

**SUPPLEMENTAL
BOARD BOOK OF APRIL 27, 2017**



J. Paul Ozer, Chair
Leslie Bingham Escareño, Vice-Chair
Juan Muñoz, Member
T. Tolbert Chisum, Member
Tom H. Gann, Member
J. B. Goodwin, Member

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**A G E N D A
9:00 AM
April 27, 2017**

**William B. Travis Building
Room 1-111
1701 Congress Avenue
Austin, Texas**

CALL TO ORDER

ROLL CALL

Leslie Bingham-Escareño, Vice Chair

CERTIFICATION OF QUORUM

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

Resolution recognizing May as *Community Action Month*

Resolution recognizing May as *National Mobility Awareness Month*

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

- a) Presentation, discussion, and possible action on Board Meeting Minutes summary for the meeting of January 26, 2017

J. Beau Eccles
Board Secretary

LEGAL

- b) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Oakridge Apartments (HTC 93159 / CMTS 1189)
- c) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Autumn Creek (HTC 70071 / CMTS 906)
- d) Presentation, discussion, and possible action regarding the adoption of three agreed final orders concerning Pinnacle properties, including Rosemont of Oak Hollow (HTC 01435 / BOND MF048 / CMTS 445), Rosemont at Timber Creek (HTC 010157 / CMTS 300), and Rosemont at Sierra Vista (HTC 04482 / CMTS 4179)
- e) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Lakewood Gardens (HTC 91059 / CMTS 2305)
- f) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Vicksburg Ltd. (HTC 91104 / CMTS 980)

Jeffrey T. Pender
Deputy General Counsel

ASSET MANAGEMENT

- g) Presentation, discussion and possible action regarding Ownership Transfers prior to IRS Form 8609 Issuance or Construction Completion
- | | |
|------------------------------------|--------------|
| 14023 Heritage Square Apartments | Jacksonville |
| 14024 Creekside Village Apartments | Jacksonville |
| 14025 Heritage Place Apartments | Jacksonville |
- h) Presentation, discussion and possible action regarding Material Amendments to Housing Tax Credit
- | | |
|------------------------------|--------|
| 16057 Silverleaf at Mason | Mason |
| 16105 Tuscany Park at Arcola | Arcola |
| 16178 Palladium Anna | Anna |

Raquel Morales
Director

BOND FINANCE

- i) Presentation, discussion, and possible action on Resolution 17-015 regarding the annual approval of the Department's Investment Policy
- j) Presentation, discussion, and possible action on Resolution 17-016 regarding the annual approval of the Department's Interest Rate Swap Policy

Monica Galuski
Director

COMMUNITY AFFAIRS

- k) Presentation, discussion, and possible action on release of the draft Federal Fiscal Years 2018-2019 Community Services Block Grant ("CSBG") State Plan for public comment, with a link to be published in the *Texas Register*
- l) Presentation, discussion, and possible action on the Program Year ("PY") 2017 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan and Awards
- m) Presentation, discussion, and possible action on release of the draft FFY 2018 Low Income Home Energy Assistance Program ("LIHEAP") State Plan to be made available for Public Comment and to be announced in the *Texas Register*

Michael DeYoung
Director

MULTIFAMILY FINANCE

- n) Presentation, discussion, and possible action on the issuance of Determination Notices for Housing Tax Credits with another issuer
- | | |
|--------------------------------|---------|
| 17412 Pathways at Gaston Place | Austin |
| 17417 Fenix Estates | Houston |
- o) Presentation, discussion, and possible action on the 2016 State of Texas National Housing Trust Fund Allocation Plan

Marni Holloway
Director

RULES

- p) Presentation, discussion and possible action on proposed amendments to 10 TAC §1.13, concerning adjudicative hearing procedures, and directing that they be published for public comment in the *Texas Register*
- q) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an Order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing its publication for public comment in the *Texas Register*
- r) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and an Order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing its publication for public comment in the *Texas Register*
- s) Presentation, discussion, and possible action on orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and orders adopting new 10 TAC Chapter 23, Single Family HOME Program ("HOME Rule"), concerning HOME single family activities, and directing their publication in the *Texas Register*

Jeffrey T. Pender
Deputy General Counsel

Homero Cabello, Jr
Director, SF Ops and Services

Jennifer Molinari
Director, HOME and Homeless Program

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, April 2017 – May 2017

Michael Lyttle
Chief, External Affairs

- c) Presentation, discussion, and possible action on possible actions to assist 9% housing tax credit-layered Direct Loan awardees and applicants that have suffered adverse changes in syndication rates
- d) Presentation, discussion, and possible action on an Amendment to the 2017-1 Multifamily Direct Loan Notice of Funding Availability

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

Leslie Bingham-Escareño
Vice Chair

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this

property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
APRIL 27, 2017

Presentation, Discussion, and Possible Action on Timely Filed Appeal of Application Termination under the 2017 Uniform Multifamily Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (“HTC”) application #17069 Arlinda Gardens Supportive Housing submitted to the Department by the Full Application Delivery Date;

WHEREAS, notice of termination was provided to the Applicant for failure to meet the requirements of multiple provisions of the 2017 Qualified Allocation Plan and Uniform Multifamily Rules;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director has denied the appeal in part and conditionally granted the appeal in part, and the Applicant has asked that the appeal be heard by the Board;

NOW, therefore, it is hereby

RESOLVED, that the appeal of termination for Arlinda Gardens Supportive Housing (#17069) is hereby denied, and the denial will become effective unless this Board affirmatively stays the termination at the May, 2017, meeting following the opportunity for the Applicant to have a request for accommodation reviewed by the Board per 10 TAC §1.1(c)(4)(E).

BACKGROUND

Arlinda Gardens Supportive Housing is a Supportive Housing development proposed for Bryan in Uniform State Service Region 8. The Application proposes 100 units, all supported by Low Income Housing Tax Credits and funds from the Direct Loan Program. The Application was terminated due to multiple material deficiencies, including:

- The Applicant did not indicate on the application that the proposed Development Site is located within the attendance Zone of a high school that does not have a Met Standard Rating, as required by §11.8(b)(I)(ii).
- The Applicant incorrectly certified on the Development Owner Certification, Acknowledgement and Consent form that the Development is not located in an area with any of the undesirable neighborhood characteristics, rendering the Development Owner Certification invalid.
- An Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be

sufficiently mitigated or significantly improved within a reasonable time, and that the undesirable characteristic demonstrates a positive trend and continued improvement. No information regarding this requirement was submitted.

- Pursuant to §10.101(a)(3)(C), should any of the undesirable neighborhood characteristics described in subparagraph (B) exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report. The Undesirable Neighborhood Characteristics Report was not submitted.
- The Application includes a materially deficient request for Multifamily Direct Loan funds.
- The Applicant did not provide letters from utility providers stating that services are present and available. The blank applications for service from several companies included in the Application do not fulfill this requirement.
- The Applicant did not provide a statement explaining how the proposed Development will promote greater housing choice.
- The Architectural drawings were incomplete.
- The proposed development has four stories but does not include the elevator required by §10.101(b)(1)(A)(ii).
- The 15-year Rental Housing *pro forma* required by §10.302(i)(6)(B) does not include the debt service for Direct Loan funds requested or the permanent loan described elsewhere in the Application. This omission renders the lender's certification invalid and the Application, therefore, lacks support for 18 points for financial feasibility.
- The Architect Certification required by §10.204(3) is not included.
- The Site Design and Development Feasibility Report does not include a survey or site plan prepared by a civil engineer as required by §10.204(15)(B).

In the appeal and related materials submitted, the Applicant did not address the bulk of these deficiencies. Although the Applicant did not request any accommodations prior to the Application submission deadline, on March 17, 2017, the Applicant contended that staff was required, as a “reasonable accommodation,” to allow the Applicant to address any and all Application deficiencies via the administrative deficiency process, regardless of whether the deficiencies involved were materials or administrative. The Applicant has filed a complaint with the Department regarding his accommodations request, which will be addressed by the appropriate staff and rules, and 10 TAC §1.1 provides the Applicant the ability to have the Board review a denied request for accommodations separate from this termination appeal.

This item will address those deficiencies that the Applicant did identify in its appeal from the termination of application #17069, and for which support was offered; namely:

- In the Pre-Application, the Applicant did not disclose that the proposed Development Site is located within the attendance zone of a high school that does not have a Met Standard Rating, as required by 10 TAC §11.8(b)(I)(ii). Due to this failure to disclose, the Pre-Application has been terminated, and if the Application is reinstated the Application is not eligible to receive six Pre-Application points.

The Applicant certified on the Development Owner Certification, Acknowledgement and Consent form that the Development is not located in an area with any of the undesirable neighborhood characteristics described in 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules and that no disclosure is necessary. Due to the failure to provide proper disclosure (of the Development Site being within the attendance zone of a high school that does not have a Met Standard Rating) the Development Owner Certification as to the elements of Subchapter B, which is mandated by 10 TAC §10.204(1), is not factually accurate and therefore is not valid.

In the appeal and related materials, the Applicant agreed that it was certified that there were no negative site features and that it was not properly disclosed that a school in the primary attendance zone for the development had failed to achieve a Met Standard Rating. The Applicant asserts that the Qualified Allocation Plan (“QAP”) does not require such disclosure until a school fails to meet standards “for 3 years and by below at least one point of the standard of the current year.” The applicant is not correct in this regard. 10 TAC §11.8(b)(1)(I)(ii) addresses pre-application threshold criteria, including the mandatory disclosure of:

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

10 TAC §10.101(a)(3)(B)(iv) is the relevant application disclosure rule regarding schools that have failed to meet standards. In particular, the applicant must make disclosure if:

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, **shall be unable to mitigate** due to the potential for school closure as an administrative remedy . . .” (emphasis added)

Disclosure of any non-Met Standards schools serving the proposed development is required in both the application and pre-application. Whether this undesirable neighborhood characteristic may be **mitigated** is the subject of the second sentence of the subsection, but it does not relieve the Applicant of the requirement to disclose that the development site is located within the attendance zone of an elementary, middle, or high school that does not have a Met Standard rating. The fact that mitigation may have been possible only triggered additional reporting requirements for the Applicant under 10 TAC §10.101(a)(3)(C), which the Applicant (also) did not submit at the time of application and was a further reason for termination.

The appeal contends that staff should have considered these “Material Deficiencies” to be “Administrative Deficiencies.” The wording of the relevant rules regarding disclosure of undesirable neighborhood characteristics is particularly instructive.

10 TAC §11.8(b): . . . pre-applications **will be terminated** unless they meet the threshold criteria . . . (emphasis added)

10 TAC §10.101(a)(3)(A): If the Development Site has any [undesirable neighborhood characteristics], the Applicant **must** disclose the presence of such characteristics in the Application submitted to the Department. . . Should staff determine that the Development Site has [undesirable neighborhood characteristics] and such characteristics were not disclosed, the Application may be **subject to termination**. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter . . .” (emphasis added)

10 TAC §10.101(a)(3)(C): Should any of the undesirable neighborhood characteristics described . . . exist, the Applicant **must** submit the Undesirable Neighborhood Characteristics Report that contains the information described . . . (emphasis added)

The rules also describe the level of further documentation, support, and departmental investigation required to address attempts to mitigate an undesirable neighborhood characteristic. They are clearly material requirements of the application and are pointed out by the rules as being mandatory and subjecting the application to termination if not addressed in the initial application.

