

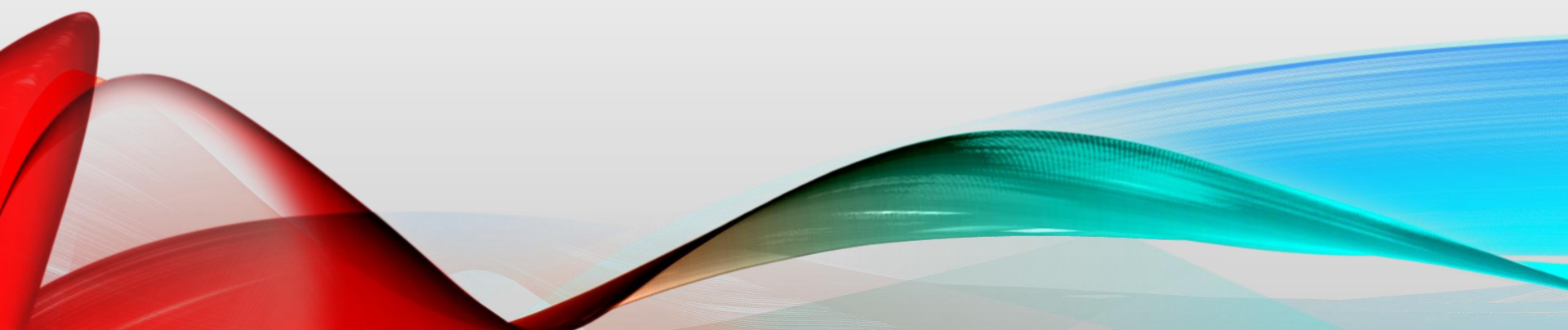


TESTING CENTERS AND OCR: GAINING A BETTER UNDERSTANDING OF THE ISSUES IN PROVIDING TESTING ACCOMMODATIONS

National College Testing Association

Cincinnati OH

Sept. 13, 2017





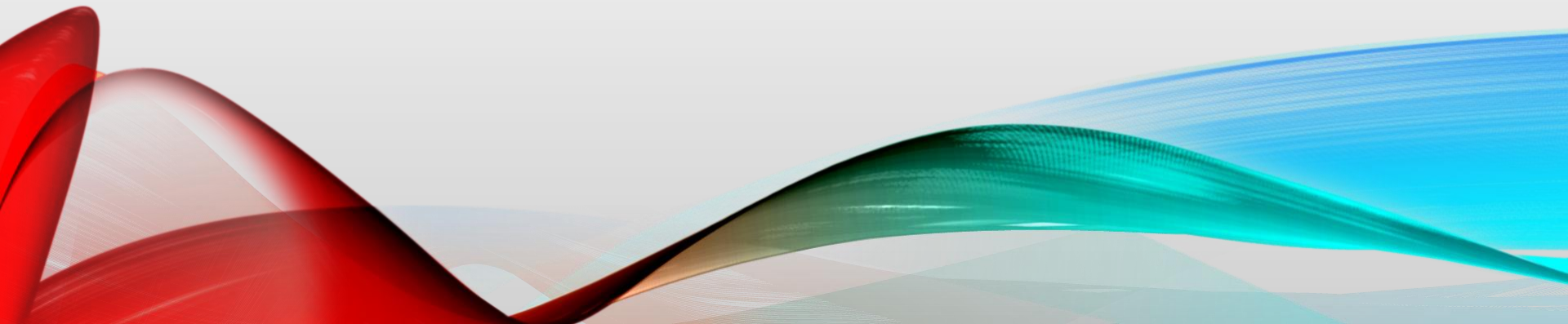
Presenters:

Tim O'Connor, University of Wisconsin-Madison

Katie Shifflett, Community College of Baltimore County

David Espinoza, University of Oregon

- ❖ Many NCTA testing centers have become part of the support network on their campuses for students with disabilities.
- ❖ The provision of non-standard testing accommodations requires testing professionals to provide services, access, and facilities that respond to a range of circumstances.
- ❖ Using scenarios derived from complaint resolutions issued by the Office for Civil Rights (OCR) this session will present examples that highlight issues relevant to testing professionals.
- ❖ Nothing in this presentation should be understood to be offering legal advice. Additionally, the OCR complaints examined for this presentation represent an outcome in an individual case and should not be understood to represent formal OCR policy.





