant's children are disabled for the purposes of the ADA and Section 504. Both children have several mental impairments that substantially limit one or more major life activity. See Toyota Motor Manufacturing, Ky., Inc. v. Williams, 534 U.S. 184 (2002).

2. Complainant requested a reasonable accommodation.

a. Complainant requested an accommodation on March 6, 2003.

OCR finds that Complainant requested an accommodation on March 6, 2003, and renewed her request several times thereafter.[17] Pursuant to well-established ADA and Section 504 doctrine, an individual is not required to use "magic words" such as "ADA" or "reasonable accommodation" to initiate his or her rights under the ADA or Section 504. See Coneen v. MBNA America Bank, 334 F.3d 318, 332 (3rd Cir. 2003)(citing Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 313 (3rd Cir. 1999)). In February, the children's psychiatrist and Son's special education teacher stated their opinion that the move to the congregate shelter contributed to the children's deterioration, and Complainant communicated this to Shelter staff. On March 6, 2003, Complainant also reported this to DTA and asked for a transfer back to the Motel. Approximately one week later, upon DTA's request, she submitted a letter from Psychiatrist that corroborated the children's mental disability and stated his opinion that the children's mental health condition was deteriorating due to placement at the Shelter. Accordingly, DTA's duty to investigate and determine the reasonableness of Complainant's accommodation request was triggered on March 6, 2003.

b. Complainant's accommodation request is reasonable.

A fact-specific, individualized inquiry is required to determine the reasonableness of a requested accommodation. Wong v. Regents of University of California, 192 F.3d 807, 818 (9th Cir. 1999). A public entity is required to gather sufficient information from the individual and any qualified expert to determine the necessary accommodation. Duvall, 260 F.3d at 1139. Thus, "mere speculation that a suggested accommodation is not feasible falls short of the reasonable accommodation requirement." Wong, 192 F.3d at 818 (quoting Buckingham v. United States, 998 F.2d 735, 740 (9th Cir. 1993)(internal quotations and brackets omitted)).

It is Psychiatrist's opinion that placement in the Motel is medically necessary both to halt the children's psychiatric symptoms and to effectively treat their psychiatric conditions. Although DTA does not dispute Psychiatrist's medical opinion regarding the children's disability and the need for stabilization, DTA rejects his medical opinion regarding the type of accommodation necessary to address the children's disabilities. In determining the reasonableness of an accommodation request, DTA argues that because the children have not been hospitalized in the four months in which he has recommended the transfer, he is not now credible or his opinion is not "sensible on its face." Although the treating physician may not have the final word in determining what is reasonable, DTA

---

[17]Although not documented, there is anecdotal evidence that Complainant requested a transfer to the Motel when she discussed the children's initial deterioration with Shelter staff. Thus, given that DTA argues that the informal avenue by which EA program participants are notified of the ADA and Section 504 process includes meetings with shelter workers, it is also possible for OCR to find that Complainant requested the reasonable accommodation on February 24, 2003.

does not present any contrary medical evidence that a transfer to the Motel is not reasonable or necessary. OCR considers this a medical issue and gives great weight to the unchallenged medical opinion of children's treating psychiatrist which does not appear "outrageous" on its face. D'Amico, 813 F.Supp at 222-23.