On appeal, the Executive Director reviewed the Application and argument presented by the Applicant, and found that the information provided in the Application for Tab 19a (regarding 811 participation) and the lack of organization of the Development Narrative both would warrant the opportunity to provide clarification via Administrative Deficiency, since information/documentation was provided with the Application and what was provided could have proven sufficient under the rules if clarified. However, the Executive Director was unable to find a basis within his authority to grant the remainder of the appeal, and, having sustained the termination of the application, the referral of the 811 and Development Narrative matters to staff to engage in the administrative deficiency process would only take place if the Board were to reverse the decision to terminate on all the other bases listed in the termination letter – most of which were not addressed by the Applicant on appeal. Indeed, in the response to the appeal, the Executive Director provided an example of the lack of satisfactory information and documentation provided in the Application, and not addressed on appeal, which, alone, would have justified termination.

Staff has not completed a full review of the application which may uncover additional eligibility issues.

Staff continues to recommend termination of the Application, and denial of the appeal. Given the Applicant’s March 17, 2017, request for accommodations under 10 TAC §1.1, and the Board’s ability to review the Applicant’s request for accommodations, if the Board sustains staff’s recommendation of termination, the termination will become effective unless this Board affirmatively stays the termination at the May, 2017, meeting following the opportunity for the Applicant to have a request for accommodation reviewed by the Board per 10 TAC §1.1(c)(4)(E).

Termination Letter

17069 Arlinda Gardens Supportive Housing



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
J. Paul Oxer, *Chair*
Leslie Bingham-Escareño, *Vice Chair*
Juan S. Muñoz, PhD
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

March 15, 2017

Writer's direct phone # (512) 475-1676
Email: marni.holloway@tdhca.state.tx.us

Mr. Rick Sims
Managing partner
Arlinda Gardens, Ltd.
420 Walnut Street
Minden, LA 71055

RE: TERMINATION OF 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATION 17069 ARLINDA GARDENS SUPPORTIVE HOUSING

Dear Mr. Sims:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the above-referenced application. The application submitted has multiple material deficiencies, as described below, and for these reasons the application has been terminated.

- In the Pre-Application, the Applicant did not disclose that the proposed Development Site is located within the attendance Zone of a high school that does not have a Met Standard Rating, as required by 10 TAC §11.8(b)(1)(ii). Due to this failure to disclose, the Pre-Application has been terminated, and the Application is not eligible to receive six Pre-Application points.
- The Applicant certified on the Development Owner Certification, Acknowledgement and Consent form that the Development is not located in an area with any of the undesirable neighborhood characteristics described in 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules and that no disclosure is necessary. Due to the failure to provide proper disclosure (of the Development Site being within the attendance zone of a high school that does not have a Met Standard Rating) the Development Owner Certification is not valid.
- Pursuant to 10 TAC §10.101(a)(3)(B), in order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. No information regarding this requirement was submitted.
- Pursuant to 10 TAC §10.101(a)(3)(C), should any of the undesirable neighborhood characteristics described in subparagraph (B) exist, the Applicant must submit the Undesirable



Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review. The Undesirable Neighborhood Characteristics Report was not submitted.

- The Application includes a request for Multifamily Direct Loan funds, which is materially deficient:
 - The Applicant requested funds from both the CHDO and Supportive Housing/Soft Repayment set-asides, which is prohibited by 8)c. of the 2017-1 Multifamily Direct Loan NOFA.
 - The Applicant does not meet the definition of CHDO at §13.2(b) of the Multifamily Direct Loan Rules because Rick Sims is listed as the Executive Director and the Application includes a copy of a consulting contract between Mr. Sims and the Applicant.
 - The TDHCA calculation of the Utility Allowance is not included
- The Applicant did not provide letters from utility providers stating that services are present and available. The blank applications for service from several companies included in the Application do not fulfill this requirement.
- The Applicant did not provide a statement explaining how the proposed Development will promote greater housing choice.
- The Application did not include a Development Narrative. The Applicant inserted a 36-page "Development and Operations Plan" that does not provide the information required in a Development Narrative.
- The Section 811 Project Rental Assistance page is marked as "Not Applicable." This is a threshold item that must be completed.
- The Architectural drawings do not include dimensions, or the required table describing the building/unit type mix. There are two different site plans in the Application. The plans do not indicate the location of accessible parking spaces or accessible units, the floor plans do not include accessible units. The building has four stories but does not include the elevator required by 10 TAC §10.101(b)(1)(A)(ii). There are no elevations included in the Application.
- The 15-year Rental Housing *pro forma* required by 10 TAC §10.302(i)(6)(B) does not include the debt service for Direct Loan funds requested or the permanent loan described elsewhere in the Application. This omission renders the lender's certification invalid, and the Application is therefore not eligible to receive 18 points for financial feasibility.
- An incomplete application to the City of Bryan is included as evidence of Commitment of Development Funding by Local Political Subdivision under 10 TAC §11.9(d)(2). Because a letter or resolution describing the grant is not included, the Application is not eligible to receive one point.
- The Architect Certification required by 10 TAC §10.204(3) is not included.
- The Site Design and Development Feasibility Report does not include a survey or site plan prepared by a civil engineer.

Staff has not completed a full review of the application which may uncover additional eligibility issues. Due to multiple material deficiencies, the Application is incomplete and is hereby terminated. An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §10.902 of the 2017 Uniform Multifamily Rules. It is our understanding that you request this item to be addressed at the March Board meeting. If that is the case, **please provide your appeal materials to Sharon Gamble at sharon.gamble@tdhca.state.tx.us no later than noon Austin local time, on March 20, 2017**, so that they can be included in the Board materials.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at marni.holloway@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marni Holloway', written over a horizontal line.

Marni Holloway
Director of Multifamily Finance

Appeal Documents

17069 Arlinda Gardens Supportive Housing

Mr. Tim Irvine
Executive Director
Application 17069

**RESPONSE TO FAILURE TO PROVIDE A REASONABLE
ACCOMMODATION ACCORDING TO TAC 1.1**

ARGUMENT OF STATE LAW IN SUPPORT

TEXAS GOVERNMENT CODE 2306.065

TEXAS GOVERNMENT CODE 2306.066 (C)

TEXAS GOVERNMENT CODE 2306.066 (e)

I sent a complaint to Sharon Gamble in accordance to Texas Government Code 2306.066(e). This complaint was sent for her to process in accordance to Texas Government Code 2306.066(e).

The filing of the Complaint was due to the persons named in the complaint failing to provide a reasonable accommodation in accordance or process the request according to TAC 1.1, as Stated in the 2017 Multi-Family Rules, Section 10.4,pg 21 and as stated in the 2017 Qualified Allocation Plan, Section 11.2, pg. 2.

I. Basis for Submission of the Application Number 17069

- I. Equal Protection under the 14th Amendment- from” persons” operating under the color of law.ⁱ
- II. Section 3605 of the Fair Housing- As a Potential Residentⁱⁱ
- III. Act, Section 504 of the Rehabilitation Act, - Program Participationⁱⁱⁱ
- IV. Section 12132 of the American with Disabilities Act.- Program Participation^{iv}
- V. Section 3617 of the Fair Housing Act – Aiding persons with Disabilities
- VI. Section 12203 (b) of the American with Disabilities Act.- Aiding Persons with Disabilities
- VII. 42 U.S.C. Section 12704.-
- VIII. Final Home Rule of 2013, effective 2015, CHDO Commitments.

IX. Texas Government Code 2306.066 (e)

II. Basis for Reasonable Accommodation

X. Equal Protection under the 14th Amendment, ^v

XI. Section 3605 of the Fair Housing

XII. Act, Section 504 of the Rehabilitation Act

XIII. Section 12132 of the American with Disabilities Act.

XIV. Section 3617 of the Fair Housing Act

XV. Section 12203 (b) of the American with Disabilities Act.

XVI. 10 TAC Section 1.1 , Multi Family Rules Page (), 2017 QAP page ()

XVII. Texas Government Code 2306.066 (e)

III. Legal Authority in Support of (I) Basis for Submission of the Application

XVIII. Defendants Texas Department of Housing and Community Affairs, Paul Oxer and Tim

Irvine's motion to Dismiss Plaintiff's Amended Complaint, by Michael R. Abrams, AAG

XIX. Defendants Texas Texas Department of Housing and Community Affairs, Paul Oxer and Tim

Irvine Reply in Support of Motion to Dismiss Plaintiff's Amended Complaint, by Michael R. Abrams, AAG.

XX. Recommendations and Ruling of United States Magistrate Andrew Austin.

XXI. Texas Government Code 2306.066 (e)

omitted), *cert. denied*, 552 U.S. 1182 (2008). While a complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations in order to avoid dismissal, the plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (/case/bell-atl-corp-v-twombly#p555) (2007). A plaintiff's obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* The Supreme Court has explained that a complaint must contain sufficient factual matter "to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (/case/ashcroft-v-iqbal-4#p678) (2009) (quoting *Twombly*, 550 U.S. at 570 (/case/bell-atl-corp-v-twombly#p570)). "A claim has facial plausibility when the [nonmovant] pleads factual content that allows the court to draw the reasonable inference that the [movant] is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (/case/ashcroft-v-iqbal-4#p678) (2009).

vi

Application submitted by a potential resident to satisfy 3605 of the FHA according to ruling of U.S. Magistrate Andrew Austin.

transactions). For a claim of discrimination under Section 3605, a plaintiff must allege that the defendant made "unavailable" because of race or disability "financial assistance for constructing dwellings." *Inclusive Community Projects v. Tex. Dept. of Hous. & Comty. Affairs*, No. 3:08-CV-546, 2008 WL 5191935, at *3 (N.D. Tex. 2008). TDHCA's tax credit program would likely be considered a "real estate-related transaction." See *Texas Dept. of Hous. & Comty. Aff. v. Inclusive Community Projects*, 135 S.Ct. 2507 (2015) (allowing a claim of disparate impact against TDHCA for the allocation of tax credits); *United States v. Mass. Indus. Finance Agency*, 910 F. Supp. 21, 28-29 (/case/us-v-massachusetts-indus-finance-agency#p28) (D. Mass. 1996) (finding that a tax-exempt bond qualified as "financial assistance" under Section 3605). However, claims brought under this statute must show discrimination to prospective residents, not prospective developers.³ (/case/sims-v-tex-dept-of-hous-cmty-affairs#idm140357851150080) Sims relies mainly on the Supreme Court's decision in *Inclusive*

vii

Denied Meaningful Access

Section 504 and 12132 and Texas Gov't Code 2306.066(e)

Moreover, as long as a person is not denied "meaningful access" to participate in or enjoy the benefits of a program, there is no ADA violation. *Alexander v. Choate*, 469 U.S. 287, 301 (/case/alexander-v-choate#p301) (1985) ("The balance struck . . . requires that an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers."). Sims admitted that at least one of his applications was recommended for consideration by the Board, though it ultimately was rejected. Dkt. No. 8 at 6. He makes no allegations in his complaint to suggest how his ability to apply for the tax credits was in any way impaired by TDHCA on the basis of his disabilities, and therefore has failed to plead that he was denied meaningful access to participate in the program. Sims has thus failed to state a claim under the ADA.

viii

Discriminatory Intent or Purpose

The Qualified Allocation Plan

I am a potential low income resident and in a protected group or class. The current Allocation Plan does not provide equal protection for potential residents. The individual administers a variety of federally assisted programs, "with the goal of providing individuals and families of low and very low who are not assisted by private enterprise or other governmental programs"ix

The Qualified Allocation Plan has a discriminatory purpose and intent that violated the Equal Protection Clause of the 14th Amendment in the most crystal clear. There is no provision for the low income residents that have no assistance from private enterprise or other governmental programs that can decide to just help themselves. The Qualified Allocation Plan restricts the housing choice of the potential resident to be dependants upon someone else, rather than encourage self help as a housing choice in the rental housing market.