Introduction

The Legal Mandate

Academic Accommodations

The Interactive Process

Disparate Treatment





The Legal Mandate

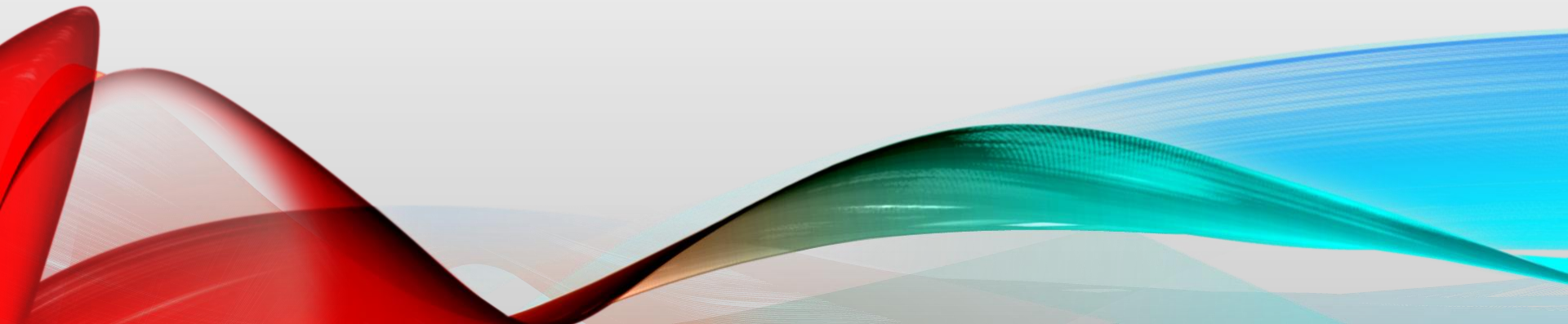
Sec. 504 of the Rehabilitation Act of 1973 created and extended civil rights to individuals with disabilities. Under Sec. 504, any federal agency, e.g. the Department of Education, which provides federal financial assistance has section 504 regulations covering those entities which receive the financial assistance.

The Americans with Disabilities Act of 1990 (ADA) is a civil rights law that specifically prohibits discrimination based on disability.

Title II of the ADA prohibits discrimination on the basis of disability by public entities. The scope of Title II was broadened by the 2008 ADA Amendments Act (ADAA).

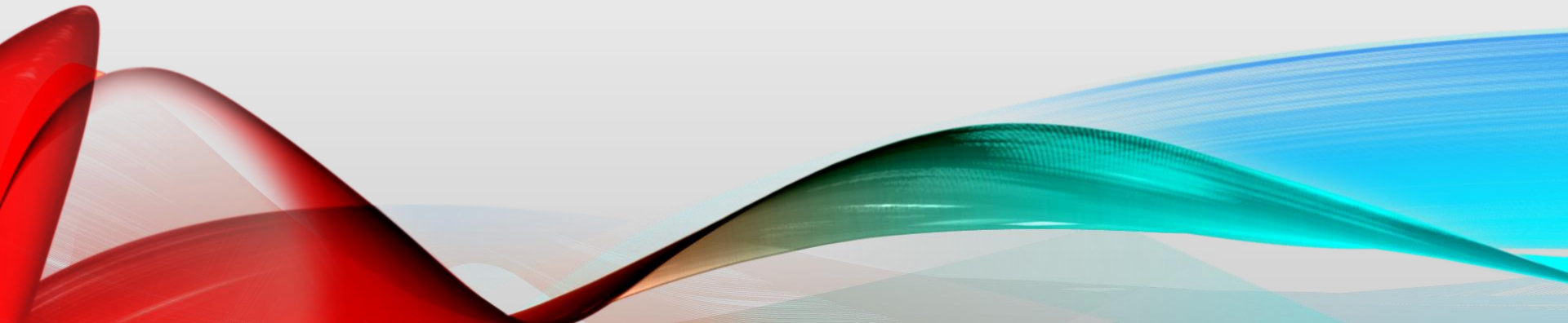
The Office for Civil Rights (OCR) is a sub-agency of the Department of Education and is responsible for protecting civil rights through the implementation of Sec. 504 of the Rehabilitation Act of 1973 and Title II of the ADA.

