



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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September 13, 2016

Ms. Rhoda Young
Director
James River Special Education Cooperative
207 2nd Street SE
Jamestown, ND 58401

Re: OCR Docket # 05-16-1232
James River Special Education Cooperative

Dear Ms. Young:

This is to advise you of the resolution of the above-referenced complaint investigation of the James River Special Education Cooperative (Cooperative) alleging discrimination on the basis of disability. The complaint alleged that

- 1) The Cooperative'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 the Cooperative's homepage, parent info page, services page, documents and forms page, and contact page.
- 2) The Cooperative does not identify and provide notice of its Section 504 coordinator.
- 3) The Cooperative's 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, the Cooperative 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 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

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

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

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 Cooperative stated that prior to the instant complaint, it had not received any formal or informal complaints about the accessibility of its website. The Cooperative has no written policy regarding the creation, editing, or accessibility of its website. The Technological Director of one of the Cooperative's member school districts manages the Cooperative's website. The Cooperative stated that the Technological Director used a web accessibility checker called "AChecker" to identify accessibility issues using 508 standards. The Cooperative's website technology ("EduSites") is provided by a state agency that does not offer training on website accessibility. The Cooperative stated that if the Technological Director was unable to correct an accessibility problem identified by AChecker, it is because the problem exists at a level of EduSites, which the Technological Director lacks the authority to control. The Cooperative stated that EduSites was scheduled to be updated in June 2016 but did not indicate how the update would impact accessibility.

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

- The homepage; <http://www.jamestown.k12.nd.us/jrsec/my-new-page/>
- The parent info page; <http://www.jamestown.k12.nd.us/jrsec/my-new-page/#>
- The services page; <http://www.jamestown.k12.nd.us/jrsec/my-new-page/#services>
- The documents and forms page; <http://www.jamestown.k12.nd.us/jrsec/staff-forms/>
- The contact page: <http://www.jamestown.k12.nd.us/jrsec/contact-me/>

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 tabbing on a page instead of using a mouse for persons with a mobility impairment, missing form 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 offered on the website and may impede the Cooperative's communications with persons with disabilities.

Allegation #2

The Cooperative explained that it is a “multi-unit 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 the Cooperative and the districts.” Because students “served by the Cooperative are students of the member school districts, not the Cooperative,” the Cooperative’s position was that “student 504 matters are addressed by the school districts’ 504 coordinators and procedures.”

The Cooperative has designated its Director as the Section 504 Coordinator. At the time OCR notified the Cooperative of this complaint, notice of the Section 504 Coordinator was provided via a publication in area newspapers. The notice identified the Director and provided her mailing address.

OCR’s investigation revealed that the Cooperative lacks a notice of nondiscrimination as required by Section 504.

Allegation #3

At the time OCR notified the Cooperative of this complaint, the Cooperative acknowledged that it had no grievance procedure “specific to Section 504” but that it had immediate plans to implement a procedure.

Legal Analysis and Conclusion

Allegation #1

Prior to the conclusion of OCR’s investigation, the Cooperative 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 Cooperative’s website. OCR would also have to examine whether the Cooperative’s information technology staff members and people responsible for uploading content or maintaining web pages have received training in website accessibility. In light of the Cooperative’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 Cooperative had not designated a Section 504 Coordinator for students, parents, or third parties.

OCR identified a compliance concern in that the Cooperative 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 the Cooperative failed to adopt a Nondiscrimination Policy and Grievance Procedures that were easily located and widely distributed to students, parents, employees or third parties.

To resolve Allegation #1 and the compliance concerns OCR identified in Allegations #2 and #3, the Cooperative submitted a signed resolution agreement (Agreement) to OCR on September 13, 2016. The Cooperative committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the Cooperative'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;
- Designating a Section 504 Coordinator who is adequately trained to coordinate the Cooperative's efforts to comply with Section 504;
- Developing a notice of nondiscrimination that will include the Cooperative'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 Cooperative's implementation of the Agreement. When OCR concludes that the Cooperative 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 Cooperative 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.

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Please be advised that the Cooperative 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 the Cooperative and its outside counsel, XXXXXXXX, extended to OCR in resolving this complaint. We look forward to receiving the Cooperative'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