DTA relies instead on the selected observations of Shelter staff and its own opinion regarding Son and Daughter's specific needs. DTA's reliance on the opinions of lay persons to rebut Psychiatrist's medical opinion is problematic in several ways. First, the Shelter staff's observations and opinions are inconsistent and do not fully support DTA's position. The letters provided by Shelter staff on June 20, 2003 to DTA at DTA's request indicate a late date reversal in the opinions of the Shelter Staff. Until then, the Shelter Staff's observations supported Complainant's request. Furthermore, the June 20, 2003 letters are inconsistent. In his letter, Shelter Manager first states that children are improving, but then states that Complainant reported two panic attacks a day before the letter was written. Finally, Shelter Manager also states that Complainant has claimed that Son is currently staying with relatives, because he is "having a hard time here." In her letter, Shelter Advocate admits that she seldom sees Son. Therefore, even if qualified to assess the condition of the children, Shelter staff cannot adequately assess the psychiatric condition of Son because he was not present at the Shelter. Second, the Shelter staff are not medically trained, nor licensed social workers and Psychiatrist indicates that children's panic attacks are not easily observed by lay persons.[18] Moreover, the panic attacks themselves were not the only indicator of psychiatric decompensation. For example, there is evidence that the children were having sleep difficulty, were less focused, were more anxious, were doing poorly in school. Teacher observed and documented Son's deteriorating behavior. To the extent that the observations of the Shelter staff disagree with Psychiatrist's medical opinion, they are lay observations and should be treated as such and considered along with other lay observations. DTA has provided no reason for discounting Psychiatrist's opinion. DTA, through the Disability Evaluation Services consultative examination process, has the means to rebut the validity of Psychiatrist's medical opinion with other medical evidence but chose not to.[19] Third, DTA does not consider the effect of the increased dosages in the children's medication which may have alleviated some of the observable psychiatric symptoms, but not the long-term effect of placement in the congregate shelter.

While DTA acknowledges Complainant's desire to minimize the amount of change to which the children would be subjected, DTA states that there is not enough evidence to support the reasonableness of her request for a transfer back to the initial placement at Motel. DTA argues that the length of time spent at the Motel–seven months–is not a sufficient amount of time to develop an

---

[18]OCR recognizes that shelter staff may have significant experience working with homeless families and may be able to observe but not diagnose or treat the manifestations of many psychiatric disorders.

[19]DTA contracts with Disability Evaluation Services (DES) to determine whether program participants are disabled for the purposes of DTA's cash assistance programs. DES reviews medical evidence submitted by program participant and conducts consultative medical examinations, when needed.

attachment such that placement elsewhere is harmful. However, Psychiatrist sufficiently counters DTA's lay opinion regarding the length of time spent at the Motel.[20] According to Psychiatrist, the time-frame is not the significant factor because it is the lack of stressors at the Motel that necessitates the transfer. According to Psychiatrist, the children were improving at Motel, and the familiarity and demonstrated improvement motivates the request for transfer.[21]

Finally, in addition to discussing Psychiatrist's medical opinion, DTA argues that the requested accommodation is not reasonable because the Motel is not a stable placement. DTA states that it does not have a contract with the Motel, and that the Motel could stop accepting EA program participants at any time. However, the likelihood that the Motel would stop accepting EA program participants is speculative and, thus, not a significant factor for consideration. Moreover, based on a letter written by the Motel's manager, the Motel remains willing to accept Complainant as a resident.

OCR's review of whether the requested accommodation is reasonable, however, does not end here. DTA is not required to transfer Complainant to the Motel if the placement is either a fundamental alteration to the EA program or an undue administrative or financial burden to DTA. DTA argues that the placement in the Motel is a fundamental alteration because the EA program is a shelter program that only uses motels as a last resort. DTA, however, does acknowledge that placement in a motel, in some circumstances and after all possibilities for shelter placement have been exhausted, may not constitute a fundamental alteration. DTA proffers an example of an instance in which placement in a motel over a shelter would not be a fundamental alteration: A program participant has a unique medical need, and requires proximity to a certain hospital in an area not serviced by a shelter program. This example, however, while illustrating one instance when such a placement would be reasonable, does not address how Complainant's transfer to and placement in the Motel would fundamentally alter the EA program.

Although DTA's regulations allow placements in shelters and specify that motels as merely interim placements, DTA currently places approximately 600 families in motel settings for a variety of mostly administrative reasons. Since a large portion of EA program participants are currently residing in motels, placing Complainant's family in the Motel as a reasonable accommodation of the

---

[20]DTA also argues that there is evidence regarding the improvement of the children's mental health condition. DTA argues that because children can stay with relatives and go camping, they are not adverse to a change in their living conditions. However, this is another example of substituting its lay opinion for the medical opinion of Psychiatrist. Psychiatrist recommended that the children spend time away from the shelter in familiar and supportive settings in order to stall their deterioration and provide therapeutic social support.