The QAP and the Practice intentionally does not give equal protections for adults still in high school protected by Individual with Disabilities Education Act. These students ages 18-21 take the same EOC exams. As a matter of fact the rules discourages the development of Supportive Housing for persons with disabilities by giving less points for education excellence.

village of Arlington Heights v. Metropolitan Hous. Devel. Corp., 429 U.S. 252, 264-65 (1977) (1977) (“Proof of racially discriminate intent or purpose is required to show a violation of the Equal Protection Clause.”). Even assuming the facts as true, statistics by themselves do not provide a basis for an Equal Protection claim. Sims does not state that there is a discriminatory intent or purpose behind the allocation, but only that by “[G]oogl[ing] the persons to determine the race if [he] is not familiar with the name,” he contends the allocation of tax credits disproportionately disadvantages African American developers.

I requested a reasonable accommodation according to TAC 1.1

The request was to treat what staff calls a material deficiency as a administrative deficiency and not terminate my application and attempt to satisfy Texas Government Code 2306.066(e) Section 504 of the Rehabilitation Act, and Section 12132 of the American with Disabilities Act.

My Application was terminated due to the rationale of Sharon Gamble and Marni Holloway the application review disclosed missing details. These details have been categorized as material by the individuals. The most significant I have been accused of signing a certification that there was no negative site features. According to Sharon Gamble and Marni Holloway the education information I inserted as part of the application submission has a school that had not “Met Standard”, which is true, but their position is inconsistent with the QAP.

2016 Comprehensive Biennial Report on Texas Public Schools

A Report to the 85th Legislature
from the Texas Education Agency
March 2017

Monitoring Statuses for 2015-16

In 2015-16, TEA integrated federally required determinations into the overall PBM System. The four federal indicators that contribute to a district's special education determination status (State Performance Plan Compliance Indicators 9, 10, 11, 12, and 13; data integrity; uncorrected noncompliance; and audit findings) were evaluated along with the PBMAS indicators to determine a district's integrated stage of intervention/determination status for special education. For the 2015-16 school year, districts received one of the following special education intervention stages/determination statuses, which were also reported on the Texas Academic Performance Report:

2016 Comprehensive Biennial Report on Texas Public Schools

Not Staged or Stage 1: Meets Requirements;

Stage 2: Needs Assistance;

Stage 3: Needs Intervention; or

Stage 4: Needs Substantial Intervention.

Stage 2 Intervention: TAIS Activities. A district identified at this level of intervention was required to complete the same activities as in Stage 1 Intervention, complete all review materials by a specified date, and retain all materials at the district. Based on a random and/or stratified selection process, the district also may have been required to submit the materials to TEA for review and verification.

Stage 3 Intervention: TAIS Activities. A district identified at this level of intervention was required to complete the same activities as in Stage 2 Intervention and a compliance review to identify areas of performance concern. The purpose of the compliance review was to ensure the district was implementing the program as required by federal or state statute or regulation. The district was required to submit the targeted improvement plan to TEA by a specified date and report progress on the targeted improvement plan quarterly.

Appendix 7-A1. Improvement Required (IR) School Districts and Campuses, 2015 (continued)							
District	Campus	Consecutive Years IR	Alt. Ed. Accountability	Index* Not Met			
				1	2	3	4
BEN BOLT-PALITO BLANCO ISD	BEN BOLT MIDDLE	1		■			
BIG SPRING ISD	BIG SPRING INT	1		■	■		
	GOLIAD EL	4		■			
	KENTWOOD EL	4		P ²	P	P	P
	MARCY EL	4		■			
	MOSS EL	1		■			
	WASHINGTON EL	4		■			
BLOOMINGTON ISD	BLOOMINGTON J H	3		■			■
BORGER ISD	CROCKETT EL	1		■	■		
	GATEWAY EL	1		P	P	P	P
BRAZOS SCHOOL FOR INQUIRY & CREATI	PAUL BELTON EL	1		P	P	P	P
	BRAZOS SCHOOL FOR INQUIRY AND CREA	1					■
BRAZOSPORT ISD	JANE LONG EL	3		■	■	■	
	O A FLEMING EL	3		■	■	■	■
	O'HARA LANIER MIDDLE	3		■	■	■	■
	VELASCO EL	3		■	■		
BRENHAM ISD	ALTON EL	2				■	
BROADDUS ISD	BROADDUS EL	1		■	■	■	
BROOKS ACADEMY OF SCIENCE AND ENGI	BROOKS ESTRELLA ACADEMY	1		■	■	■	■
	BROOKS INTERNATIONAL STUDIES	1			■		■
	ACADE						
BROOKS COUNTY ISD	FALFURRIAS J H	1		■		■	
BRYAN ISD	ANSON JONES EL	1		■			■
	BEN MILAM EL	2		■		■	■
	FANNIN EL	1		■			■

The Qualified Allocation Plan plainly states the school must have not “Met Standard” for 3 years and by below at least one point of the standard of the current year.

Appendix 7-A2. Improvement Required (IR) School Districts and Campuses, 2016 (continued)							
District	Campus	Consecutive Years IR	Alt. Ed. Accountability	Index* Not Met			
				1	2	3	4
BRENHAM ISD	ALTON EL	3		■	■		
BROADDUS ISD	BROADDUS EL	2		■	■	■	■
BROWNFIELD ISD	BRIGHT BEGINNINGS ACADEMIC	1		P ²	P	P	P
	CENTER						
	COLONIAL HEIGHTS EL	1		P	P	P	P
BRUCEVILLE-EDDY ISD	OAK GROVE EL	1		■	■	■	■
	BRUCEVILLE-EDDY EL	1		■	■	■	■
BRYAN ISD	JAMES EARL RUDDER H S	1		■	■		
	MARY BRANCH EL	1		■	■		

Interference with aiding persons with disabilities with Supportive Housing.

Appendix 7-G1. Special Education Monitoring Status, Districts in Stage 3 Intervention, 2014-15			
District	Status	District	Status
Alto ISD*	Completed: Routine Follow-up	La Marque ISD	Year After TEA On-Site Action: Routine Follow-up
Arkansas Pass ISD	Completed: Routine Follow-up	La Vega ISD	Completed: Routine Follow-up
Arlington ISD	Completed: Routine Follow-up	Livingston ISD	Completed: Routine Follow-up
Athens ISD	Completed: Routine Follow-up	Lookhart ISD	Completed: Routine Follow-up
Bandera ISD	Completed: Routine Follow-up	Longview ISD	Oversight/ Sanction/ Intervention
Barstow ISD	Oversight/ Sanction/ Intervention	Luling ISD	Completed: Routine Follow-up
Bay City ISD	Completed: Routine Follow-up	Manor ISD	Oversight/ Sanction/ Intervention
Beaumont ISD	Year After TEA ² On-Site Action: Routine Follow-up	Marlin ISD	TEA Integrated On-site Action
Bloomington ISD	Oversight/ Sanction/ Intervention		Completed: Routine Follow-up
Bryan ISD	Year After TEA On-Site Action: Routine Follow-up	Mexis ISD	TEA Integrated On-site Action
			Completed: Routine Follow-up

There is only one solution to this problem for the Bryan ISD. Increase the Housing Availability for low income residence in the school zone, to lower the percentage of special needs taking the

mandatory end of course exams and provide Supportive Housing to the persons with disabilities existing high school that are categorized as non goal oriented transition to independent living.

**Appendix 2-J. STAAR End-of-Course
Participation and Performance, English I, English II,
Algebra I, Biology, and U.S. History, by Student Group, 2015 and 2016**

Group	2015			2016		
	Tested	Achieved (%)		Tested	Achieved (%)	
		Level II	Level III		Level II	Level III
English I						
All Students	438,934	61	8	459,644	60	7
African American	59,583	49	3	62,909	49	3
American Indian	1,627	58	7	1,738	57	6
Asian	15,558	83	32	16,933	83	30
Hispanic	231,074	53	4	247,543	53	4
Pacific Islander	575	65	10	634	64	8
White	123,027	78	14	121,799	76	13
Multiracial	7,258	74	13	7,792	73	14
At-Risk	244,544	39	1	265,741	39	1
Economically Disadvantaged	252,355	49	3	271,843	49	3
English Language Learner	50,024	16	0	60,377	19	0
Special Education	38,177	14	0	43,832	13	0
English II						
All Students	396,183	64	5	420,682	64	7
African American	53,814	51	2	57,125	52	3
American Indian	1,526	66	4	1,574	62	6
Asian	14,630	82	22	16,401	82	29
Hispanic	202,661	57	2	219,918	56	3
Pacific Islander	580	65	5	596	63	6
White	116,073	80	8	117,498	80	12
Multiracial	6,674	78	8	7,215	77	13
At-Risk	206,312	41	1	228,346	41	1
Economically Disadvantaged	216,141	53	1	234,561	52	2
English Language Learner	36,963	18	0	45,812	17	0
Special Education	31,251	17	0	34,257	16	0
Algebra I						
All Students	422,519	77	20	428,055	77	23
African American	56,791	66	9	58,289	65	11
American Indian	1,612	75	17	1,601	72	20
Asian	15,957	94	59	16,406	94	66
Hispanic	218,859	73	14	225,367	73	17
Pacific Islander	634	79	24	616	77	25
White	121,120	87	30	117,841	86	34
Multiracial	7,279	84	27	7,634	83	32
At-Risk	223,230	63	4	234,759	63	6
Economically Disadvantaged	238,984	70	12	247,918	70	15
English Language Learner	43,636	52	4	49,941	55	6
Special Education	34,515	32	2	39,119	32	2

Note: Results are based on STAAR, STAAR A, and STAAR L combined, as applicable (see Table 2.1 on page 43).

Interferes with the aiding if the Special Needs Population or Persons with Disabilities to live in Supportive Housing 3617 of the FHA and 12202 of the ADA.

Denied meaningful access because I failed to sign an 811 agreement due to my disability and denied a reasonable accommodation to correct the situation.

