



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

September 28, 2016

Mr. Dave Wilcox, Superintendent
Smackover-Norphlet School District
112 East 8th Street
Smackover, Arkansas 71762

Re: Smackover-Norphlet School District
OCR Number: 06-16-1365

Dear Superintendent Wilcox:

This is to advise you of the resolution of the above-referenced complaint investigation of the Smackover-Norphlet School District (Recipient) by the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office. The complaint, which was received by OCR on March 28, 2016, alleged that the Recipient is discriminating on the basis of disability because certain pages on its website are not accessible to persons with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 United States Code (U.S.C.) § 794, *et seq.*, 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, 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 Recipient is subject to OCR's jurisdiction under Section 504 and Title II.

OCR opened the following allegation for investigation:

1. Whether the SNISD discriminates against individuals with disabilities on a systemic basis because certain of the recipient's web pages are not accessible to students and adults with disabilities including, but not limited to, vision impairments. These inaccessible web pages include:
 - a. SNSD's Home page;
 - b. SNSD's District Policies, Section 4 (Students) page and Adobe PDF documents on this page.

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

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

Legal Authority:

Section 504 and Title II prohibit people, 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. People 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. 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 people 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.

Investigation to Date:

During the course of the investigation OCR examined the two pages described above to determine whether they are accessible to persons with disabilities. OCR identified barriers to access on each of the web pages cited by the complainant. These include, but are not limited to:

- Keyboard controls will not access all content and functions so a user may not be able to determine where on the page they have navigated and may be unable to access certain content (like menus that appear only when rolled-over by mouse);
- Keyboard controls are not visually apparent so a user might not be aware of where they are on a web page;
- Form controls are not okay so forms can be difficult to understand or impossible to complete without appropriate text labels;
- Links are not meaningfully labelled or titled so it may not be clear to a screen reader user whether they should or may need to click on the link and they will have no clear indication of where the link will take them;
- Linked PDFs do not have selectable text and a screen reader cannot read an image of text;

The above-listed barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede the Recipient's communications with persons with disabilities.

Prior to the conclusion of OCR's investigation, the Recipient 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 the Recipient's website. OCR would have sought to learn, for example, whether the Recipient had received previous complaints of inaccessible website content or functionality, and how those complaints were resolved; and whether its information technology staff members and people responsible for uploading content or maintaining web pages had received training in website accessibility. In light of the Recipient's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Resolution Agreement:

The Recipient submitted a signed resolution agreement (Agreement) to OCR on September 28, 2016. Enclosed is a courtesy copy of the Agreement. The Recipient committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the Recipient'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 an 18-month period;
- 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 the Recipient's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the Recipient's implementation of the Agreement and notify you when the provisions of the Agreement have been satisfied. When OCR concludes the Recipient 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 Recipient fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including the enforcement of 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 Recipient 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 the Recipient and its counsel extended to OCR in resolving this complaint. We look forward to receiving the Recipient's first interim monitoring report. If you have any questions, please feel free to contact the attorney-investigator, XXXXXX XXXXXX, by telephone at XXXXXX or by e-mail at: XXXXXX. You may also contact me by telephone at XXXXXX or by e-mail at: XXXXXX.

Sincerely,

Paul E. Coxe
Team Leader/Supervisory Attorney
Office for Civil Rights
Dallas Office

Enclosure: Resolution Agreement