[21]The children's attachment and the stressors associated with the Shelter cannot be measured through the observation of lay people. See e.g., Bultemeyer v. Fort Wayne Community Schools, 100 F.3d 1281, 1284 (7th Cir. 1996)(Employer could have spoken to doctor, rather than unilaterally determining that mentally disabled employee was wrong in thinking that the position at another location was more stressful.)

children's disabilities will not fundamentally alter the nature of the EA program. Furthermore, while the EA program is an emergency shelter program, it does provide other services with the ultimate goal of assisting program participants in securing permanent housing. These services, such as housing search assistance, can be and are provided to families placed in motels. Therefore, there is no basis for a determination that placing Complainant's family in the Motel would fundamentally alter the nature of the EA program.

Furthermore, the evidence does not support that Complainant's requested reasonable accommodation would be an undue burden on DTA. DTA has not presented an argument that placing Complainant in the Motel would be an action requiring significant difficulty or expense for DTA, or even an increased cost. As of July 31, 2003, DTA housed approximately 600 program participants in motels. Many of these interim placements will last several months, and some will last more than a year. Given that it would not require significant administrative difficulty or expense, placing Complainant's family at the Motel as an accommodation of the children's disability is not an undue burden on DTA.

For the foregoing reasons, OCR finds that Complainant made a request for an accommodation and the request was reasonable. The request to be transferred back to the Motel is neither a fundamental alteration of the EA program nor an undue burden on DTA.

3. DTA denied Complainant's request for an accommodation.

OCR finds that without sufficiently assessing the reasonableness of her request, DTA denied Complainant's request to be transferred to Motel on July 1, 2003 and did not provide an alternative that would meet the children's needs. Furthermore, DTA's offer of placement on a waiting list was not a meaningful alternative to accommodate Complainant's family.

DTA argues that a transfer to the Motel is not the only available reasonable accommodation, and that an individual with a disability is not necessarily entitled to the specific, requested accommodation. Indeed, this is true. However, a qualified individual with a disability is entitled to a reasonable accommodation–one that is meaningful and goes far enough to accommodate an individual's disability. See e.g., Darien v. Univ. of Massachusetts, 980 F.Supp. 77, 88 (D.Mass. 1997)(emphasis added). The ADA and Section 504 do not contemplate that a public entity meets its obligations "by proffering just 'any' accommodation: it must consider the particular individual's need when conducting its investigation into what accommodations are reasonable." Duvall v. Kitsap, 260 F.3d 1124, 1139 (9th Cir. 2001). OCR finds that DTA did not communicate directly with Complainant to ascertain and consider Son and Daughter's needs. An individualized inquiry would have revealed that, even if available, a scattered-site placement in Lynn was not feasible and would not address the children's needs and, thus, was not a reasonable alternative. Moreover, DTA could not be certain when a scattered-site placement would become available and, therefore, could not offer an actual placement.

Although a scattered-site placement might enable Complainant to control the daily disruptions in the children's lives because such a placement is more private than a congregate setting and the

children would be able to go to the same school and medical providers, DTA did not take into account the distance of the commute to school and the effect of the commute on the children given their disabilities. This is not merely inconvenience that all homeless families experience, as DTA argues. Had DTA discussed its proposal with Complainant, it would have learned that her car was unreliable; that her Son was not able to tolerate long car rides; and that her children would not be easily aroused at 5:00am each weekday morning due to the effects of the psychiatric medications. Furthermore, it is not reasonable to place the burden of transportation, at least four hours of driving each day,[22] on Complainant when she is obligated (and apparently motivated) to find permanent housing. OCR finds that DTA's alternative accommodation does not adequately address the children's disabilities, and may even exacerbate the children's psychiatric symptoms given the long car or van rides and the decreased ability to have therapeutic social interactions such as the Boys' Club. See id. (where public entity offers accommodation, complainant must show that accommodation offered by public entity was unreasonable).