The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.



The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.

OCR can provide guidance to educational institutions on how to comply with civil rights laws under its mandates. Some times that guidance is furnished within the context of a formal complaint alleging discrimination against a student(s) on the basis of disability.



Academic Accommodations

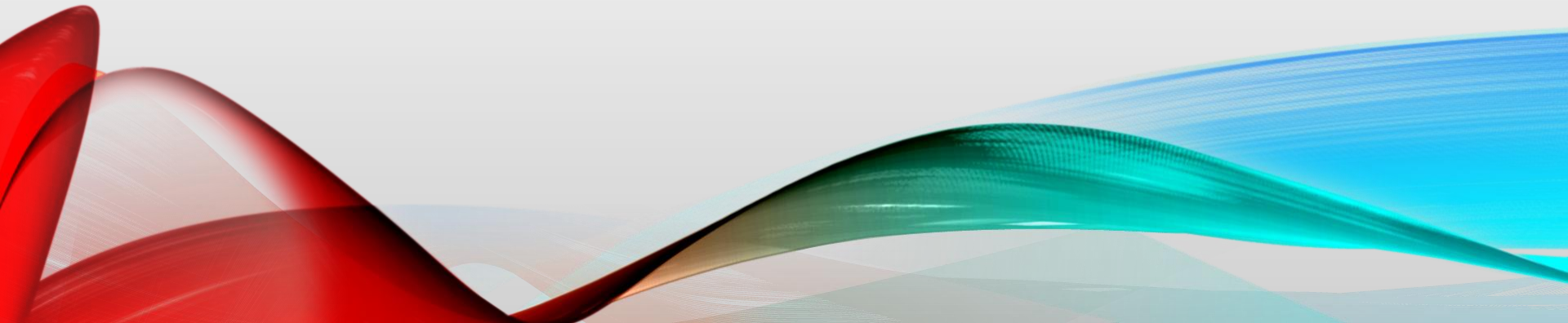
Sec. 504 provides:

“In the postsecondary setting, recipients are required to make modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability.”

“Recipients must take necessary steps to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity because of the absence of educational auxiliary aids for students with a documented disability.”

Title II of the ADA provides:

“A public entity shall 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 the modifications would fundamentally alter the nature of the service, program, or activity.”



The Interactive Process

Post-secondary institutions must provide academic adjustments and aids that are:

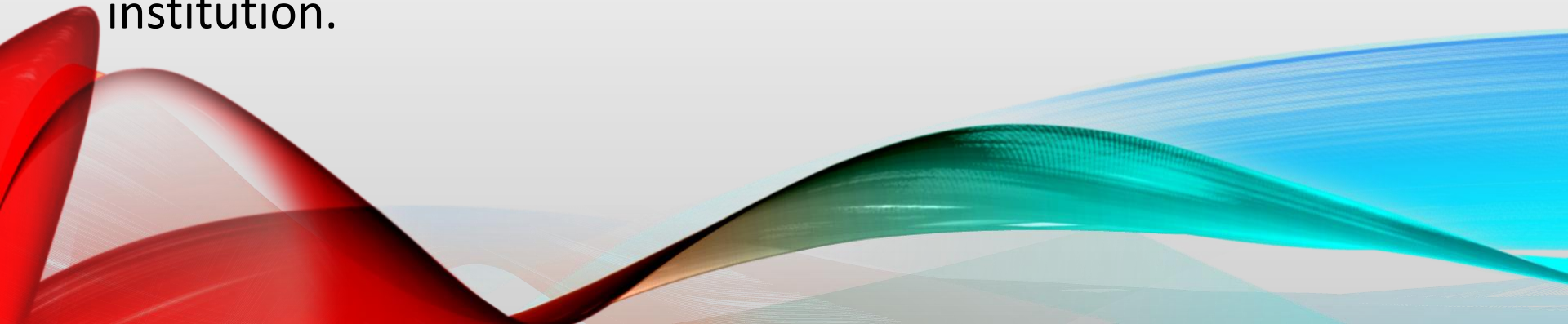
- ❖ Effective
- ❖ Appropriate to the individual needs of the student with a disability

To ensure that a student with disabilities is not denied appropriate academic adjustments based on their ***individualized needs***, a post-secondary institution must engage in a dialogue with students who are seeking adjustments.

This dialogue should be ***interactive*** between the student seeking the adjustment and those responsible for ensuring that the appropriate adjustments are delivered.

The Interactive Process includes:

- ❖ Students are responsible for notifying the institution that they have a disability and are in need of an academic adjustment or aid because of that disability.
- ❖ Institutions may require students with disabilities to follow reasonable procedures to request an academic adjustment.
- ❖ If the student has received proper notice of an institution's process for providing adjustments, they are expected to follow the process.
- ❖ In addition to informing the institution of their disability, the student may be asked to provide supporting documentation and ask for assistance related to their disability. The requirement for documentation of a disability will vary from institution to institution.





The Interactive Process (con't.)

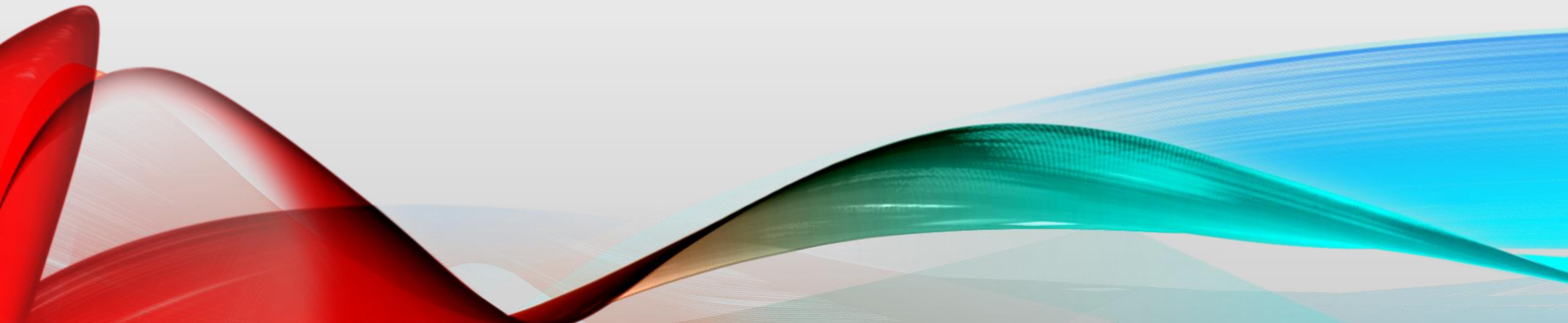
- ❖ Institutions may set reasonable standards for documentation of disability and needed accommodations, including that the documentation be prepared by an appropriate professional.
- ❖ The documentation should provide enough information for the student and the institution to decide what is an appropriate academic adjustment.
- ❖ Once the student has complied with the institution's established process, the institution is responsible for ensuring that any necessary and agreed upon adjustments are provided to the student.