Because the difference between individual and official capacity suits is a meaningful one, the Court should determine whether Sims' Original or Amended Complaints can be read to assert any individual capacity claims. "In the Fifth

Moreover, even if Sims has stated individual capacity claims, those claims should be dismissed. First, he has not alleged that Defendant Ozer, Chairman of the Department's Board, played a role in any of the decisions at issue in the Complaint. Personal involvement is a critical component of individual capacity claims. *See generally Thompson v. Steele*, 709 F.2d 381, 382 (5th Cir. 1983), *cert. denied*, 464 U.S. 897 (1983) ("Certainly § 1983 does not give a cause of action based on the conduct of subordinates. Personal involvement is an essential element in a civil rights cause of action." (citation omitted)). With respect to Defendant Irvine, Sims attached a letter as an exhibit to his Amended Complaint in which Irvine denied Sims' appeal of one of his tax credit applications. Docket Entry No. 8-1 at 68. Even if the Court finds this sufficient to state individual capacity claims against Irvine, those claims should still be dismissed under Rule 12(b)(6). As discussed in Section B, *infra*, the denial of the tax credit applications does not violate the Fair Housing Act, the ADA, the Rehabilitation Act, or the Fourteenth Amendment. Furthermore, Irvine would also be entitled to qualified immunity because Sims has not alleged that Irvine violated any clearly established constitutional or statutory rights. *Trent v. Wade*, 776 F.3d 368, 377 (5th Cir. 2015) (requiring a plaintiff to show a violation of a clearly established constitutional or statutory right to avoid application of qualified immunity defense); *see, e.g., Taylor v. City of Shreveport*,

xi

Based upon the above insert and in the words of the Assistant Attorney General, filing appeals to the Board of Director is moot. Due to the fact that the Executive Director and the Board have no personal involvement.

Respectfully Submitted

ⁱ Texas Assistant Attorney General Mark Abrams on behalf of Defendants Texas Department of Housing and Community Affairs, Paul Ozer and Tim Irvin's Motion to dismiss Plaintiff Amended Complaint. 9/14/2016

ⁱⁱ United States Magistrate Report and Recommendation November 18, 2016, page 4 and 5.

ⁱⁱⁱ United States Magistrate Report and Recommendation November 18, 2106 page 6.

^{iv} United States Magistrate Report and Recommendation November 18, 2016 page 6

^v United States Magistrate Report and Recommendation November 18, 2016 page 7

^{vi} Report and Recommendation U. S. Magistrate November 18, 2016

^{vii} Report and Recommendation U.S. Magistrate November 18, 2018

^{viii} Report and Recommendation U.S. Magistrate November 18, 2018

^{ix} Texas Assistant Attorney General Mark Abrams on behalf of Defendants TDHCA, Paul Ozer and Tim Irvine's Motion to Dismiss Plaintiff's Amended Complaint III. Page 2 and 3.

^x Texas Assistant Attorney General Mark Abrams on behalf of Defendants TDHCA Paul Ozer and Tim Irvine's Reply in Support of Motion to Dismiss Plaintiff's Amended Complaint.

^{xi} Texas Assistant Attorney General Mark Abrams on behalf of Defendants TDHCA Paul Ozer and Tim Irvine's Reply in Support of Motion to Dismiss Plaintiff's Amended Complaint

June 28, 2016

Honorable Mike Morath
Commissioner
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701

Dear Commissioner Morath:

I am writing to advise you of the U. S. Department of Education's (Department) 2016 determination under section 616 of the *Individuals with Disabilities Education Act (IDEA)*. The Department has determined that Texas needs assistance in implementing the requirements of Part B of the *IDEA*. This determination is based on the totality of the State's data and information, including the Federal fiscal year (FFY) 2014 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

Your State's 2016 determination is based on the data reflected in the State's "2016 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is individualized for each State and consists of:

- (1) a Compliance Matrix that includes scoring on Compliance Indicators and other compliance factors;
- (2) a Results Matrix that includes scoring on Results Elements;
- (3) a Compliance Score and a Results Score;
- (4) an RDA Percentage based on both the Compliance Score and the Results Score; and
- (5) the State's Determination.

The RDA Matrix is further explained in a document, entitled "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2016: Part B" (HTDMD).

OSEP is continuing to use both results data and compliance data in making determinations in 2016, as it did for Part B determinations in 2014 and 2015. (The specifics of the determination procedures and criteria are set forth in the HTDMD and reflected in the RDA Matrix for your State.) In making Part B determinations in 2016, OSEP continued to use results data related to:

- (1) the participation of children with disabilities (CWD) on regular Statewide assessments;
- (2) the participation and performance of CWD on the most recently administered (school

Step 1

Texas 2016 Part B Results-Driven Accountability Matrix

Results-Driven Accountability Percentage and Determination¹

Percentage (%)	Determination
72.5	Needs Assistance

Results and Compliance Overall Scoring

	Total Points Available	Points Earned	Score (%)
Results	24	12	50.00
Compliance	20	19	95.00

Exiting Data Elements

Exiting Data Elements	Performance (%)	Score
Percentage of Children with Disabilities who Dropped Out	15	7
Percentage of Children with Disabilities who Graduated with a Regular High School Diploma ²	57	0

EXITING SPECIAL EDUCATION AND SCHOOL, AGES 14 THROUGH 21

Method of Exiting:	Graduated with a Regular High School Diploma (%)	Received a Certificate (%)	Dropped Out (%)	Reached Maximum Age
SY 2013-14	57.2	26.7	15.5	0.2
<p>Explanatory Note: The percentages were calculated by dividing the number of students ages 14 through 21 served under IDEA, Part B, reported in the exit reason category (i.e., <i>graduated with a regular high school diploma, received a certificate, dropped out, or reached maximum age</i>) for the year by the total number of students ages 14 through 21 served under IDEA, Part B, reported in the five categories that represent exiting from special education and school (i.e., <i>graduated with a regular high school diploma, received a certificate, dropped out, reached maximum age for services, and died</i>) for that year, then multiplying the result by 100. The U.S. Department of Education collects data on seven categories of exiters from special education (i.e., the Part B program in which the student was enrolled at the start of the reporting period). The categories include five categories of exiters from both special education and school (i.e., <i>graduated with a regular high school diploma, received a certificate, dropped out, reached maximum age for services, and died</i>) and two categories of exiters from special education, but not school (i.e., <i>transferred to regular education and moved, known to be continuing in education</i>). The seven categories are mutually exclusive. Students with disabilities reported in the Graduated with a Regular High School Diploma category represent students who exited an educational program through receipt of a high school diploma identical to that for which students without disabilities are eligible. <u>These students met the same standards for graduation as those for students without disabilities.</u> As defined in 34 CFR 300.102(a)(3)(iv), "the term regular high school diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or GED." The percentages of students who exited special education and school by graduating as required under IDEA and included in this report are not comparable to the graduation rates required for reporting in CSPR. The data used to calculate percentages of students who exited special education and school by graduating or dropping out are different from those used to calculate other graduation and dropout rates. In particular, states often use data such as the number of students who graduated in four years with a regular high school diploma and the number of students who entered high school four years earlier to determine their graduation rates for the CSPR. These exiting data are from the reporting period between July 1, 2013 and June 30, 2014. Data reported for IDEA 2013-14 Exiting.</p>				

2014 Local Educational Agency (LEA) Determination Report

Under §616 of the Individuals with Disabilities Education Act (IDEA), States are required to make annual determinations about the performance of the LEAs using the categories of Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention. Under §616(f) (34 CFR §300.608(a)), if, in making its annual Determinations, the state educational agency (SEA) determines that any LEA is not meeting the requirements of Part B, including meeting compliance targets in the state's performance plan (SPP) Indicators 9, 10, 11, 12, and 13, the SEA must prohibit that LEA from reducing its maintenance of effort (MOE) under IDEA §613(a)(2)(C) for the 2014-2015 fiscal year. Therefore, if the LEA's Determination status is Needs Assistance, Needs Intervention, or Needs Substantial Intervention, the LEA is not eligible to voluntarily reduce MOE for the 2014-2015 fiscal year based on the flexibility option of 34 CFR §300.205.

021902 **Bryan ISD** **06**
 County-District District Name Region

2014 LEA Determination Status: Meets Requirements

LEA eligibility status to voluntarily reduce MOE: eligible

The following areas were reviewed in making the LEA's Determination status:

Determination Elements	Rating
1. State Performance Plan (SPP) Compliance Indicators	0
2. Valid, Reliable, and Timely Data	0
3. Status of Uncorrected Noncompliance	0
4. Financial Audits	0
5. Program Effectiveness	0
6. Significant Disproportionality	0
Total	0

Crosswalk of Rating Scale to Determination Level

Determination Level	Total Rating Points
Meets Requirements	0 -1 Points
Needs Assistance	2 Points
Needs Intervention	3 Points
Needs Substantial Intervention	4 or more Points

**Texas Education Agency
 2014-15 School Report Card
 THE MARY CATHERINE HARRIS SCHOOL-5 (021902017)**

Campus Name: 021902017
 Campus Type: High School
 Total Students: 279
 Grade Span: 09 - 12

2015 Performance Index

State accountability ratings are based on four performance indexes: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar chart below illustrates the index scores for this campus. The target score required to meet each index standard is indicated below the index description and as a line on each bar. In 2015, to receive the base Standard or Met Alternative Standard accountability rating, districts and campuses must meet targets on three indexes: index 1 for index 2 and index 3 and index 4.



2015 Accountability Rating

Met Alternative Standard

For 2015 base accountability, campuses are rated as **Met Standard**, **Improvement Required**, or **Not Rated**. The rating, **Met Alternative Standard**, is assigned to charter and alternative education campuses included under alternative education accountability (AEA) provisions.

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State
Attendance Rate (2013-14)	76.7%	94.0%	95.2%
Enrollment by Race/Ethnicity			
African American	24.7%	18.2%	12.6%
Hispanic	60.2%	55.0%	52.0%
White	14.2%	23.2%	28.2%
American Indian	0.0%	0.2%	0.4%
Asian	0.7%	0.4%	3.9%
Pacific Islander	0.0%	0.1%	0.1%
Two or More Races	0.0%	1.5%	2.0%
Enrollment by Student Group			
Economically Disadvantaged	73.8%	73.6%	58.6%
English Language Learners	18.8%	23.3%	18.2%
Special Education	6.5%	7.3%	8.5%
Mobility Rate (2013-14)	70.8%	21.2%	18.2%

**Texas Education Agency
2015-16 School Report Card
BRYAN COLLEGIATE H S (021902003)**

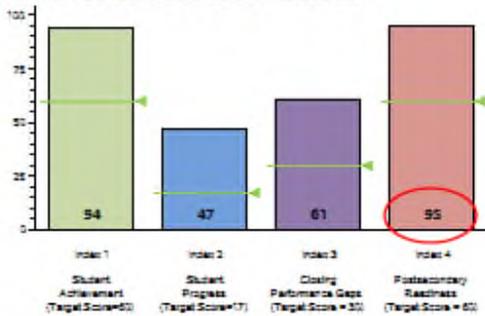
District Name: BRYAN ISD
Campus Type: High School

Total Students: 430
Grade Span: 09 - 12

Attendance 430

2016 Performance Index

State accountability ratings are based on four performance indices: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar graph below illustrates the index scores for this campus. The score required to meet each index's target is indicated below the index description and as a line on each bar. In 2016, to receive the Met Standard or Met Alternative Standard accountability rating, districts and campuses must meet targets on three indices: Index 1 or Index 2 and Index 3 and Index 4.