For the foregoing reasons, OCR finds that DTA failed to make a reasonable accommodation to the Complainant and her children, who are qualified individuals with disabilities; thereby violating its obligations under the ADA and Section 504. DTA did not make an individualized assessment as to the reasonableness of Complainant's requested accommodation. A transfer to the Motel would be neither a fundamental alteration of the EA program nor an undue burden to DTA. Furthermore, the accommodation offered by DTA was not meaningful and did not sufficiently accommodate Complainant's children.

B. Did DTA's failure to respond to Complainant's request for a reasonable accommodation in a timely manner violate its obligations under the ADA and Section 504?

Complainant's Position

Complainant argues that she requested an accommodation on February 24, 2003, provided DTA substantial documentation to support the reasonableness of her request, and that over a period of four months DTA did not respond to her request in any meaningful way. She alleges that she did not learn of the denial of her request until after she retained an attorney. Shelter Manager told her attorney that Complainant's accommodation request was denied in mid-June.

DTA's Position

DTA argues that "[a]lthough [Complainant] did not specifically request an accommodation under the ADA until the middle of June, [DTA] reviewed her request for a transfer back to the motel when she first raised the issue and [DTA] continued to consider the matter including the ADA implications of the request." DTA also argues that it acted promptly stating the Complainant did not

---

[22]One round-trip to take children to school, one round-trip to pick up Daughter from school in the afternoon, and one round-trip to pick up Son from Boys Club in the evening.

make her request until mid-June and that DTA issued its response on July 1, 2003.

OCR's Finding: DTA failed to respond to Complainant's request for a reasonable accommodation in a timely manner.

For the following reasons, OCR finds that DTA failed to respond to Complainant's request in a timely manner, thereby violating its obligations under the ADA and Section 504. Upon receiving a request for an accommodation, a public entity is obligated to determine whether the requested accommodation is reasonable. Duvall, 260 F.3d at 1136. A request for an accommodation triggers an "interactive" process during which reasonable accommodations are formulated. See Guckenberger v. Boston University, 974 F.Supp. 106, 141 (D.Mass. 1997). Consequently, administrative procedures or lack of such procedures ("methods of administration") resulting in an unreasonable delay in the public entity's response to the accommodation request constitutes discrimination under the ADA and Section 504. Id. at 153 (administration failed to achieve sufficient interactivity when accommodation requested in September and not provided until November); see also, Vinson v. Thomas, 288 F.3d 1145, 1154 (9th Cir. 2002), cert. denied 537 U.S. 1104 (2003)(failure to engage in interactive process in good faith if a reasonable accommodation would have been possible creates liability for public entity); Duvall, 260 F.3d at 1140 (failure to consider an individual's needs when conducting an investigation into what accommodations are reasonable constitutes deliberate indifference or intentional discrimination).

Although DTA first argues that it reviewed Complainant's request when she first raised the issue with Local Office, the evidence does not support its position.[23] OCR acknowledges that Local Office asked Complainant to provide information regarding her request shortly after her request on March 6, 2003.[24] However, Complainant's specific request to be transferred back to the Motel was not reviewed to determine whether it would be a reasonable accommodation, rather DTA raised the possibility of another accommodation at a meeting with Complainant on April 8, 2003. Moreover, DTA made no decision at that time regarding Complainant's request; additional information was solicited and on May 2, 2003, the request was referred to DTA's Central Office for consideration. Furthermore, at no time was Complainant told about any specific procedural requirements regarding an accommodation request. Finally, notwithstanding Local Office's initial response and the subsequent referral, Local Office did not refer the request to Central Office in a timely manner.

---

[23]Furthermore, DTA's argument that it sufficiently reviewed the February request is unpersuasive, because DTA does not even now acknowledge that the request for a transfer constituted a request for an accommodation. It is DTA's position that Complainant did not specifically request an accommodation until the middle of June.

