



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

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September 21, 2016

Ms. Tami Kramlich
Superintendent
Kulm Public Schools
217 2nd Ave SE
Kulm, ND 58456

RE: OCR # 05-16-1223

Dear Ms. Kramlich:

This is to advise you of the resolution of investigation of the above-referenced complaint against Kulm Public Schools (District) alleging discrimination on the basis of disability. The complaint alleged that:

- 1) The District's website is not accessible to students and adults with disabilities, including, but not limited to, vision impairments, print disabilities, physical impairments and hearing impairments. These web pages include the District's homepage, parent resources page, library page, and school staff page.
- 2) The District does not identify and provide notice of the District's Section 504 Coordinator.
- 3) The District's website does not identify and provide notice of the District's 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, the District 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.

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

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 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.

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.

Communication

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

Section 504 Coordinator⁷

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, the District is not subject to the Title II regulation at 28 C.F.R. § 35.107.

The Section 504 regulations, at 34 C.F.R. § 104.7(a), requires recipients that employ 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 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

The District stated that prior to the instant complaint it had not received any formal or informal complaints about the accessibility of its website. The District's website is hosted by "Weebly," which provides tools for adding and editing content but does not assure accessibility or offer training on accessibility. The District's Technology Coordinator updates the website. Other District staff, including the High School Principal and Superintendent, have responsibility for updating parts of the website but have not been trained on accessibility.

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

- the homepage; <http://www.kulmschool.com/>
- the parent resources page; <http://www.kulmschool.com/parentsstudents.html>
- the library page; <http://www.kulmschool.com/staff.html>
- the school staff page; <http://www.kulmschool.com/staff.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 problems with missing form labels so visually impaired persons might not have access to forms on web pages, missing "alt tabs", descriptions or text labels for persons who are blind and use a screen reader, and certain items had low contrast, which may render the item unreadable for persons with low vision. These barriers may deny persons with disabilities access to programs, services, and activities offered on the website and may impede the District's communications with persons with disabilities.

Allegation #2

The District designates two Section 504 coordinators. The Elementary School Principal serves as the Elementary School 504 Coordinator and the High School Principal serves as the

High School 504 Coordinator. The District acknowledged in its data response that it provides its Section 504 coordinator designations to the North Dakota Department of Public Instruction but does not post this information on its website or otherwise make the designations available to parents, students, or staff.

Allegation #3

The District acknowledged to OCR that it does not currently have Section 504 grievance procedures in place but stated its intention to adopt them in a timely manner.

Allegation #1

Prior to the conclusion of OCR's investigation, the District 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 the District's website. OCR would also have examined whether the District's Technology Coordinator has received training in website accessibility and whether the Technology Coordinator oversees other District staff members, including the High School Principal and Superintendent, who have authority to upload content onto the District's website. In light of the District's 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, the District had not provided notice of its designated Section 504 Coordinator to students, parents, or third parties.

OCR also identified a compliance concern in that the District 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, the District failed to provide a Nondiscrimination Policy and Grievance Procedures that were easily located, widely distributed to students, parents or third parties, and that provide for the prompt and equitable resolution of complaints of discrimination, as required by the Section 504 regulation at 34 C.F.R. § 104.7(b).

To resolve Allegation #1 and the compliance concerns OCR identified in Allegations #2 and #3, the District submitted a signed resolution agreement (Agreement) to OCR on September 19, 2016. The District committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the District's 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 the District's Section 504 Coordinator's contact information;
- Adopting grievance procedures 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 the Cooperative's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the District's implementation of the Agreement. When OCR concludes that the District 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 the District fails to implement the Agreement, 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 the District 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.

Page 7

Thank you for the assistance that the District and its outside counsel, XXXXXXXX, extended to OCR in resolving this complaint. We look forward to receiving the District's 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: XXXXXXXX