2016 Accountability Rating

Met Standard

For 2016 state accountability, campuses are rated as Met Standard, Improvement Required, or Not Rated. The rating, Met Alternative Standard, is assigned to charters and alternative education campuses evaluated under alternative education accountability (AEA) provisions.

Distinction Designations

ELA/Reading	Mathematics
Science	Social Studies
Top 25% Student Progress	Top 25% Closing Perform Gaps
Postsecondary Readiness	

Campuses that receive a rating of Met Standard are eligible for as many as seven distinction designations: Academic Achievement in English Language Arts (ELA)/Reading, Academic Achievement in Mathematics, Academic Achievement in Science, Academic Achievement in Social Studies, Top 25% Student Progress, Top 25% Closing Performance Gaps, and Postsecondary Readiness.

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State
Attendance Rate (2014-15)	97.8%	96.0%	95.7%
Enrollment by Race/Ethnicity			
African American	4.7%	19.4%	12.6%
Hispanic	66.3%	54.9%	52.2%
White	26.0%	23.3%	28.5%
American Indian	0.5%	0.2%	0.4%
Asian	1.2%	0.4%	4.0%
Pacific Islander	0.0%	0.1%	0.1%
Two or More Races	1.4%	1.7%	2.1%
Enrollment by Student Group			
Economically Disadvantaged	67.2%	74.7%	59.0%
English Language Learners	6.0%	73.2%	18.5%
Special Education	1.6%	8.6%	8.6%
Mobility Rate (2014-15)	10.2%	22.7%	16.5%

Special Education 1,6 percent

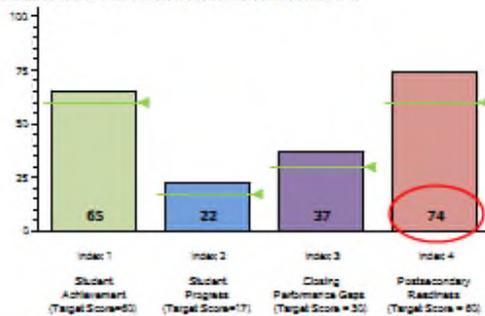
**Texas Education Agency
2015-16 School Report Card
TRAVIS B BRYAN H S (021902001)**

District Name: **BRYAN ISD**
Campus Type: **High School**

Total Students: **2,051**
Grade Span: **09 - 12**

2016 Performance Index

State accountability ratings are based on four performance indices: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar graph below illustrates the index scores for this campus. The score required to meet each index's target is indicated below the index description and as a line on each bar. In 2016, to receive the Met Standard or Met Alternative Standard accountability rating, districts and campuses must meet targets on three indices: Index 1 or Index 2 and Index 3 and Index 4.



2016 Accountability Rating

Met Standard

For 2016 state accountability, campuses are rated as **Met Standard**, **Improvement Required**, or **Not Rated**. The rating, **Met Alternative Standard**, is assigned to charters and alternative education campuses evaluated under alternative education accountability (AEA) provisions.

Distinction Designations

ELA/Reading	Mathematics
Science	Social Studies
Postsecondary Readiness	

Campuses that receive a rating of **Met Standard** are eligible for as many as seven distinction designations: Academic Achievement in English Language Arts (ELA)/Reading, Academic Achievement in Mathematics, Academic Achievement in Science, Academic Achievement in Social Studies, Top 25%: Student Progress, Top 25%: Closing Performance Gaps, and Postsecondary Readiness.

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State
Attendance Rate (2014-15)	95.2%	96.0%	95.7%
Enrollment by Race/Ethnicity			
African American	17.9%	19.4%	12.6%
Hispanic	50.2%	54.9%	52.2%
White	29.9%	23.3%	28.5%
American Indian	0.0%	0.2%	0.4%
Asian	0.6%	0.4%	4.0%
Pacific Islander	0.0%	0.1%	0.1%
Two or More Races	1.3%	1.7%	2.1%
Enrollment by Student Group			
Economically Disadvantaged	63.9%	74.7%	59.0%
English Language Learners	11.3%	23.3%	18.5%
Special Education	8.7%	8.6%	8.6%
Mobility Rate (2014-15)	19.4%	22.7%	16.5%

	Campus	District	State
Class Size Averages by Grade or Subject			
Secondary			
English/Language Arts	16.1	16.3	17.1
Foreign Languages	17.4	19.9	19.1
Mathematics	22.5	19.8	18.1
Science	18.3	19.3	19.1
Social Studies	17.5	18.8	19.5

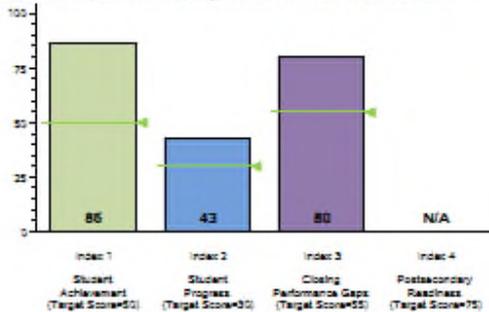
**Texas Education Agency
2012-13 School Report Card
NEAL EL (021902118)**

District Name: **BRYAN ISD** Campus Enrollment: 508
 Campus Type: **Elementary** Grade Span: **KG - 05**

Increase in attendance non special needs, higher Index 1 score.

2013 Performance Index

State accountability ratings are based on four performance indexes: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar chart below illustrates the index scores (ranging from 0 to 100) for this campus for a given index. The Target Score -- the score required to meet each index's standard -- is indicated below the index description and as a line on each bar. In order to receive the Met Standard accountability rating, the campus must have met or exceeded the target score on each index evaluated.



2013 Accountability Rating
Met Standard

For 2013 state accountability, campuses are rated as **Met Standard**, **Improvement Required** or **Not Rated**. The rating, **Met Alternative Standard**, is assigned to charters and alternative education campuses evaluated under alternative education accountability (AEA) provisions.

Distinction Designations
Reading/ELA

Distinction designations recognize outstanding academic achievement in reading/English language arts and mathematics. Campuses that receive a rating of **Met Standard** are eligible for three distinction designations: **Top 25% Student Progress**, **Academic Achievement in Reading/English language arts (ELA)**, and **Academic Achievement in Mathematics**.

School and Student Information

Special need population below the district and state population

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State		Campus	District	State
Attendance Rate (2011-12)	98.3%	95.6%	95.9%	Class Size Averages by Grade or Subject			
Enrollment by Race/Ethnicity				Elementary			
African American	25.4%	20.1%	12.7%	Kindergarten	22.6	20.1	19.6
Hispanic	71.7%	52.4%	51.3%	Grade 1	17.0	18.6	19.5
White	1.8%	25.8%	30.0%	Grade 2	16.0	18.6	19.4
American Indian	0.2%	0.2%	0.4%	Grade 3	17.7	17.8	19.3
Asian	0.0%	0.3%	3.6%	Grade 4	17.3	17.7	19.5
Pacific Islander	0.0%	0.1%	0.1%	Grade 5	20.3	19.2	21.4
Two or More Races	1.0%	1.1%	1.8%				
Enrollment by Student Group							
Economically Disadvantaged	96.3%	73.2%	60.4%				
English Language Learners	44.1%	19.2%	17.1%				
Special Education	5.5%	7.5%	8.5%				
Mobility Rate (2011-12)	13.1%	23.1%	17.9%				

School Financial Information (2011-12)

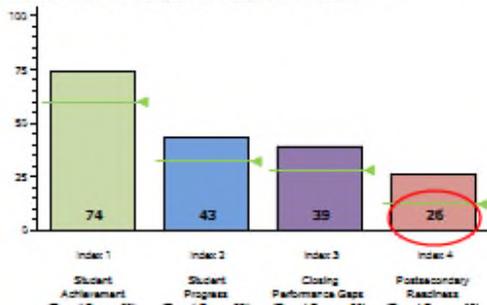
**Texas Education Agency
2015-16 School Report Card
NEAL EL (021902118)**

District Name: BRYAN ISD
Campus Type: Elementary

Total Students: 493
Grade Span: KG + 05

2016 Performance Index

State accountability ratings are based on four performance indices: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar graph below illustrates the index scores for this campus. The score required to meet each index's target is indicated below the index description and as a line on each bar. In 2016, to receive the Met Standard or Met Alternative Standard accountability rating, districts and campuses must meet targets on three indices: Index 1 or Index 2 and Index 3 and Index 4.



2016 Accountability Rating

Met Standard

For 2016 state accountability, campuses are rated as **Met Standard**, **Improvement Required**, or **Not Rated**. The rating, **Met Alternative Standard**, is assigned to charters and alternative education campuses evaluated under alternative education accountability (AEA) provisions.

Lower attendance
lower index 1 score
increases Special
needs percentage

Increase in special needs population

(Target Score=60) (Target Score=42) (Target Score = 28) (Target Score = 12)

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State		Campus	District	State
Attendance Rate (2014-15)	97.6%	96.0%	95.7%	Class Size Averages by Grade or Subject			
Enrollment by Race/Ethnicity				Elementary			
African American	25.2%	19.4%	12.6%	Kindergarten	18.0	18.1	18.9
Hispanic	70.2%	54.9%	52.2%	Grade 1	18.0	18.7	19.1
White	3.9%	23.3%	28.5%	Grade 2	19.5	18.5	19.1
American Indian	0.6%	0.2%	0.4%	Grade 3	17.0	18.0	19.1
Asian	0.0%	0.4%	4.0%	Grade 4	16.4	17.3	19.0
Pacific Islander	0.0%	0.1%	0.1%	Grade 5	25.5	21.1	20.8
Two or More Races	0.2%	1.7%	2.1%				
Enrollment by Student Group							
Economically Disadvantaged	96.1%	74.7%	59.0%				
English Language Learners	49.9%	23.3%	18.5%				
Special Education	6.3%	8.6%	8.6%				
Mobility Rate (2014-15)	21.1%	22.7%	16.5%				

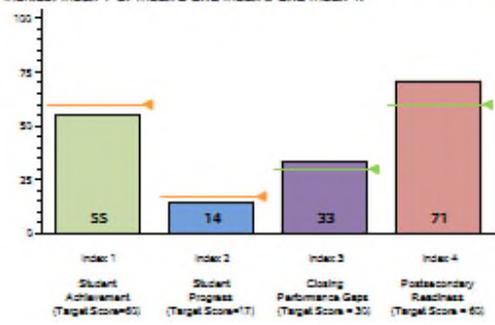
Not meeting the demand for Housing for persons with disabilities

**Texas Education Agency
2015-16 School Report Card
JAMES EARL RUDDER H S (021902002)**

District Name: **BRYAN ISD** Total Students: 1,646
 Campus Type: **High School** Grade Span: 09 - 12

2016 Performance Index

State accountability ratings are based on four performance indices: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar graph below illustrates the index scores for this campus. The score required to meet each index's target is indicated below the index description and as a line on each bar. In 2016, to receive the Met Standard or Met Alternative Standard accountability rating, districts and campuses must meet targets on three indices: Index 1 or Index 2 and Index 3 and Index 4.