[24]After receiving Psychiatrist's March 14, 2003 letter, Local Office arranged to meet with Complainant on April 8, 2003 to discuss her children's specific needs. Local Office raised the possibility of a transfer to the Merrimack House shelter. Complainant declined this offer because it did not address her children's disabilities and she renewed her request to be transferred to the Motel. Local Office requested additional medical documentation.

Thus, there was a delay between the initial request at the beginning of March to the referral to the Central Office almost two months later. Contrary to DTA's assertion, this does not constitute a sufficient review; nor a timely decision.[25]

DTA also argues that EO Director investigated the case in May and made a determination that placement in a scattered-site placement would constitute a reasonable accommodation for the family. Again, interviews with DTA staff and documentary evidence do not support DTA's assertion. According to EO Director it was her understanding that the May 2, 2003 referral was not a request for her review, and the request would be handled by Local Office. Indeed, she states that she was not aware that Complainant was actually requesting a transfer to the Motel. Without knowing the details of Complainant's situation, it was not possible for EO Director to conduct an individualized assessment and determine the reasonableness of the Complainant's request.[26]

Likewise, DTA only minimally considered Complainant's request prior to the June 11, 2003 denial. In doing so, DTA substituted its lay opinion for the considered medical opinion of the children's psychiatrist. Even though DTA considered Complainant's request as an accommodation request under its ADA regulations as of mid-June,[27] there is no evidence that DTA conducted a review to determine whether Complainant's request itself was reasonable, *i.e.*, whether DTA could accommodate Complainant without fundamentally altering the EA program or placing an undue burden on DTA. On June 11, 2003, EO Director contacted Shelter Manager to determine the status of the children and the factors which contributed to the decline in the children's condition. The accommodation request was denied on June 12, 2003, because EO Director concluded that the Shelter had been accommodating Complainant by allowing her to take the children outside during a panic attack.[28] EO Director also determined that it was more reasonable for Complainant to stay in the Shelter where there was staff supervision and other support services, rather than the Motel. There was no attempt to contact Complainant to determine the current status of the children or whether the accommodation provided by the Shelter would adequately address the children's disabilities. Given the Shelter staff's reversal of opinion, as well as the fact that DTA staff had not communicated directly with Complainant since April 30, 2003, it was necessary to include the Complainant in any review. Had DTA initiated an individualized review, it would have learned that

---

[25]During this period, neither DTA nor Shelter notified Complainant that her request was denied.

[26]Although EO Director was out for a significant period of time in April, DTA still has an obligation to have procedures in place to review incoming requests.

[27]This is the likely result of Assistant Director's June 11, 2003 phone call to Central Office.

[28]Although DTA did not communicate to Complainant that her request was denied, both Assistant Director and Shelter Manager had apparently been informed that DTA would not transfer Complainant and her family. Again, this denial did not include any notice to Complainant regarding the procedures under which to grieve the denial.

the children continued to deteriorate despite increased dosages of psychiatric medications and the inability of the Shelter to accommodate the children's disabilities. Finally, there is no evidence that DTA contacted Psychiatrist prior to disregarding his opinion and denying Complainant's request.[29]

DTA finally interviewed Psychiatrist on the morning of July 1, 2003. DTA issued a formal letter of denial after the interview. Both of these actions appeared to be in preparation for a hearing in the ancillary litigation to be held on the afternoon of July 1, 2003.[30] DTA made no effort to determine if the requested accommodation was reasonable: there was no contact with the Motel to ascertain whether there was an opening and there was no contact with Complainant to determine whether there were meaningful alternatives. Therefore, DTA did not adequately consider Complainant's request or Psychiatrist's opinion prior to the denial of Complainant's accommodation request.

