



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

November 18, 2016

Ashby Kilgore, Ed.D.
Superintendent
Newport News Public Schools
12465 Warwick Boulevard
Newport News, Virginia 23606

RE: OCR Complaint No. 11-16-1398
Resolution Letter

Dear Dr. Kilgore:

This is to advise you of the resolution of the above-referenced complaint investigation of the Newport News Public Schools (the Division) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on June 7, 2016, alleged that the Division is discriminating, on the basis of disability, because certain pages on its website are not accessible to persons with disabilities.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standards

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 covered entities' 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

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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 a number of pages on the Division’s website to determine whether they are accessible to persons with disabilities. These web pages included:

- Homepage: <http://www.nnschools.org>
- NNPSTV: <http://www.nnpstv.com>
- Student VUE: <http://sbo.nn.k12.va.us/studentvue/index.html>
- Special Education: <http://sbo.nn.k12.va.us/sped/>
- Family Resources: <http://sbo.nn.k12.va.us/resources/>
- Parent VUE: <http://sbo.nn.k12.va.us/parentvue/index.html>

OCR evaluated the above-listed pages and determined: some content located in PDF’s is not correctly labeled to permit a screen reader to be able to fully access it, which means a person who is blind or has low vision who requires a screen reader is not provided all content; aspects of the website, such as the search bar located on most pages, is missing a proper labeling to permit a screen reader to explain the purpose of the block; the controllers for some videos located on the website could only be accessed by people who can use a computer mouse, which means that content is not available to those who are blind, many of whom have low vision or disabilities affecting fine motor control; parts of the website use color combinations that make text difficult or impossible for people with low vision to see; and videos are not accurately captioned, so they were inaccessible to people who are deaf. These barriers 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.

Prior to the conclusion of OCR’s investigation, the Division expressed an interest in voluntarily resolving this case. In light of the Division’s willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Resolution Agreement

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on November 17, 2016 which, when fully implemented, will resolve the allegations raised in this complaint. The Division 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 an 24-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.

The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact the assigned attorney, Judith Risch, at 202-453-5925 or by email at Judith.Risch@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Michelle Price, Director of Public Information and Community Involvement