Disparate Treatment

Institutions are obligated to provide a person with a disability the opportunity to:

- ❖ Acquire the same information
- ❖ Engage in the same interactions
- ❖ Enjoy the same services

... as a person without a disability. This is a basic definition of “accessible”.



Disparate treatment(con't.)

In meeting this basic definition of “accessible” the opportunity provided to the person with a disability must be:

- ❖ Available in an equally effective and equally integrated manner.
- ❖ Available with substantially equivalent ease of use.
- ❖ Able to be obtained as fully, equally, and independently as a person without a disability.

Failure to meet these expectations can result in person with a disability being subjected to differing, or disparate treatment.



THE CASES



The Office for Civil Rights maintains a searchable database that provides access to complaints and resolution letters and agreements.

<https://www.ed.gov/ocr-search-resolutions-letters-and-agreements>



Search...



Student Loans

Grants

Laws

Data

The Office for Civil Rights (OCR) is providing access to recipient resolution letters with agreements reached on or after October 1, 2013. The letters and agreements cover aspects of laws OCR enforces. You have access to all currently uploaded documents that meet OCR's document upload criteria. Additional documents will be posted on a continual basis. Use the search box below to conduct your search. Search criteria assistance is provided below.

Keyword(s):

Keyword(s)

Name of Recipient:

Name of Recipient

Document Type

- Resolution Agreement
- Resolution Letter

Covered Statutes

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act of 1990

State Location:

Select State



Search

Reset

How Do I Find...?

- Student loans, forgiveness
- College accreditation
- Every Student Succeeds Act (ESSA)
- FERPA
- FAFSA
- More...

Information About...

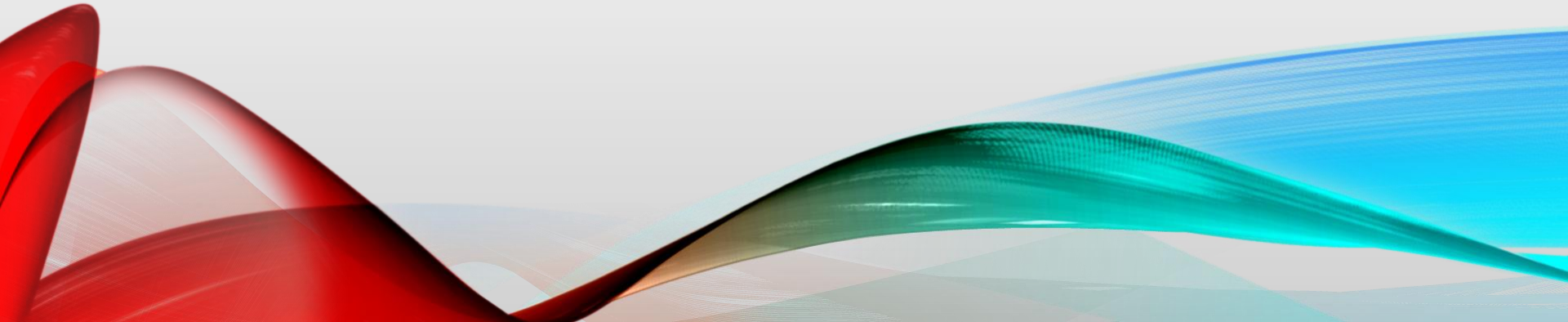
- Transforming Teaching
- Family and Community Engagement
- Early Learning

OCR Case #15-15-2042
Oakland University
Rochester MI

Complaint alleged that the university limited students who needed a reduced distraction environment for reasons relating to university resources.