OCR finds that DTA does not have a policy or procedure that adequately implements its obligations under the ADA and Section 504. DTA's policy and procedure do not provide a chain of command for decision-making; a time-frame within which to review a request and to make decision; a method for communicating the decision and availability of appeal; and guidance regarding how an accommodation request is individually-assessed. Here, the lack of policy, or application thereof, created confusion among DTA staff regarding whether an accommodation was actually requested and whose responsibility it was for making a formal decision. Moreover, where DTA policy does implement provisions of the ADA and Section 504, the policy is not always followed by DTA staff. The applicable DTA policy required the Local Office to refer accommodation requests to Central Office for investigation; however, there was both a delay in the initial referral and a failure to investigate by Central Office. DTA's method of administration resulted in a delayed and unsupported decision. As such, DTA's method of administration substantially contributed to DTA's failure to adequately respond to Complainant's request and the ultimate denial of meaningful access to Complainant.

For the foregoing reasons, OCR finds that DTA utilizes methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; thereby violating Title II of the ADA and Section 504 of the Rehabilitation Act.

---

[29]DTA sets forth contradicting arguments by first stating that Complainant did not specifically request an accommodation until the middle of June, then stating that Complainant's ADA reasonable accommodation request was "elevated" to the Central Office on May 2, 2003. The obligation to review a request for a reasonable accommodation is triggered upon the first instance of a request. Therefore, DTA is foreclosed from arguing that its obligation to investigate Complainant's request was not triggered until mid-June when Complainant "officially" requested the accommodation through her attorney, or even May 2, 2003 when Complainant's initial request was "elevated" to Central Office.

[30]DTA had already communicated the denial to Complainant's attorney and scheduled an interview at a scattered-site placement in Lynn.

C. Did DTA fail to provide sufficient notice to inform Complainant of the rights and protections afforded by the ADA and Section 504?

Complainant's Position

Complainant argues that she was not notified of the right to request a reasonable accommodation, the formal process for requesting an accommodation, or her right to appeal DTA's failure to provide a reasonable accommodation.

DTA's Position[31]

It is DTA's position that Complainant received general notice of the anti-discrimination grievance procedures through the "Your Right to Know" booklet as well as having available informal but effective channels to communicate to DTA any problems she was having with her services. DTA states that all applicants of DTA administered programs receive, as a part of the application process, the "Your Right to Know" booklet. The booklet refers applicants and recipients who want information on DTA's anti-discrimination policy or with grievances to the Director of Equal Opportunity. In addition, there are posters displaying DTA's anti-discrimination policy in all Local Transitional Assistance Offices.

Furthermore, DTA suggests that other informal avenues exist–regular meetings with shelter staff and meetings with case worker–to raise issues involving disability. DTA argues that Complainant took advantage of these informal avenues because she notified the shelter of her children's problems. DTA argues that the meeting held in early April with the shelter director and the Lowell TAO Assistant Director at which Complainant was offered a place in a local shelter is evidence of the effectiveness of the notice.

OCR's Findings: DTA failed to provide sufficient notice to inform Complainant of the rights and protections afforded by the ADA and Section 504.

For the following reasons, OCR finds that DTA did not sufficiently notify Complainant of the rights and protections afforded by the ADA and Section 504. A public entity is obligated "to provide notice to individuals with disabilities of the protections against discrimination assured them and disseminate sufficient information to those individuals to inform them of the rights and protections afforded by the ADA." Parker v. Universidad de Puerto Rico, 225 F.3d 1, 5 (1st Cir. 2000)(quoting 56 Fed.Reg. 35694, 35702 (July 26, 1991)(internal quotations and citations omitted)); see also, Clarkson v. Coughlin, 898 F.Supp. 1019, 1044 (S.D.N.Y. 1995)(Public entity is required by the ADA and Section 504 to make available to applicants and recipients information regarding both the protections against discrimination provided by the statute and the existence and location of

---

[31]DTA's position is set forth in August 19, 2003 response to the allegations of the OCR complaint; the July 1, 2003 denial of Complainant's requested accommodation; and information submitted to the Division of Hearings regarding this matter.

accessible services, activities and facilities.)

