



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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September 12, 2016

Dr. Allison Doctor
Director
Souris Valley Special Services
215 2nd St SE
Minot, ND 58701

Re: OCR Docket # 05-16-1208
Souris Valley Special Services

Dear Dr. Doctor:

This is to advise you of the resolution of the above-referenced complaint investigation of the Souris Valley Special Services (SVSS) alleging discrimination on the basis of disability. The complaint alleged that

- 1) SVSS's website is not accessible to students and adults with disabilities, including, but not limited to, vision impairments, print disabilities, and physical impairments. These web pages include SVSS's homepage, special services page, staff contact page, parent guide, and employment application.
- 2) SVSS does not identify and provide notice of its Section 504 coordinator.
- 3) SVSS' website does not identify and provide notice of its Section 504 procedures.

OCR is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, *et seq.*, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, SVSS is subject to OCR's jurisdiction under Section 504 and Title II.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

Legal Authority

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Section 504 and Title II provide that no qualified persons with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by recipients of federal financial assistance or by public entities.¹ Persons with disabilities must have equal access to the programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden.² Under Section 504 and Title II, individuals with disabilities must be afforded an opportunity that is equal to the opportunity afforded others to participate in or benefit from aids, benefits, and services³ and must be provided with aids, benefits, or services that provide an equal opportunity as others to achieve the same result or the same level of achievement.⁴ An individual with a disability, or a class of individuals with disabilities, may be provided with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others.⁵ Title II also requires public entities to take steps to ensure that communications with people with disabilities are as effective as communications with others, subject to the fundamental alteration and undue burden defenses.⁶ In sum, programs, services, and activities—whether in a “brick and mortar,” on-line, or other “virtual” context—must be operated in ways that comply with Section 504 and Title II.

Communication

Recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by technology and equal treatment in the use of the technology for all individuals with disabilities who access their programs or activities, including members of the public.

Section 504 Coordinator⁷

The Section 504 regulations, at 34 C.F.R. § 104.7(a), requires recipients that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with Section 504.

Notice of Non-Discrimination

The Section 504 regulation at 34 C.F.R. § 104.8(a) requires recipients to provide notice of the employee designated to coordinate its efforts to comply with Section 504. It further requires recipients to notify participants, beneficiaries, applicants, employees and unions or

¹ 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

² 28 C.F.R. § 35.164

³ 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii)

⁴ 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii)

⁵ 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv)

⁶ 28 C.F.R. § 35.160(a)(1)

⁷ As a public entity that employs less than 50 people, SVVS is not subject to the Title II regulation at 28 C.F.R. § 35.107.

professional organizations holding collective bargaining or professional agreements with the recipient that the recipient does not discriminate on the basis of disability in violation of Section 504. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the nondiscrimination policy. Similarly, the Title II regulation, at 35 C.F.R. § 35.106, requires public entities to make available to applicants, participants, beneficiaries, and other interested persons information regarding Title II and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the entity finds necessary to apprise such persons of the protections against discrimination afforded to them by Title II.

Grievance Procedures

The Section 504 regulations, at 34 C.F.R. § 104.7(b), require that recipients that employ 15 or more employees adopt and publish grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints. An applicable element of prompt and equitable is whether a recipient provides notice to participants, beneficiaries, applicants, or employees of the procedures, including where complaints may be filed.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints of discrimination. These include:

- notice to students and employees of the grievance procedures, including where complaints may be filed, as well as contact information for the recipient's Section 504 coordinator, including name, address and telephone number;
- adequate definitions of prohibited discrimination, with specific examples and an explanation that the procedures apply to complaints alleging discrimination carried out by employees, other students, or third parties;
- provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and individual(s) accused of discrimination to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- written notice to the parties, complainant and individual(s) accused of discrimination, of the outcome of the complaint; and
- an assurance that the recipient will take steps to prevent recurrence of any discrimination and to correct its effects on the complainant, and others, if appropriate.