Issues addressed:

- Institutional responsibility
- Interactive process
- Individualized needs



OCR Case #09-12-2317

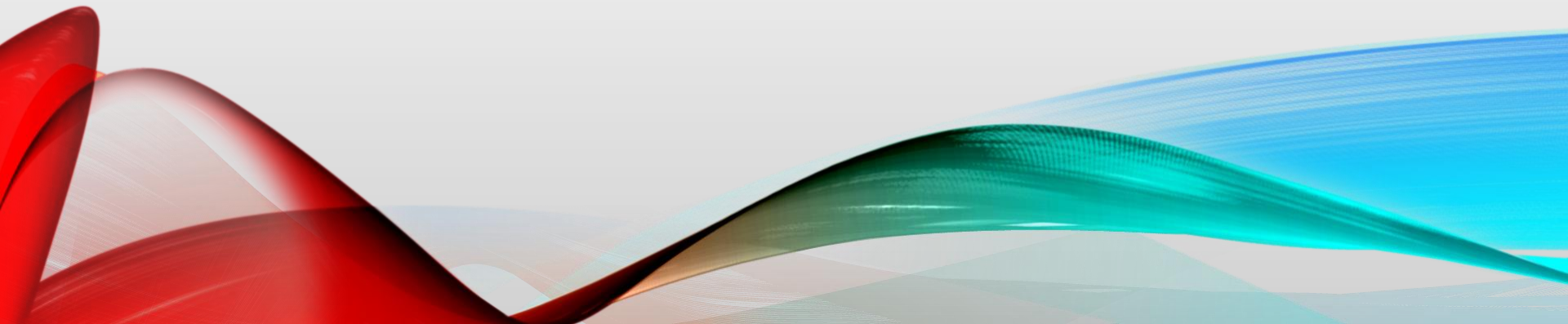
Laney College

Oakland CA

Complaint alleged that the college failed to provide approved academic adjustments.

Issues addressed:

- Faculty responsibility
- Faculty discretion
- Technical guidance
- Institutional Responsibility



OCR Case #09-14-2407

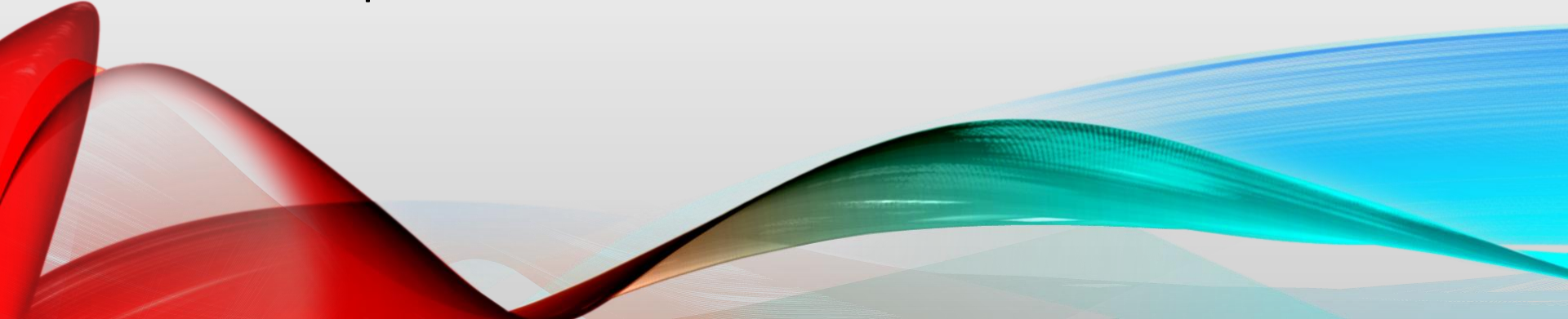
Whittier Law School

Costa Mesa CA

Complaint alleged that the law school failed to provide approved academic adjustments, retaliated against the student, and failed to have published grievance procedures providing for the resolution of complaints of discrimination in grading.