OCR finds that DTA did not sufficiently notify Complainant of the rights and protections afforded to her by the ADA and Section 504, specifically her right to request an accommodation and the process for making the request and filing a grievance. On DTA's ADA poster, there is no indication that DTA can accommodate an individual with a disability, except in the context of filing a grievance with the Director of Equal Opportunity, *e.g.*, "[P]ersonal interviews or a tape recording of the complaint, will be made available for persons with disabilities who are unable to submit a written complaint." The poster does not include information regarding how to request an accommodation; rather, it refers to the reader to the Director of Equal Opportunity for "inquiries, requests, and complaints." Similarly, the "Your Right to Know" brochure does not sufficiently inform individuals of the rights and protections afforded by the ADA and Section 504 and its applicability to DTA's services, programs, or activities, specifically DTA's duty to provide reasonable accommodations to qualified individuals with disabilities. The brochure merely states that DTA does not discriminate on the basis of disability. This notice is insufficient, given that program participants may not understand that protection against disability discrimination includes the right to request and to have the EA program modified, if appropriate.

While DTA may have posted its poster at the Local Office, it appears that the bulk of Complainant's interaction with DTA was through the Shelter staff and that her visits to the Local Office were limited. There was no such poster at the Shelter. This notification is necessary because the Shelter, as a DTA contractor, shares DTA's ADA and Section 504 obligations.[32]

Complainant's case illustrates that DTA's reliance on "informal avenues" to sufficiently notify EA program participants of their rights under the ADA and Section 504 is not effective. Complainant did exactly what DTA suggests: she raised an issue of disability with Shelter staff. Shortly thereafter, she notified her DTA case worker of her request to be transferred back to the Motel. However, DTA admits that it considered Complainant's request at this time "de facto."[33] Consequently, DTA did not consider her request as a reasonable accommodation request until June, and did not adequately respond to Complainant's request as required by the ADA and Section 504. For this reason, it is difficult to accede to DTA's assurances that "informal avenues" as currently implemented mitigate the deficiencies in DTA's notice. Furthermore, we have observed during the course of our investigation that shelter staff[34] and DTA staff are not necessarily familiar with the ADA and the process to request an accommodation. Thus, sufficient notice is necessary to inform

---

[32]DTA has informed OCR that it is currently in the process of developing such a poster for the shelters.

[33]It may be that DTA is attempting to argue that there was no harm in DTA's insufficiency of notice because Complainant made a "de facto" request, and exercised her rights under the ADA and Section 504. However, OCR disagrees with such an assessment.

[34]OCR recognizes that Shelter staff made efforts to advocate on Complainant's behalf with DTA for several months. However, in interviews with OCR, Shelter staff expressed that DTA had not informed the Shelter of DTA's ADA policies.

program participants of the rights afforded to them under the ADA and Section 504.

VI. Voluntary Compliance

Where OCR has found a recipient of Federal financial assistance noncompliant with the ADA or Section 504, "the recipient shall take such remedial action as the Director deems necessary to overcome the effects of discrimination." See 45 C.F.R. § 84.6(a)(1). If compliance cannot be secured by voluntary means, it may be effected by suspension or termination of, or refusal to grant or continue Federal financial assistance, when a violation is found after opportunity for hearing, or by any other means authorized by law, including a recommendation that the Department of Justice bring an action to enforce the ADA or Section 504.

The corrective actions OCR considers necessary to overcome the effects of discrimination in this case are listed below. In addition, OCR suggests the implementation of policies and/or procedures to specifically address the concerns raised by our findings. DTA is not precluded from devising alternate approaches to meet its legal obligations.

A. Eliminate methods of administration that have the effect of subjecting individuals to disability-based discrimination.

1. Prompt review and determination: DTA should develop and implement procedures regarding the consideration of reasonable accommodation requests. DTA should develop a time-line within which accommodation requests are reviewed and decided.[35]

2. Specific Guidance: DTA should develop specific guidance for DTA staff responsible for reviewing reasonable accommodation requests. Such guidance should include the necessary steps for assessing the reasonableness of a request for an accommodation.

3. Medical Evidence: DTA should develop a policy regarding the review of medical evidence. To that end, DTA could develop a form analogous to DTA's "good cause medical" form wherein the necessary information is delineated for providers submitting evidence to DTA.