2016 Accountability Rating

Improvement Required

For 2016 state accountability, campuses are rated as **Met Standard**, **Improvement Required**, or **Not Rated**. The rating, **Met Alternative Standard**, is assigned to charters and alternative education campuses evaluated under alternative education accountability (AEA) provisions.

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State
Attendance Rate (2014-15)	95.3%	96.0%	95.7%
Enrollment by Race/Ethnicity			
African American	24.4%	19.4%	12.6%
Hispanic	45.1%	54.9%	52.2%
White	27.8%	23.3%	28.5%
American Indian	0.2%	0.2%	0.4%
Asian	0.2%	0.4%	4.0%
Pacific Islander	0.2%	0.1%	0.1%
Two or More Races	1.2%	1.7%	2.1%
Enrollment by Student Group			
Economically Disadvantaged	69.6%	74.7%	59.0%
English Language Learners	8.5%	73.3%	18.5%
Special Education	9.8%	8.6%	8.6%
Mobility Rate (2014-15)	20.8%	22.7%	16.5%

Class Size Averages by Grade or Subject

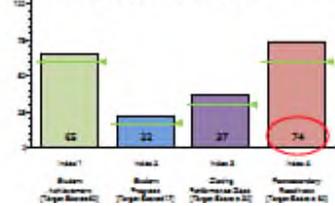
	Campus	District	State
Secondary			
English/Language Arts	14.8	16.3	17.1
Foreign Languages	19.3	19.9	19.1
Mathematics	18.3	19.8	18.1
Science	18.1	19.3	19.1
Social Studies	17.9	18.8	19.5

Special Needs Attendance higher than state and district.

Comparison of Rudder High School Special Needs Population to Bryan HS Special Needs population

2016 Performance Index

State accountability ratings are based on four performance index: Student Achievement, Student Progress, Closing Performance Gaps, and Postsecondary Readiness. The bar graph below illustrates the index score for this campus. The score would also meet each index target if indicated below the index description and as a line on the graph. In 2016, to receive the Met Standard or Met Alternative Standard accountability rating, district and campus must meet targets on three index: index 1 or index 2 and index 3 and index 4.



2016 Accountability Rating

Met Standard

For 2016 state accountability, campuses are rated as: Met Standard, Improvement Required, or Not Rated. The rating, Met Alternative Standard, is assigned to private and alternative education campuses evaluated under alternative education accountability (AEA) provisions.

Distinction Designations

ELA/Reading	Mathematics
Science	Social Studies
Postsecondary Readiness	

Campuses that receive a rating of Met Standard are eligible for as many as seven distinction designations: Academic Achievement in English Language Arts (ELA)/Reading, Academic Achievement in Mathematics, Academic Achievement in Science, Academic Achievement in Social Studies, Top 25% Student Progress, Top 25% Closing Performance Gaps, and Postsecondary Readiness.

School and Student Information

This section provides demographic information about the campus, including attendance rates; enrollment percentages for various student groups; student mobility rates; and class size averages at the campus, district, and state level, where applicable.

	Campus	District	State
Attendance Rate (2014-15)	95.2%	95.0%	95.7%
Enrollment by Race/Ethnicity			
African American	17.9%	19.4%	12.6%
Hispanic	50.2%	54.9%	52.2%
White	29.9%	23.3%	28.5%
American Indian	0.0%	0.2%	0.4%
Asian	0.6%	0.4%	4.0%
Pacific Islander	0.0%	0.1%	0.1%
Two or More Races	1.3%	1.7%	2.1%
Enrollment by Student Group			
Economically Disadvantaged	63.9%	74.7%	59.0%
English Language Learners	11.3%	23.3%	18.5%
Special Education	8.7%	8.6%	8.6%
Mobility Rate (2014-15)	19.4%	22.7%	16.5%

Class Size Averages by Grade or Subject

	Campus	District	State
Secondary			
English/Language Arts	16.1	16.3	17.1
Foreign Languages	17.4	19.9	19.1
Mathematics	22.5	19.8	18.1
Science	18.3	19.3	19.1
Social Studies	17.5	18.8	19.5

DATE OF MEETING: _____
TEC §29.005(B-1)(1)

Individualized Education Program (IEP)

The school district may include in this section student identifying information (such as name, address, date of birth, etc.).

*Please duplicate sections B – G, as needed.

ANNUAL GOAL AREA (content, skill and/or service): _____

PRESENT LEVEL OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE including how student's disability affects involvement and progress in the general education curriculum, or, for a preschool child, how student's disability affects participation in appropriate activities: 34 CFR §300.320(a)(1)

MEASURABLE ANNUAL GOAL(S): 34 CFR §300.320(a)(2)(i)

HOW PROGRESS TOWARD MEETING ANNUAL GOAL(S) WILL BE MEASURED: 34 CFR §300.320(a)(3)(i)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

I. The Parties to This Complaint

1. The Parties

2. The Plaintiff is a citizen of the United States and resides in Parish of Webster State of Louisiana, which is this judicial district.
3. Defendant Sharon Gamble and Marni Holloway are employees of the Texas Department of Housing and Community Affairs (TDHCA). As employees of TDHCA the both are responsible for the direct administration of federal assistance TDHCA receives from the federal government, Marni Holloway is the Director of Multi-Family Finance and Sharon Gamble is the Administrator of the Competitive Tax Credit Program.
4. Defendants Marni Holloway and Sharon Gamble are being sued in their individual capacity as Director of Multi Family Finance and Administrator of the Competitive Tax Credit program as such it is their duty that federally funded programs are administered in accordance to federal laws.

II. Basis for Jurisdiction

- I. This action is to enforce Equal Protection under the 14th Amendment, Section 3605 of the Fair Housing Act, Section 504 of the Rehabilitation Act, and Section 12132 of the American with Disabilities Act.
- II. Section 3617 of the Fair Housing Act and Section 12203 (b) of the American with Disabilities Act.
- III. Section 3617 of the Fair Housing Act and Section 12203 (b) of the American with Disabilities Act.

III, Venue

Venue is proper since the plaintiff has no idea where the defendant resides and a substantial part of the event happened in Louisiana.

IV. Nature of Action

5. On March 16, 2017, I received an email from Sharon Gamble. Ms Gamble acting under the color of Texas Statute 2306 and several Texas Administrative Codes. The email was a termination of an application I submitted to TDHCA for housing development financing where I was to be a potential resident. This adverse action violated the FHA, the ADA, and Section 504 on the basis of disability when I requested to allow me to correct clerical error to the application

that I submitted to the staff to allow for the financing of Arlinda Gardens a housing development for person with disabilities and recovering from alcohol and drug addiction. Specifically I allege Marni Holloway and Sharon Gamble violate 42 U.S.C. Section 3605 of the FHA by denying or otherwise making unavailable such a transaction because of disability, violated 42 U.S.C. Section 3605 (a) by discriminating in the terms, conditions, or privileges of real estate related transactions with housing because of disability, Section 3605 (a) of the FHA by failing or refusing to make a reasonable accommodation in the rules, policies, practices, or services when such accommodation may have been necessary to afford persons with disabilities an equal opportunity to use and a dwelling.

6. I also allege the defendants 42 U.S.C Section 3617 of the FHA by coercing , intimidating, threatening, or interfering with the rights of persons in the exercise or enjoyment of, or because they exercised or enjoyed or aided persons with disabilities in exercising or enjoying, rights granted or protected by the FHA.
7. I also allege that the defendants violated 42 U.S.C. Section 12132 of the ADA by excluding persons with disabilities from participating in and denying them the benefits of services, programs, or activities of the Texas Department of Housing and Community Affairs and failing to make a reasonable modification in it policies, or procedures which excluded persons with disabilities from participating in or denied me the benefits of services, programs, or activities of the Texas Department of Housing and Community Affairs and violated 42 U.S.C, Section 12203(b) by coercing, intimidating, threatening, or interfering with an individual exercising or enjoying, or aiding others in exercising or enjoying rights granted and protected by the by the ADA.
8. The correspondence was from Marni Holloway also acting under the color of law. On March 16, I submitted a request for a reasonable accommodation to Sharon Gamble. The request was asking the staff to treat the deficiencies outlined in the notice from the department as an administrative deficiency rather than a material deficiency.

V. Statement of Claim

9. On March 16, 2017, I was in Shreveport Louisiana when I received the email from Sharon Gamble. On March 16, 2107, I called Marni Holloway and left a message that I would first talk to an attorney and that I would first request a reasonable accommodation from her to consider the deficiencies as administrative rather than material deficiencies. All the information that is required and the quantize compilation of data required by the

State Agency is done in Minden LA. All information is transmitted via an electronic server provided by the State Agency from Minden Louisiana..

10. March 16, 2107 I submitted a request for reasonable accommodation to Sharon Gamble, The request was to treat the deficiencies as administrative rather than material deficiencies, I inform Ms. Gamble the deficiencies were due to my ADHD and that this disorder causes me to have concentration problems and the hinders my attention to details What is ADHD, ADHD is a brain disorder that result n a pattern of inattention to details. On or about March 20, 2017, I received a email correspondence from Sharon Gamble, the email stated that the department could not receive my medical information is submitted to the department based upon HIPAA,
11. This information is the same information I have submitted to the courts that was sealed by use by the United States District Court in a previous complaint Rick Sims versus Zion Gardens Ltd. On March 22, I sent Ms. Gamble an email informing her that I disagree with her previous email regarding acceptance of the medical information I sent her under HIPAA, since it's the patients that control what third parties can have access to our personal health information. On March 22, 2017, I received an email correspondence from Sharon Gamble, the email had attached a letter stating that " TDHCA would like to extend an offer in submitting an appeal of the termination of the application" On March 22, 2017, I again sent Sharon Gamble an email informing her that was request was to treat the issues outlined in the termination letter as a administrative deficiency rather than a material deficiency.
12. What is a administrative deficiency? According to the Multi Family Rules an Administrative Deficiency is Information requested by Department Staff that is required that is required to clarify or correct one or more inconsistencies or provide non material missing information in the original application.
13. Some of the issues considered by Sharon Gamble and Marni Holloway were failing to sign an 811 agreement, also stated was that instead of giving a narration of the housing development that I had attached a 36 pages document, another items considered a material deficiency was that I did not reveal a negative site characteristic. I point these out because I did not have a negative site characteristic, according to the department a high school that has not yet a certain score for student achievement is considered a negative site characteristic