Factual Information

Allegation #1

SVSS stated that prior to the instant complaint, it had not received any formal or informal complaints about the accessibility of its website. SVSS has no written policy regarding the creation, editing, or accessibility of its website. It contracts with an outside vendor who has an undergraduate degree in computer science and a master's degree in management information systems with a focus in universal design, assistive technology, and systems analysis. SVSS' outside vendor has received certifications in web accessibility and participated in a national conference on assistive technology and universal design for learning.

SVSS asserts that its outside vendor is knowledgeable in web accessibility and designed its webpage with web accessibility requirements in mind. SVSS' outside vendor considers web accessibility before making any changes to SVSS' webpage. SVSS represented to OCR that in addition to ensuring screen reader ability, "every page of the website has been tested using *The Wave*, an Internet program that alerts the designer of any issues with accessibility."⁸ According to SVSS, its last check of the website using *The Wave* found no accessibility errors.

SVSS acknowledged that several resources available on its website at the time this complaint was opened were available only in PDF format. One of the resources, a parent guide developed by the North Dakota Department of Public Instruction is available to SVSS only as a PDF. The other resource, its employment application, has been removed from the website as SVSS currently has a hiring freeze.

During the course of the investigation OCR examined a number of pages on SVSS' website to determine whether they are accessible to persons with disabilities. These web pages included:

- The homepage; <http://svssnd.org/>
- The Staff Contact Page; <http://svssnd.org/contact-information.html>
- Parents' Guide Page; <http://svssnd.org/guides-for-parents.html>

OCR conducted a preliminary evaluation of the above-listed pages and had concerns with the accessibility of certain features to persons with disabilities, including visually impaired persons (blind and low vision) and mobility impaired persons. These concerns include blank document titles when tabbing between pages, form controls with missing labels so visually impaired persons might not have access to forms on web pages, and low contrast. These barriers may deny persons with disabilities access to programs, services, and activities

⁸ *The Wave* is a service provided by *WebAim: Web Accessibility in Mind* (<http://webaim.org/>).

offered on the website and may impede SVSS' communications with persons with disabilities.

Allegation #2

SVSS explained that:

SVSS is a multi-school district special education unit, which plans and delivers special education and related services for its member districts in accordance with contracts entered into between SVSS and the districts. SVSS employs personnel to provide these services, but does not have its own students. Students served by SVSS are students of the member school districts.

SVSS has designated its Director as the Section 504 Coordinator. However, at the time OCR notified SVSS of this complaint notice of the Section 504 Coordinator was only provided to employees via the SVSS Employee Handbook. A hard copy of the Handbook is provided to all employees and is also available to employees on an internal Google Drive. Students, parents and third parties did not receive notice of the 504 Coordinator. The 2015-2016 Handbook states that the SVSS Board "designates the Unit Director as the Title IX and Nondiscrimination Coordinator. The Director can be contacted at: 215 2nd St SE, Minot, ND, or 701-857-4407."

SVSS recently modified its website to provide notice of its 504 Coordinator to all interested persons. The website currently lists the Director as the person responsible for "504 Compliance" and includes her email address.⁹

OCR's investigation revealed that SVSS lacks a notice of nondiscrimination as required by Section 504.

Allegation #3

At the time OCR notified SVSS of this complaint, its Non-Discrimination and Anti-Harassment Policy and Discrimination and Harassment Grievance Procedure (Policy and Grievance Procedure) which were included in its Employee Handbook, were available only to SVSS employees. The Policy and Grievance Procedure were not made available to students, parents or third parties, who had no notice of the Policy and Grievance Procedure and were not advised how to file a complaint. Students, parents or third parties could only obtain a copy upon request from SVSS.

During the course of OCR's investigation, SVSS modified its website to include a link to SVSS' Policy and Grievance Procedure.¹⁰

⁹ <http://svssnd.org/> (Last visited September 12, 2016).

¹⁰ *Id.*

SVSS' Policy prohibits employees from engaging in discrimination of students or other employees based on disability. It also prohibits "retaliation against individuals who report and/or participate in a discrimination and/or harassment investigation. . . ." The Policy confirms that employees found to have violated the Policy face discipline including but not limited to termination. The Policy defines disability and discrimination in reference to state law. It also refers to the informal and formal complaint filing procedures contained in the SVSS Grievance Procedure and notes that SVSS will attempt to maintain the confidentiality of individuals who file complaints of discrimination, but that anonymous complaints may limit SVSS' ability to respond fully to the complaint.