4. Training: DTA should develop training for DTA staff that includes new policy and guidance developed pursuant to the actions DTA takes in response to these findings.

---

[35]Subsequent to the allegations that gave rise to this complaint, on August 15, 2003, DTA issued Field Operations Memo 2003-19, *DTA Obligations Under the Americans with Disabilities Act (ADA)*. The corrective actions OCR considers necessary to remedy this complaint takes into account DTA's new procedures.

5. Contractors: Ensure that contractors, including shelters, make reasonable accommodations that are necessary to avoid discrimination on the basis of disability. Develop procedures for shelters to refer to DTA reasonable accommodation requests regarding modifications of DTA policy. Conduct training on DTA's procedure.

B. Provide sufficient notice to program participants of rights afforded under the ADA and Section 504.

1. Communication: Notice should be communicated in a manner intended to effectively inform EA program participants of the rights and protections afforded by the ADA and Section 504 as it applies to them. Simple explanations of reasonable accommodation may be necessary to provide effective notice. Sufficient notice may also require DTA to provide examples of common mental disabilities, the ways in which certain mental disabilities may make it difficult to comply with program requirements, and some examples of reasonable accommodation requests.

2. Signs: DTA should develop and post a sign sufficiently notifying EA program participants of the rights and protections afforded by the ADA and Section 504 in each DTA-contracted shelter.

3. Written statement: DTA should develop a written statement informing EA program participants of the rights and protections afforded by the ADA and Section 504 to be included on each shelter warning/notice of rules violations and DTA notice of noncompliance or termination. The statement should also include information regarding who to contact to make a request for a reasonable accommodation.

4. Procedures: DTA should develop and implement procedures whereby caseworkers inform EA recipients of the rights and protections afforded by the ADA and Section 504 during intake interviews, development of the Self-Sufficiency Plan, and/or discussions regarding noncompliance and good cause.[36]

C. Provide individual relief to Complainant.

1. Motel placement: Subject to continued eligibility, maintain current placement

---

[36]Although DTA contends these informal avenues are in currently in place, OCR's investigation reveals otherwise. OCR envisions caseworkers proactively engaging EA program participants regarding potential barriers due to disability. This may be required in order to avoid discrimination.

of Complainant in Town Place Suites Motel.[37]

2. Other relief: Determine and implement other relief that may be necessary.

OCR is interested in working with DTA to resolve the violations identified by our investigation in a cooperative and proactive manner, and in providing DTA with technical assistance in making changes to ensure that individuals with disabilities have an equal opportunity to benefit from the EA program. To this end, we suggest that representatives of OCR and representatives of DTA meet within 14 days after the date of this letter to discuss necessary corrective actions and specific strategies to ensure that corrective actions are carried out. If DTA does not agree to take the required corrective actions, formal enforcement action may be taken.

OCR determinations do not affect the right of an aggrieved person to file or maintain a private civil action to remedy alleged discrimination by a recipient of Federal financial assistance. Such a person may wish to consult an attorney about his/her right to pursue a private cause of action, any applicable statutes of limitations and other relevant considerations.

Pleased be advised that no recipient may intimidate, threaten, coerce or discriminate against an individual because he or she has made a complaint, testified, assisted or participated in any manner in an action to secure rights protected by the civil rights statutes enforced by OCR. 45 C.F.R. § 80.7(e).

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will make every effort to protect, to the extent provided by law, information which identifies individuals or which, if released, would constitute an unwarranted invasion of privacy. 5 U.S.C. §552.

We wish to thank you for your cooperation during the course of this investigation. If you have any questions, please contact Tierney Bianconi at 617-565-1330 (voice) or 617-565-1343 (TDD).

Sincerely,

Peter K Chan

Peter K. Chan
Acting Regional Manager

cc: Michelle Lerner

---

[37]On July 30, 2003, Complainant was transferred to Motel because the Shelter terminated her shelter residency for noncompliance.