



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
DISTRICT OF COLUMBIA
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA

September 1, 2021

By email only to: superintendent@apsva.us

Dr. Francisco Durán
Superintendent
Arlington Public Schools
2110 Washington Blvd
Arlington, Virginia 22204

Re: OCR Docket No. 11-21-1033
Arlington Public Schools, Virginia

Dear Dr. Durán:

This letter is to advise you of the resolution of the complaint investigation that the U.S. Department of Education (Department), Office for Civil Rights (OCR) initiated in the Arlington Public Schools. The Complainants alleged that educational programs delivered at the District's Dr. Charles R. Drew Elementary School (the School) through the XXXXXX application (XXXXXX) (Allegation 1) and certain PDF documents created by the Department of Teaching and Learning (DTL) (Allegation 2) were not accessible to individuals with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

The District's education-related services and programs, including those delivered electronically, must not exclude qualified people with disabilities from participation in, deny them the benefits of, or otherwise subject them to discrimination under any program or activity, in violation of Section 504 and Title II. In addition, the District is required to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, pursuant to Title II, at 28 C.F.R. § 35.160(a).

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

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During its investigation, OCR interviewed the Complainants and District staff. OCR also reviewed documentation that the District submitted, and met with representatives from XXXXXX. OCR made the following determinations.

The Complainants XXX XXXXX XXX XXXX X XXXXXXXX XXX (the Student) who attended kindergarten at the School during school year 2019-2020. The Complainants XXXXXXXXXXXXX the Student during school year 2020-2021.

The District informed OCR that schools in Virginia, including the District, were closed in mid-March 2020 due to the COVID-19 pandemic. Schools remained close for the duration of school year 2019-2020.

With respect to Allegation 1, the Complainants alleged that certain aspects of the educational programs delivered at the School through XXXXXX were not accessible to parents and other individuals with disabilities. They stated that during the COVID-19 pandemic, the School used XXXXXX to deliver educational programs to students. They asserted that although nondisabled parents were able to do so, they could not access the Student's assignments through XXXXXX because of a number of accessibility barriers, including that buttons were unlabeled, and the application used drag-and-drop functionality that is not accessible to people who are XXXXX.

The District informed OCR that XXXXXX is an online platform that enables remote learning and provides teachers the ability to interact with students and their families. Through XXXXXX, teachers can transmit assignments to students, students can upload their completed work, and parents can facilitate and monitor their students' work. In addition, teachers can share announcements and information with students' families. The District initially purchased a one-year license to use XXXXXX during school year 2019-2020; prior to school year 2020-2021, the District renewed its contract with XXXXXX for three additional years. The District informed OCR that various pre-kindergarten through fifth-grade classes at the School use XXXXXX.

OCR determined that, generally, students and their families can access XXXXXX through a computer web browser or an application for a mobile device. OCR tested the accessibility of XXXXXX on a computer web browser and noted possible compliance concerns including, but not limited to, some instances where:

- Users with disabilities who use computer keyboards for navigation due to a disability did not have access to all contents and functions;
- Certain important graphics or images were missing meaningful alternative text, posing a barrier to people with vision disabilities who use screen readers; and
- The foreground and background colors of certain important content lacked sufficient contrast, posing a barrier to people with low vision.

XXXXXX informed OCR that it plans to complete a third-party audit of key portions of its website and mobile applications pursuant to Web Content Accessibility Guidelines (WCAG) version 2.1 Level AA by August 2021; and it will begin implementing changes to its website and mobile applications between August and December 2021.

Prior to the completion of OCR's investigation, the District agreed to voluntarily resolve Allegation 1 through a resolution agreement pursuant to Section 302 of OCR's CPM.

With respect to Allegation 2, the Complainants alleged that certain PDF documents created by the DTL were not accessible to individuals with disabilities. They stated that following the time the COVID-19 pandemic began, the District sent home PDF work packets for students. They asserted that the PDF packets were not accessible because they included images that lacked meaningful alternative text, and they did not include an appropriate programmatic tag structure for assistive technology.

The District informed OCR that it executed a District-wide plan for continuous learning following the time schools were closed due to the COVID-19 pandemic, which included creating educational PDF packets for students. The District did not send similar PDF packets to students during school year 2020-2021.¹

OCR reviewed PDF packets that were created by the DTL and sent to kindergarten and first-grade students at the School for the months of April, May, and June 2020. The packets stated that they were intended to address the academic and social emotional needs of students, and they included daily literacy and numeracy instructional activities as well as social emotional learning lessons. OCR assessed the accessibility of these PDF packets and noted possible compliance concerns including, but not limited to, some instances where:

- Certain important graphics or images were missing meaningful alternative text, posing a barrier to people with vision disabilities who use screen readers;
- Some packets did not include a programmatic tag structure for compatibility with assistive technology; and
- Certain tables lacked appropriate table headers necessary for them to be compatible with assistive technology.

Prior to the completion of OCR's investigation, the District agreed to voluntarily resolve Allegation 2 through a resolution agreement pursuant to Section 302 of OCR's CPM.

On August 31, 2021, the District signed the enclosed resolution agreement (Agreement) to voluntarily resolve the Allegations 1 and 2 pursuant to Section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation. This letter should not be interpreted to address the District'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 complaint. 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. An individual may have the right to file a private

¹ The District stated that students were given individual electronic devices for school year 2020-2021, and they could access their learning materials using these devices.

suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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.

If you have any questions, you may contact Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or by email at logan.gerrity@ed.gov.

Sincerely,

/s/

Judith Risch
Co-Lead, National Digital Accessibility Team

Enclosure

Courtesy copy by email only to:

John F. Cafferky, Esq.
Attorney for the District
jcafferky@bklawva.com