



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

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**REGION V  
ILLINOIS  
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WISCONSIN**

September 12, 2016

Mr. Robert Lech  
Superintendent  
Jamestown Public School District # 1  
207 2<sup>nd</sup> Ave SE  
Jamestown, ND 58401

RE: OCR # 05-16-1220

Dear Mr. Lech:

This is to advise you of the resolution of the above-referenced complaint investigation of the Jamestown Public School District #1 (District) alleging discrimination on the basis of disability. The complaint alleged that

- 1) The District's website is not accessible to students and adults with disabilities, including, but not limited to, vision impairments, print disabilities, hearing impairments, and physical impairments. These web pages include the District's homepage, Parent Information page, Services page, and Documents & Forms page.
- 2) The District's website does not identify and provide notice of its designated Section 504 coordinator or 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 District 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**

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504

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standards.

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.<sup>1</sup> 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.<sup>2</sup> 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 services<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.

### ***Communication***

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.

### ***Section 504 Coordinator***

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. Similarly, the Title II regulation, at 35 C.F.R. § 35.107(a) requires a public entity that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with Title II.

### ***Notice of Non-Discrimination***

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<sup>1</sup> 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

<sup>2</sup> 28 C.F.R. § 35.164

<sup>3</sup> 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii)

<sup>4</sup> 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii)

<sup>5</sup> 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv)

<sup>6</sup> 28 C.F.R. § 35.160(a)(1)

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. If a recipient designates more than one Section 504 coordinator, its notice should describe each coordinator's responsibilities and designate one coordinator as having ultimate oversight responsibility. The Section 504 regulation 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. Similarly, the Title II regulation, at 35 C.F.R. § 35.107(b) requires a public entity that employs 50 or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints.

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 District stated that prior to the instant complaint, it had not received any formal or informal complaints about the accessibility of its website. The District has no written policy regarding the creation, editing, or accessibility of its website. The District's K12 Tech Curriculum/Staff Development Coordinator serves as the District's webmaster and has responsibility for changes and updates to that website. The District informed OCR that its website was:

Built through EduSites, using WordPress, which is provided by EduTech (a state agency under the North Dakota Information Technology Department which provides EduSites to K-12 school districts throughout North Dakota at no cost). EduTech provides training on how to build webpages, links, calendars, etc., but does not provide training on accessibility or compliance.

In addition to the Staff Development Coordinator, a Business Instructor in the District's high school manages the website for the District's high school. She is aided by students in the high school's web design class, who help maintain the page.

The District reported to OCR that the Business Instructor uses an online tool (AChecker) to check the accessibility of the District's website and the high school website. The District acknowledged, however, that when the online tool identifies problems the Business Instructor does not always have access to make necessary changes. According to the District, the technology through which its websites were developed by WordPress is scheduled to be updated by the vendor.

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

- The homepage; <http://www.jamestown.k12.nd.us/>
- Parent Information Page; <http://www.jamestown.k12.nd.us/parent/parent-general-information/>

- Services Page; <http://www.jamestown.k12.nd.us/special-services/>

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 links with no corresponding text and low contrast throughout the website. These barriers may 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.

### ***Allegation #2***

The District informed OCR that it designated the Director of the James River Special Education Cooperative as its Section 504 Coordinator. However, the General Notice of Non-Discrimination contained on the District's website does not refer to the Section 504 Coordinator or provide her contact information.<sup>7</sup> Moreover, the District's Grievance Procedure for Title VI, Title IX and Section 504 (Grievance Procedure), lists the District Administrator/Superintendent, as the individual designated to receive formal written complaints of discrimination based on disability, among other things.<sup>8</sup> The Grievance Procedure includes his name, title, address, and telephone number. Elsewhere, in the District's Policy Handbook, the Business Manager is listed as by the District as its Title IX and Non-discrimination Coordinator. Her contact information is provided as well.<sup>9</sup>

### ***Allegation #3***

The District's Parent Info webpage includes in the Documents and Forms page a "Grievance Procedure T VI, IX, 504).<sup>10</sup> This version of the District's Grievance Procedure informs individuals who believe they have been subjected to discrimination on the basis of disability, among other things, of their right to file an informal, oral complaint with the District Superintendent or a formal written complaint with the District Administrator. No further information is included in the Grievance Procedure, nor does the Grievance Procedure refer or link to the District's Policy Handbook, which contains a detailed Nondiscrimination &

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<sup>7</sup> <http://www.jamestown.k12.nd.us/parent/general-notice-of-non-discrimination/> (Last visited September 12, 2016).