14. , The school in question is called Rudder High School, although it does not have the achievement score that meet the standard required by the department it had a very significant contributing factor, First of all the Bryan ISD, send all student that they have identified as part of the Individuals with Disabilities Education Act, to two high schools, from ages 15 to 17 they send these children with special needs to Rudder High School. Rudder High School has a special needs student population of 9.8 percent that takes the annual student assessment test, this percentage exceeds the district and state population percentage of 8.7 percent.
15. Once a child turns 18, the Bryan ISD send the adults to Bryan High School, where they are now categorized as non goal oriented and are given assistance in cooking, cleaning, basically just how to care for them self in a independent living environment.
16. The issue of the 811 omission was based upon them seeing where I wrote not applicable on the form. The 36 pages program manual give specific details on the responsibilities of the representative of the shelter plus care for the prospective disability resident and the responsibilities of the 811 program representatives for the prospective person with disabilities residents.
17. The 36 pages document that is one of the reasons for the termination because it is considered a material deficiency also stated that 20 to 25 percent of the housing units were to be restricted to persons with disabilities.
18. All the aforementioned did not require what the department is basing the reason for the termination of the application in addition to other deficiencies that I am sure I need to correct.
19. Knowing the above mentioned issues I simply requested that they grant me a reasonable accommodation because the issue are directly related to my functional brain disorder described as Attention Deficit Hyperactively Disorder, which Sharon Gamble knows and at this point she is being indifferent knowing the direction that I have submitted the application does not require outscoring developers based upon rules targeting developers.
20. I submitted the application based upon the fact that a potential resident protected by the ADA, Section 504, and Section 3605 of the FHA would not need approval from a city council to better his living conditions, the same person would not needs approval and support from State Representative to better his present living condition.
21. The department terminates the application for this very reasons and has failed to provide a reasonable accommodation and these error are directly due to my ADHD, and by

failing to grant me the request and terminating the application is interfering with the local community based organization and myself with helping other persons with disabilities living within the only school zones that has prepares Individual Education Plans (IEP) from Pre- K to adulthood

22. . On November 12, 2016, I received a telephone call from Terry Roberts; Mr. Roberts informed me that He had gotten my number from the Consultants list posted on the TDHCA website. Mr. Roberts informed me that he was an agent for a nonprofit entity that had been certified as a CHDO by the City of Bryan and asked if I could assist the entity with a tax credit application
23. I informed Mr. Roberts about a pending legal complaint that I had brought against TDHCA, Paul Over and Tim Irvine in their official capacity, I informed Mr. Roberts of my ADHD and the problems with concentration and attention to details. On or about November 23, 2016, I received the Recommendation and Ruling from United States Magistrate concerning the above mention lawsuit. On or about December 5,
24. I signed a consulting agreement with the entity No Limit International Economic Development Corp. On December 12, 2017 I signed an employment agreement with the Entity No Limit International Development Corp.
25. We agreed the organization would submit the application according the Recommendation and Ruling of the U S Magistrate. The Housing would be for persons with disabilities the nonprofit organization No Limit International Economic Development Corporation is a tax exempt organization whose purpose was to provide housing within the City of Bryan for low to moderate income earners. The nonprofit organization meets the definition of a Community Housing Development Organization (CHDO) 42 U.S.C. 12704.
26. I informed the CHDO board of directors which was comprised of at least 1/3 representation of low income persons that it must decide the manner of input from public officials. I pointed out to the CHDO, that the Texas State Statutes that regulate the Low Income Tax Credit Programs, is silent regarding the 2013 HUD Final Ruling on the HOME program. I informed the Board of Directors, the new ruling became effective in 2015 and that this year's Texas could forfeit 4.7 million dollars in CHDO set aside funds. I informed the board that under the new rules the department staff must now commitment funds to CHDO project based upon a new standard of submitting the application with a feasible project based upon a third party market study,

27. I showed the board the HUD data where Texas was ranked 44th out of 53 States in meeting the standard for the HOME Program. I also informed the Board of Directors that according to HUD 2017 Budget request that HUD was recommending the elimination of the CHDO set aside but the Participating Jurisdictions was still make efforts to get the involvement of CHDO's.
28. The CHDO agreed that it was to their belief that the community based groups to survive that a new plan of direction needed to be implemented that could overcome the deep pockets of the for profit developers. The CHDO and I agreed that we would submit the application to TDHCA, according to the HUD rule because the staff of the TDHCA is very predictable. We concluded that I would be paid a salary less than 80 percent of the median income and that I would be a rent paying tenant.
29. The Board and I concluded the Allocation Plan is based upon developers applying for financing to provide housing for renters, but what happens when the residents applies for himself in conjunction with the CHDO.
30. The first obstacle we encountered was when we sent out the notification to the State and local officials we had a meeting with the City of Bryan Community Development Department. We had already reviewed their ordinance for the agenda's and getting on the agenda. Prior to this meeting Informed the board of directors that there is a conflict of interest between the Texas State Statute and the Multi Family Rules of TDHCA, and the HUD rules for CHDO's.
31. According to the HUD rules if a Public Entity wished to organize a CHDO, it could but it could not have no more than 1/3 control directly or indirectly of the CHDO. According to the Texas State Statute the individual whom the State as designated to administer has to develop a plan for input from the State Representative, the Local Political Subdivision, and Community Support.
32. The Department that administers the multi family program has rules that gives the State Representative, and the Local Political Sub Division in direct control of a nonprofit meeting the criteria of 42 U.S.C 12704.
33. This is against the HUD rules when utilizing HOME funds for CHDO projects. Sharon Gamble and Marni Holloway are responsible for the oversight of these federal assistance program to the State of Texas, and are of the Section 504 standard, currently to be competitive they awards 17 points by submitting a resolution of support for the local city council and 8 points for a letter of support from the statement representative. I and Mr., T

Robert met with the Director of Community Development for the City of Bryan and the Assistant Director had discussed the project with them; we informed them that the project would be for person with disabilities and requested to be placed on the agenda to get the council input as required by the ordinance, that any employee can get an item on the agenda according to the city managers procedures.

34. . The city responded with indifference, the secretary for the State Representative also responded with indifference, believing it would deter us from submitting the application because we would not have the 25 points. On or about February 25, 2017.
35. The Board of Director met at 2002 State Hwy 21 East Bryan Texas, and adopted a resolution to salsify the State of Texas Government Code for Input for the State Representative and Input for the Local Political Sub division are approved by majority vote to allow representation on the board of directors of public official not to be no greater than 1/3 representation. Who are protected according to Section 12132 of the American with Disabilities Act and Section 504 of the Rehabilitation Act.
36. We are agreed that I would be paid a low income salary that would be less than 80 percent of the median income for the area and that I would be a resident in the community in one of the units at rent at 50 percent of the median rents.
37. On or about January 5, I submitted a pre application to TDHCA as a potential resident of a proposed housing development called Arlinda Gardens in Bryan Texas. On or about March 1, I submitted a final application to TDHCA for the proposed Housing development for persons with disabilities and as a potential resident.
38. The application TDHCA application number 17069 was submitted under the Final HOME Rule of 2013 by HUD and became effective 2015. According to the new HOME Rules Participating Jurisdictions are required to commitment CHDO set aside funds based upon a Non Profit with the minimum of 1/3 board members being low income residents or representatives from a low income community where the percentage the low income population exceeds 51 percents of the census tract. Another criteria required by the new rules was the submission of a third party market study to validate the feasibility of the project.
39. These rules were adopted and became effective well after any previous statutory mandates of the Texas State Legislature. Another criterion under the HOME rules established by HUD was that the nonprofit could have no more than 1/3 representation from public officials.

40. The board of Directors voted and approved by resolution to allow no more than 1/3 representation from public officials, presently based upon the letters from Marni Holloway and the scoring of the Multi Family Rules, the defendants are disregarding the Final Rules from HUD. The board of Director approved the input from public official to satisfy the Statutory Requirement of the Texas Legislature of Political Input, while maintaining control of the nonprofit by the low income board members.
41. On March 1, 2017 I entered into an engagement letter with a Market Analyst from the Texas Department of Housing and Community Affairs Approved Market Analysis List, and paid them the required fees.
42. Also on March 1, 2017 I submitted a full application to the Texas Department of Housing and Community Affairs. On March 16, I received an email from Sharon Gamble; the email contained a notice of termination of my application from Marni Holloway.
43. One of the deficiencies noted in the termination notice was that the nonprofit did not qualify as aCHDO because the application had a consulting agreement and that I signed the documents as the Executive Director. Another items cited for the termination was I did not report the school in the district as a negative site characteristic or submitted a plan or solution to bring the school rating to met standard rating.
44. Prior to submitting the application I looked at the schools report card and I reviewed the state of Texas assessment by the U S Department of Education Office of Special Education. According to the official correspondence from the US Department of Education the Texas Education Agency needs assistance with the implementation of meeting the requirements of the Individual with Disabilities Education Act,
45. This particular site is in the Bryan ISD which according to their 2016, Individual with Disabilities Assessment met the standard under the act. This was due to the fact that Bryan ISD implements IED, for persons with disabilities and the district sends persons with disabilities to the two high schools within the boundaries of the proposed housing for person with disabilities.
46. The school name is Rudders High school, this school's persons with disabilities population is 9.8 percent, exceeding the district and state percentage, I compared this school to the high school that had a met standard rating, and their person with disability percentage was 1 percent.

47. We compared a elementary school that in 2014 had a rating of distinguished rating and their special needs population was 1,5 points below the district and state percentage, but in 2016 their rating dropped drastically and their special need population increased over 2 percent. The Office Of Special Education send the special needs students to Rudder High School from ages up to 17 and once the special needs students reached age 18 the office of Special Education send the student to Bryan High School to continue help until age 21.
48. The residents of the community whom organized themselves as a CHDO whether certified by the Texas Department of Housing and Community Affairs voted to provide housing these the special needs population within their census tract
49. . Once I received the email I traveled to Dallas Texas to discuss the issue with Vanessa Garza, Ms Garza, is a person I enlisted to asset with because of the ADHD and my problems with concentration and paying attention to details was going through a horrible domestic violence situation.
50. During this application process she was really suffering from mental distress from the abuse of her husband and was having difficulty concentrating during this period of putting the application together for submission. Since I had completed a civil commitment had would do all I could to comfort Ms Garza about the legal system for getting her husband a civil commitment and treatment.
51. On March 16, 2017 I had the difficulty of informing Ms Garza that I noticed when the department publishes the application on line she had inserted information that did not pertain to the application inside the application. But I also informed her that during the application process that my hand were tied because she needed this application work to get her mind off of the mental abuse she was going thru with her husband, Eventually her husband was arrested for violating the restraining orders and the Judge whom issued the restraining order also issued a warranted for her husband arrest for stalking the Judge himself.
52. After my discussion with Ms. Garza, I called Ms. Holloway and left a message that I would not be appealing her decision but instead I would be requesting a reasonable accommodation to the rules cited in the notice and request the deficiencies be treated as administrative deficiencies rather than material deficiencies.
53. On March 20, 2017, I submitted a Request for a Reasonable Accommodation to Sharon Gamble and Marni Holloway according to the right secured under the Fair Housing Act

as a potential resident; the request was submitted according to the American with Disabilities Act Section 12132 and Section 504 of the Rehabilitation Act.