Issues addressed:

- Interactive process
- Unlawful retaliation
- Grievance procedures

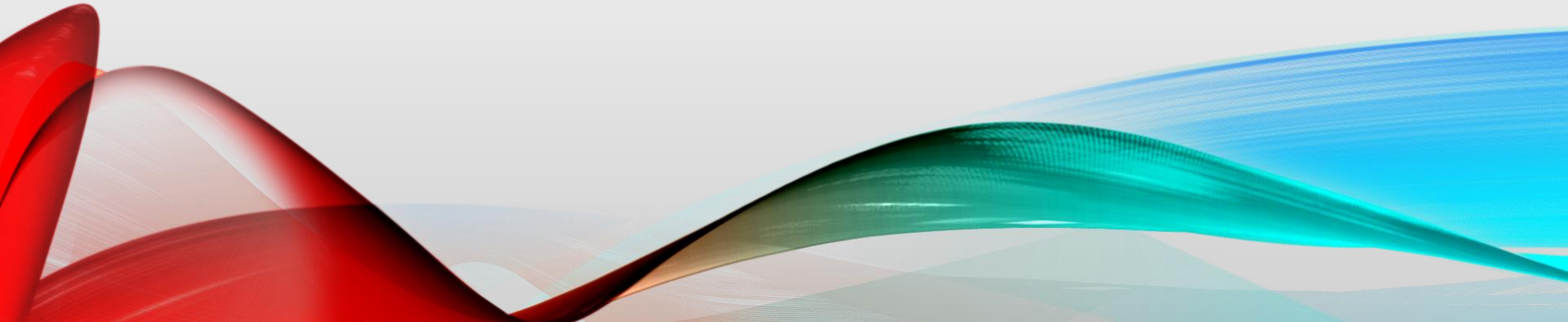


OCR Case #04-15-2320
Georgia Institute of Technology
Atlanta GA

Complaint alleged that the university maintained testing policies that discriminated against students with disabilities.

Issue addressed:

- Disparate treatment

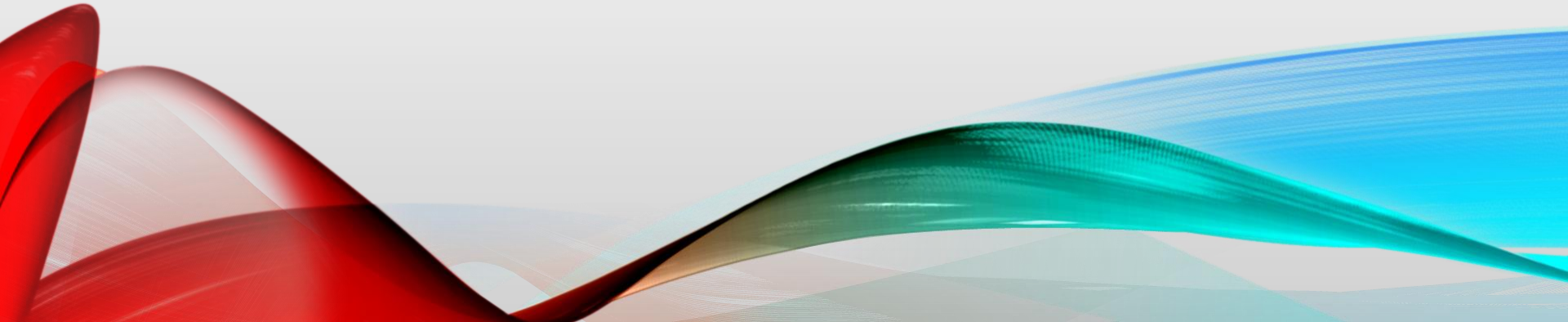


OCR Case #09-14-2404
Woodland Community College
Woodland CA

Complaint alleged that the college failed to provide appropriate and approved testing accommodations, failed to respond to student's complaints, and retaliated against the student for engaging in protected activity.

