

September 14, 2016

Dr. Lewis D. Ferebee  
Superintendent  
Indianapolis Public Schools  
120 East Walnut Street  
Indianapolis, Indiana 46204

Re: OCR #05161309

Dear Superintendent Ferebee:

This is to advise you of the resolution by the United States Department of Education (Department), Office for Civil Rights (OCR), of the above-referenced complaint filed against Indianapolis Public Schools (IPS). The complaint alleged that IPS is discriminating, on the basis of disability, because certain pages on its website are not accessible to persons with disabilities. The complaint also alleged that IPS does not identify and provide notice of its designated Section 504 Coordinator.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulations at 34 Code of Federal Regulations (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 (Title II), 42 U.S.C. §§ 12131 - 12134, 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 a public entity, IPS is subject to these laws.

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

### **Legal Standards**

Section 504 and Title II prohibit individuals, on the basis of disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. Individuals with disabilities must have equal access to covered entities 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. 28 C.F.R. § 35.164. Both Section 504

and Title II prohibit affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that is unequal to the opportunity afforded others. 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii). Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others. 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii). 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. 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv). Title II also requires public entities to take steps to ensure that communications with individuals with disabilities are as effective as communications with others, subject to the fundamental alteration and undue burden defenses. 28 C.F.R. § 35.160(a)(1). 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.

Section 504, at 34 C.F.R. § 104.7, requires recipients to designate an individual to coordinate efforts to promptly and equitably resolve complaints of discrimination based on disability. The Section 504 regulation, at 34 C.F.R. § 104.8(a), also requires a recipient to provide notice of the employee designated to coordinate its efforts to comply with Section 504.

### **Investigation To Date**

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

- the IPS homepage;
- the Student Services webpage;
- the Parent Resources webpage;
- the Sign up for Email webpage;
- the El Dericho de los Padres a Saber webpage; and,
- the Student Code of Conduct webpage.

OCR conducted a preliminary evaluation of the above-listed pages and had concerns with the accessibility of certain features to persons with disabilities. These concerns include that images were missing text labels, some form controls lacked labels, and many items had low contrast. These barriers may deny persons with disabilities access to programs, services, and activities offered on the webpages and may impede IPS’s communications with persons with disabilities.

Prior to the conclusion of OCR’s investigation, IPS expressed an interest in voluntarily resolving this case. In order to conclude OCR’s investigation of this complaint, OCR would have had to conduct interviews, review documents, and examine a broader range of pages on IPS’s website. In light of IPS’s willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Regarding the second allegation, on July 20, 2016, IPS informed OCR that it had updated its website<sup>1</sup> to identify its Section 504 Coordinator and provide the address and phone number for this individual.<sup>2</sup> Based on this information, OCR has determined that the updated website provides the required information about IPS's Section 504 Coordinator sufficient to comply with the Section 504 regulation. Accordingly, OCR determined that this allegation is resolved.

### **Resolution Agreement**

IPS submitted a signed resolution agreement (Agreement) to OCR on September 9, 2016. IPS committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on IPS'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;
- Posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible; and
- Providing website accessibility training to all appropriate personnel.

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address IPS's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor IPS's implementation of the Agreement. When OCR concludes IPS 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 IPS fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including to enforce the specific terms of the enclosed Agreement.

This letter sets forth OCR's determinations 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 IPS 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

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<sup>1</sup> <http://www.myips.org/Page/42332>

<sup>2</sup> OCR has provided IPS with technical assistance indicating that best practice would be to include an e-mail address for the Section 504 coordinator in addition to the required contact information.

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 IPS and its counsel, Ms. Marva Deskins Hamilton, extended to OCR in resolving this complaint. We look forward to receiving IPS's first report about its implementation of the Agreement by December 30, 2016. If you have any questions, please contact Mark Erickson at [mark.erickson@ed.gov](mailto:mark.erickson@ed.gov) or at 312-730-1574.

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Ms. Marva Deskins Hamilton