SVSS' Grievance Procedure states that complaints will be resolved in a prompt and equitable manner; may be made verbally or in writing, and "must be filed within statutory deadlines contained in law," but does not refer to or state what those deadlines are. It outlines informal and formal complaint procedures, and notes that either party may terminate informal procedures at any time and pursue a remedy under SVSS' formal procedures. Under the informal procedures, within 30 days of the filing of the complaint "or as soon as practical," written recommendations will be issued to both parties.

The formal procedures provide timeframes for each stage of the investigation and require the entire investigation to be completed within 30 calendar days or as soon as practical not to exceed 60 days. The formal procedures provide for written notification of the outcome of the investigation to both parties, and do not contain an appeal procedure.

Legal Analysis and Conclusion

Allegation #1

Prior to the conclusion of OCR's investigation, SVSS expressed an interest in voluntarily resolving Allegation #1. In order to conclude OCR's investigation of this allegation, OCR would have had to conduct interviews, review documents, and examine a broader range of pages on SVSS' website. OCR would also have examined whether SVSS' information technology staff members and people responsible for uploading content or maintaining web pages had received training in website accessibility. In light of SVSS' willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

Allegation #2

OCR determined that at the time this complaint was initiated, SVSS had not provided notice of its designated Section 504 Coordinator to students, parents, or third parties. After OCR informed SVSS of its concerns, SVSS subsequently provided notice via its website and Nondiscrimination Policy to students, parents, and third parties that the SVSS Director serves

as its Section 504 Coordinator, and by including her contact information. OCR will confirm that SVSS made these changes to comply with the resolution agreement referenced below.

OCR identified a compliance concern in that SVSS lacks a notice of nondiscrimination as required by the Section 504 regulation at 34 C.F.R. § 104.8(a).

Allegation #3

OCR determined that at the time this complaint was initiated, SVSS failed to provide a Nondiscrimination Policy and Grievance Procedures that were easily located and widely distributed to students, parents or third parties. After OCR informed SVSS of its concerns, SVSS subsequently made its Nondiscrimination Policy and Grievance Procedures available to students, parents and third parties via the SVSS website; however, the Policy and Grievance Procedures do not fully comply with the requirements of Section 504. Specifically, the Policy and Grievance Procedures do not contain adequate definitions with specific examples of discrimination.

To resolve Allegation #1 and the compliance concerns OCR identified in Allegations #2 and #3, SVSS submitted a signed resolution agreement (Agreement) to OCR on September 12, 2016. SVSS committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on SVSS' website and conducting a thorough audit of existing online content and functionality;
- Making all new website content and functionality accessible to people with disabilities;
- Developing a corrective action plan to prioritize the removal of online barriers over a period;
- Posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible;
- Providing website accessibility training to all appropriate personnel;
- Revising its notice of nondiscrimination to include SVSS' Section 504 Coordinator's contact information;
- Revising its grievance procedures so that they incorporate appropriate due process standards and provide for the prompt and equitable resolution of any complaints alleging any action prohibited by Section 504.

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address SVSS' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor SVSS' implementation of the Agreement. When OCR concludes that SVSS has fully implemented the terms of the Agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If SVSS fails to implement the Agreement,

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OCR may seek compliance with the federal civil rights laws through any means authorized by law, including by enforcing the specific terms of the Agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that SVSS may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance that SVSS and its outside counsel, XXXXXXXX, extended to OCR in resolving this complaint. We look forward to receiving SVSS' first report about its implementation of the Agreement by October 31, 2016. If you have any questions, please contact Lauren Lowe at Lauren.Lowe@ed.gov or (312) 730-1584.

Sincerely,

/S/

Aleeza M. Strubel
Supervisory Attorney

Enclosure

cc: XXXXXXXXXXX