Issues addressed:

- Disparate treatment
- Institutional responsibility

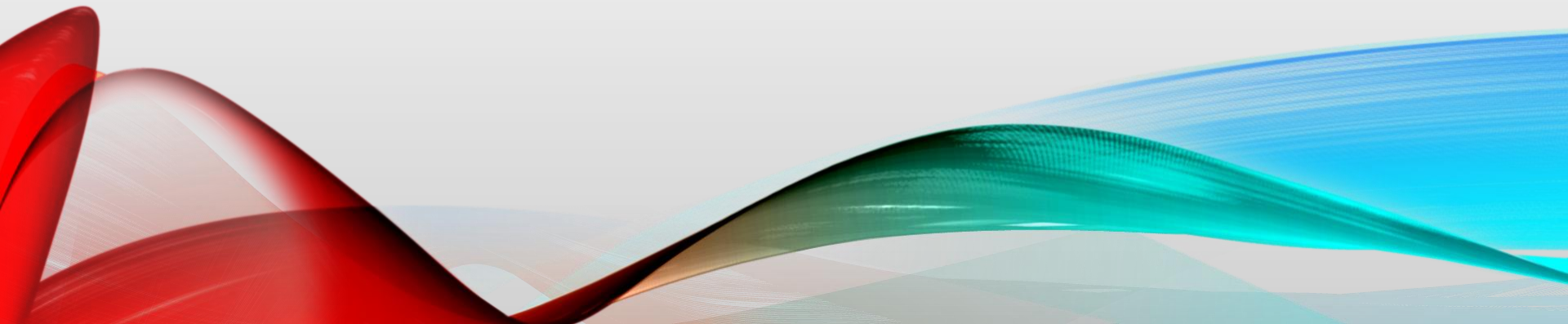


OCR Case #02-15-2328
Educational Testing Service
Ewing NJ

Complaint alleged that ETS discriminated against testing applicants with disabilities who are seeking testing accommodations by preventing them from using ETS's online registration system.

Issue addressed:

- Disparate treatment
- Deliberate Indifference

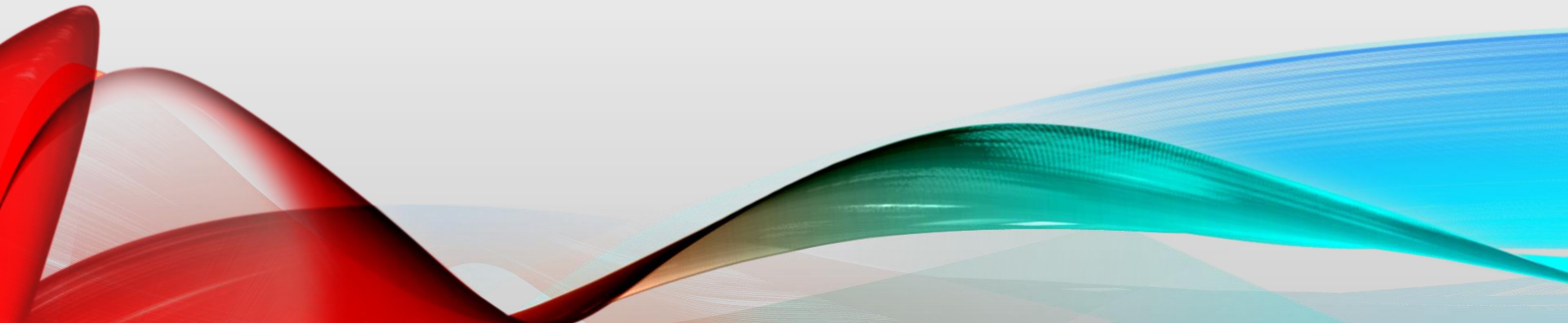


OCR Case #15-13-6002
Youngstown State University
Youngstown OH

Complaint alleged that university websites were not accessible.

Issues addressed:

- Disparate treatment
- Institutional responsibility



QUESTIONS?

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