<sup>8</sup> <http://www.jamestown.k12.nd.us/parent/files/2013/08/GRIEVANC-Procedure.pdf> (Last visited September 12, 2016).

<sup>9</sup> <http://www.jamestown.k12.nd.us/staff/files/2013/08/POLICY-HANDBOOK-2016-2017.pdf> (Last visited September 12, 2016).

<sup>10</sup> <http://www.jamestown.k12.nd.us/parent/files/2013/08/GRIEVANC-Procedure.pdf> (Last visited September 12, 2016).

Anti-Harassment Policy. (Nondiscrimination Policy)<sup>11</sup> as well as a detailed Discrimination & Harassment Grievance Procedure (Grievance Procedure).<sup>12</sup>

The District's Nondiscrimination Policy, prohibits employees from engaging in discrimination of students or other employees based on disability. It also prohibits "retaliation against individuals who report and/or participate in a discrimination and/or harassment investigation. . . ." The Policy confirms that employees and students found to have violated the Policy face discipline including but not limited to expulsion or termination. The Policy defines disability in reference to state law, and defines discrimination as "failure to treat a person equally due to a protected status," which it defines in reference to state and federal laws. It also refers to the informal and formal complaint filing procedures contained in the District's Grievance Procedure and notes that the District will attempt to maintain the confidentiality of individuals who file complaints of discrimination, but that anonymous complaints may limit the District's ability to respond fully to the complaint.

The District's Grievance Procedure states that complaints will be resolved in a prompt and equitable manner; may be made verbally or in writing, and "must be filed within statutory deadlines contained in law," but does not refer to or state what those deadlines are. It outlines informal and formal complaint procedures, and notes that either party may terminate informal procedures at any time and pursue a remedy under the District's formal procedures. Under the informal procedures, within 30 days of the filing of the complaint "or as soon as practical," written recommendations will be issued to both parties.

The formal procedures provide timeframes for each stage of the investigation and require the entire investigation to be completed within 30 calendar days or as soon as practical not to exceed 60 days. The formal procedures provide for written notification of the outcome of the investigation to both parties, and do not contain an appeal procedure.

## **Legal Analysis and Conclusion**

### ***Allegation #1***

Prior to the conclusion of OCR's investigation, the District 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 District's website. OCR would also have examined whether the District's information technology staff members and people responsible for uploading content or maintaining web pages had received training in website accessibility. In light of the District's willingness to address its website comprehensively without further

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<sup>11</sup> <http://www.jamestown.k12.nd.us/staff/files/2013/08/POLICY-HANDBOOK-2016-2017.pdf> (Last visited September 12, 2016).

<sup>12</sup> *Id.*

investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

***Allegation #2***

OCR determined that the District has met its obligations to designate a Section 504 Coordinator, and found insufficient evidence to substantiate this allegation. Nevertheless during the course of OCR's investigation, the District has identified three separate individuals who have been designated to serve as Section 504 Coordinator. Therefore, OCR has provided the District with technical assistance to ensure that it understands that it should designate at least one Section 504 Coordinator as having ultimate oversight responsibility.

Additionally, although not raised as an allegation in this complaint, OCR determined that the District's Notice of Nondiscrimination does not identify any of its Section 504 Coordinators, provide their contact information, or clarify the title, roles and responsibilities of each designated Section 504 Coordinator.

***Allegation #3***

OCR determined that the District has failed to provide a Nondiscrimination Policy and Grievance Procedures that were easily located and widely distributed to students, parents or third parties, because it contains two separate Grievance Procedures on its website.

To resolve Allegation #1 and the compliance concern OCR identified in Allegations #2 and #3, the District submitted a signed resolution agreement (Agreement) to OCR on September 7, 2016. The District 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 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;
- Revising its notice of nondiscrimination to include the District's Section 504 Coordinator's contact information;
- Revising its grievance procedures so 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 District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the District's implementation of the Agreement. When OCR concludes that the District 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 District 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.

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