54. In submitting this request I informed all parties that failure make this reasonable request would result with me filing a complaint in the United States District Court against them in their individual capacity. I informed the individuals that this complaint would not be files against the state of Texas or against them in their official capacity and failure could result with them being held personally liable for damages. In addition I informed the parties that 3 times I avoided making this a personal issue but it impossible to provide decent housing for myself or other persons with disabilities without holding them personally accountable and address the issue in the courts of law.
55. On March 22, Sharon Gamble sent me correspondence denying me my request for a reasonable accommodation. And informed me that I had one day to appeal the termination of my application..

VI. Injuries

56. The defendants violated the ADA, the Rehabilitation Act, and the FHA by discriminating against the Plaintiff upon my application to participate in the Programs in a number of ways including, without limitation the denying Plaintiff a reasonable accommodation and denying the Plaintiff the full and equal enjoyment of the services, privileges, advantages, or accommodations because of a disability.
57. The Plaintiff disability was a determining factor in the defendant's decision to deny and preclude Plaintiff from being a participant in the Program.
58. As a direct and proximate result of the defendant's unlawful discrimination, Plaintiff has sustained injuries and damages.

VII. Relief

59. Wherefore, Plaintiff request that this court enter judgement against Defendants providing the following relief.
- a) Compensatory damages in whatever amount in excess of \$ 150,000, exclusive of cost and interest, that Plaintiff is found to be entitled.
 - b) Punitive /exemplary damages against the Defendants in whatever amount, exclusive of cost and interest, that Plaintiff is found entitled.
 - c) An order placing Plaintiff in the position the he would have been in had there been no violation of his rights.

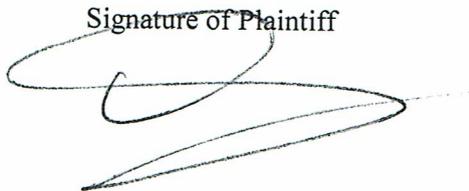
VIII. Certification and Closing

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

March 23, 2017

Signature of Plaintiff



Printed Name of Plaintiff Rick Sims

Executive Director's Response

17069 Arlinda Gardens Supportive Housing



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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April 11, 2017

Writer's direct phone # (512) 475-3296
Email: tim.irvine@tdhca.state.tx.us

Mr. Rick Sims
Managing Partner
Arlinda Gardens, Ltd.
420 Walnut Street
Minden, LA 71055

Via e-mail: rrsims90@aol.com

RE: APPEAL OF TERMINATION FOR 2017 COMPETITIVE HOUSING TAX CREDIT APPLICATION
#17069, ARLINDA GARDENS SUPPORTIVE HOUSING

Dear Mr. Sims:

This letter is to respond to your appeal of the March 15, 2017, termination of the above-referenced application. Following your request for accommodation, e-mailed to Sharon Gamble on March 17, 2017, you were provided additional time to make or supplement the appeal of your termination. On March 31, 2017, I acknowledged receipt of a document you sent to me, titled "Response to Failure to Provide a Reasonable Accommodation According to TAC §1.1" as constituting an appeal of the termination of Application #17069 under 10 TAC §10.902. Please note that this letter is responsive only to the appeal of the termination of Application #17069, and to the extent your March 31, 2017, document constitutes a complaint under 10 TAC §1.2 regarding adherence by staff to the requirements of the Department's Reasonable Accommodation rule, it will be addressed by appropriate TDHCA staff under separate cover.

The March 15, 2017, letter informing you of the termination of application #17069 stated that the application had "multiple material deficiencies, as described below," and then listed fourteen deficient areas that constituted the bases for termination. In your appeal and related materials submitted,¹ you failed to address the bulk of the reasons presented to you for termination. In attempting to assist you with your understanding of TDHCA's appeal rule, you received a letter from TDHCA on March 24, 2017, wherein you were advised that "your appeal should respond to each of the deficiencies noted in the termination letter and specifically state that there is a legal basis for your position . . . that staff incorrectly applied the rules or statutory provisions cited in the termination letter."² Indeed, 10 TAC §10.902(d) states "the

¹ On March 23, 2017, you sent a document to Sharon Gamble via e-mail, and stated, in part, "Here is my appeal . . ." This document, along with the document submitted on March 31st, is considered your appeal.

² By e-mail later the same day, you acknowledged receipt and review of this letter, and stated, ". . . I know the appeal procedures you have outlined in the letter."



Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director.” This rule comes from a statutory requirement in Tex. Gov’t Code §2306.6715(c): “In the appeal, the applicant must specifically identify the applicant’s grounds for appeal, based on the original application and additional documentation filed with the original application.” You have not, as required by the statute, identified grounds to appeal most of the deficiencies identified in the March 17, 2017, termination letter.

This letter will address those deficiencies that you did identify in your appeal and for which you offered support, namely:

- In the Pre-Application, the Applicant did not disclose that the proposed Development Site is located within the attendance zone of a high school that does not have a Met Standard Rating, as required by 10 TAC §11.8(b)(1)(I)(ii). Due to this failure to disclose, the Pre-Application has been terminated, and the Application is not eligible to receive six Pre-Application points.
- The Applicant certified on the Development Owner Certification, Acknowledgement and Consent form that the Development is not located in an area with any of the undesirable neighborhood characteristics described in 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules and that no disclosure is necessary. Due to the failure to provide proper disclosure (of the Development Site being within the attendance zone of a high school that does not have a Met Standard Rating) the Development Owner Certification is not factually accurate and therefore is not valid.

In your appeal and related materials, you agree that you had certified in your application that there were “no negative site features,” and you had certified that no schools in the primary attendance zone for the development had failed to achieve a Met Standard Rating. However, you argue that the Qualified Allocation Plan (“QAP”) does not require such disclosure until a school fails to meet standards “for 3 years and by below at least one point of the standard of the current year.” This is not what the QAP and Rules require. 10 TAC §11.8(b)(1)(I)(ii) addresses pre-application threshold criteria, including the mandatory disclosure of:

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

10 TAC §10.101(a)(3)(B)(iv) is the relevant application disclosure rule regarding schools that have failed to meet standards. In particular, the applicant must make disclosure if:

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, **shall be unable to mitigate** due to the potential for school closure as an administrative remedy . . .” (emphasis added)

A review of your Application reveals that, despite certifying that there were no undesirable neighborhood characteristics, you had submitted information regarding the non-met standards high school that would serve the development. However, the fact that mitigation may have been possible only triggered additional reporting requirements for the Applicant under 10 TAC §10.101(a)(3)(C), which you (also) did

not submit at the time of your application and was a further reason for termination. Under this section of the rule, you were required to submit the Undesirable Neighborhood Characteristics Report that addressed not only the performance shortcomings of the school, but also addressed evidence of mitigation, including documentation from a school official with oversight of the school in question that indicates current progress toward meeting the goals and performance objectives identified at the campus. This required report was not submitted with your application.

As to your general contention that staff should have considered “Material Deficiencies” to be “Administrative Deficiencies,” the wording of the relevant rules regarding disclosure of undesirable neighborhood characteristics is particularly instructive.

10 TAC §11.8(b): . . . pre-applications **will be terminated** unless they meet the threshold criteria . . . (emphasis added)

10 TAC §10.101(a)(3)(A): If the Development Site has any [undesirable neighborhood characteristics], the Applicant **must** disclose the presence of such characteristics in the Application submitted to the Department. . . Should staff determine that the Development Site has [undesirable neighborhood characteristics] and such characteristics were not disclosed, the Application may be **subject to termination**. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter . . .” (emphasis added)

10 TAC §10.101(a)(3)(C): Should any of the undesirable neighborhood characteristics described . . . exist, the Applicant **must** submit the Undesirable Neighborhood Characteristics Report that contains the information described . . . (emphasis added)

The rules also describe the level of further documentation, support, and departmental investigation required to address attempts to mitigate an undesirable neighborhood characteristic. They are clearly material requirements of the application and are pointed out by the rules as being mandatory and subjecting the application to termination if not addressed in the initial application. Accordingly, your application was properly terminated, and this was fully supported by this basis alone.

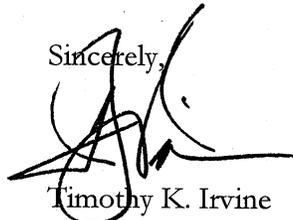
As previously stated, your appeal did not specifically identify grounds to appeal most of the deficiencies identified in the March 17, 2017, termination letter. Among the reasons articulated by staff to terminate this application were missing or deficient documents and certifications. As an example, 10 TAC §10.101(b)(1)(A)(ii) states that any development with a building with four or more stories that does not include an elevator “shall be ineligible.” The development proposed by this application is a four story supportive housing development without an elevator. Tab 22 contains insufficient plans and elevations, but does show the absence of elevators; Tab 23 indicates no elevators in the development; and Tab 43 has a checked box for the Architect Certification required by 10 TAC §10.204(3), but no architect certification was submitted. Again, this is only an example of the numerous reasons provided to you for termination that you did not contest by way of your appeal.

In your appeal and related documents, you made mention of your omission of 811 materials, having, instead, written “not applicable” on the application form. Further, you appear to argue that your 36 page “Development and Operations Plan” should satisfy the elements of the required Development Narrative. Although I am of the view that for the independent reasons set forth herein your application was properly terminated, on the basis that you have further appeal rights, namely to appeal my decision to the TDHCA Governing Board, I desire to preserve such rights as you may have and grant your appeal as to the requests

that the “not applicable” response on the 811 matter, and any clarifications to the Development Narrative, should be treated as an administrative deficiencies. I point out that this decision is based on the fact that “not applicable,” may constitute a certification that the Application is “unable to meet the requirements of subparagraphs (A) or (B),” pursuant to 10 TAC §10.204(16), as opposed to an omission of a material fact or document from the Applications, and I believe it requires clarification.. Furthermore, even if your 36 page “Development and Operations Plan” was not absolutely clear on the elements of a Development Narrative, it was submitted with the application, and as such it merits the opportunity for clarification. Except with regard to these limited matters (the 811 response and Development Narrative) that I have determined could be handled by administrative deficiency, I am unable to find a basis within my authority to grant the remainder of your appeal and, accordingly, must deny the appeal. Finally, as I have sustained the termination of your application, the referral of the 811 and Development Narrative matters to staff to engage in the administrative deficiency process will only take place if the Board were to reverse the decision to terminate on all the other bases listed in the termination letter.

If you are not satisfied with this decision, you may file a further appeal with the Governing Board of the Texas Department of Housing and Community Affairs. Please review §10.902 of the 2017 Uniform Multifamily Rules for full instruction on the appeals process. Should you have any questions about the appeals process, please contact any of the TDHCA staff who have specifically offered assistance to you on these matters over the last weeks, including Sharon Gamble, Marni Holloway, or James “Beau” Eccles.

Sincerely,



Timothy K. Irvine
Executive Director

Board Appeal Documents

17069 Arlinda Gardens Supportive Housing

From: willman [mailto:rrsims90@aol.com]
Sent: Wednesday, April 19, 2017 4:23 PM
To: Beau Eccles
Subject: Statment to the Board

To the Board of Director, The staff has terminated my participation due to things I did not see or overlooked due to a disability. I requested to an accommodation but was denied

Respectfully

Rick Sims