



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

February 24, 2016

Dr. Aaron C. Spence  
Superintendent  
Virginia Beach City Public Schools  
P.O. Box 6038  
Virginia Beach, Virginia 23456-0038

Re: OCR Complaint No. 11-15-1344  
Letter of Findings

Dear Dr. Spence:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on August 26, 2015 against the Virginia Beach City Public Schools (the Division) alleging disability discrimination. Specifically, the complaint alleges that the Division's website is inaccessible to individuals with visual impairments.

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. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents included with the complaint; conducted an independent assessment of the four web pages identified in the complaint; and engaged in several discussions with Division staff and counsel.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns with the web pages identified in the complaint. Early on, the Division voluntarily expressed an interest in ensuring that its website is fully accessible to individuals with visual impairments and in working with OCR to resolve any compliance concerns. The Division entered into a Resolution Agreement (the Agreement) that commits the Division to take specific actions to address the identified compliance concerns. Given that some of the problems identified on the four web pages recur throughout the website coupled with its

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

interest in ensuring that its website is fully accessible to individuals with visual impairments, the Division has agreed to undertake an assessment of its entire website to identify and correct the specific portions that are inaccessible. OCR acknowledges and appreciates the Division's willingness to quickly and comprehensively resolve the identified compliance concerns so as to expedite the process of ensuring equal access as regards to this issue.

OCR's findings and conclusions are discussed below.

### **Background**

The complaint identified four web pages on the Division's website as inaccessible to individuals with disabilities, provided the results of a review of those pages by a web-based program (*A-Checker*), and suggested that the problems identified on those four pages could be representative of more widespread inaccessibility of the Division's website. The four pages are as follow:

1. the Division's home page;
2. the Division's Special Education home page;
3. Bayside Sixth Grade Campus (School) home page; and
4. the Division's Section 504 Rights page.

### **Legal Standards**

Pursuant to the regulations implementing Section 504 and Title II, recipients and public entities must ensure that qualified individuals with disabilities shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the entity's programs, services, and activities.<sup>1</sup> The general non-discrimination requirements imposed by Section 504 and Title II include an obligation to make sure that individuals with disabilities are afforded an equal opportunity to participate in a school division's online programs, services, and activities. This included programs, services, or activities delivered online or through websites.

Section 504 pre-dated the Internet and, therefore, does not contain specific standards for web accessibility. To determine if a program, service, or activity delivered online or through a website provides equal access to individuals with disabilities, OCR considers such factors as whether individuals with disabilities have the same ease of use, completeness of information, functionality, and timeliness of response.<sup>2</sup> A school division with an inaccessible website could

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<sup>1</sup> See 34 C.F.R. §§ 104.4(a) and (b)(1)(iii) & (iv) and 28 C.F.R. §§35.130(a) & (b)(1). See also 28 C.F.R. § 35.160(a)(1) specifically addressing communications.

<sup>2</sup> This approach is consistent with the standard set forth in OCR's June 29, 2010 Dear Colleague Letter (June 2010 DCL), jointly issued by OCR and the U.S. Department of Justice, advising college and university presidents that requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities—e.g., individuals with visual disabilities—is discrimination prohibited by Title II and Section 504 unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. Specifically, the June 2010 DCL explains that the educational institution must ensure that students with disabilities can access the educational opportunity and benefit with "substantially equivalent ease of use" as students without disabilities. On May 26, 2011, OCR issued a Frequently Asked Questions (FAQ) document confirming the use of a functional definition of accessibility for students who are blind or low vision and

satisfy its obligations under Section 504 by providing the same information and services through other accessible means.

### **Analysis**

OCR reviewed and evaluated the identified web pages for accessibility using Section 508 standards as guidelines.<sup>3</sup> OCR identified a number of accessibility concerns on the four web pages identified in the complaint. For example, website accessibility software identified 27 instances on just the Division’s home page and the School’s home page where images were missing alternative text. Division counsel confirmed the Division’s propensity to include pictures throughout its 89 web sites and 18,333 active pages, including 3,618 Hypertext Markup Language (HTML) files and 11,296 PDFs. The lack of alternative text may deny persons with visual impairments equal access to the information and services available through the web pages. OCR did not review each image or graphic that lacked alternative text to determine if the missing text affected the usability or completeness of the information on the web page. Rather as part of the Agreement, the Division has agreed to conduct its own analysis and add alternative text to any image or graphics as necessary for the individuals to have equal access to the information or services provided on the web pages.

In addition, portions of the Division’s website cannot be accessed without a mouse and, therefore, are unusable to individuals using assistive technology. For example, the lack of keyboard control of the video player and main navigation bar on the Division’s home page and of the slideshows on the Division’s home page and on the School’s home page renders content inaccessible to assistive technology users. For example, information on “How to Enroll” or “Bus Schedules” under the “Parent” tab of the main navigation bar would not be available to an individual using a screen reader. Similarly, the inability of a keyboard user to pause, stop or otherwise control the videos or slideshows on the Division’s web pages could result in the loss of important content. Likewise, the failure to identify the primary language of the website could prevent a screen reader from reading the content in the appropriate language. In addition, the use of the Cascading Style Sheet to visually rearrange items on the website impedes the logical reading order needed to prevent keyboard users from losing track of where they are on the page. Finally, the lack of sufficient contrast between text and background on the School’s web pages could impede its readability by individuals with moderately low vision (who don’t use contrast-enhancing assistive technology).

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the applicability of those principles to elementary and secondary schools under the general nondiscrimination principles of Section 504 and the ADA.

<sup>3</sup> Section 508 of the Rehabilitation Act of 1973, as amended in 1998, requires that when Federal agencies develop, procure, maintain or use electronic and information technology that individuals with disabilities have access to and use of the information and data that is comparable to individuals without disabilities unless doing so would result in an undue burden to the particular agency. Section 508 Standards and Web Content Accessibility Guidelines (WCAG 2.0) provide guidance and technical specifications and serve as the primary guidelines for web accessibility. Although as a non-Federal agency the School Division is not required to strictly comply with the requirements of either Section 508 or WCAG 2.0, the requirements of both serve as resources in considering how the School Division can satisfy its obligation to ensure that individuals with disabilities are provided an equal opportunity to participate.

Considered together, OCR concludes that there is sufficient evidence that the Division's website does not afford individuals with disabilities the same ease of use, completeness of information or functionality through its website that is provided to individuals without disabilities. While a division with an inaccessible website could satisfy its obligations under Section 504 by providing the same information and services through other accessible means, for example, offer a 24 hour, 7-day-a-week staffed telephone line to provide the information and services available on its website, OCR is unaware of, and the Division did not provide, an alternative method for equal access to the information and services.

Because several of the accessibility concerns identified on the four identified web pages recur throughout the Division's websites and given the Division's commitment to enhancing the accessibility of its web domain, the Division has agreed to conduct an assessment of the current content its websites to identify and correct the specific portions that are not accessible. To ensure that new, newly added, or modified online content and functionality will be accessible to individuals with disabilities, the Division also agrees to develop and implement a website accessibility policy and to develop and provide annual training on web accessibility to all appropriate personnel, including those responsible for developing, loading, maintaining, or auditing web content and functionality.

### **Conclusion**

On February 24, 2016, the Division agreed to implement the enclosed Agreement, which commits the Division to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the Division is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the Division deemed compliant if the Division enters into an agreement that, fully performed, will remedy the identified areas of noncompliance.

OCR will monitor closely the Division's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the Division has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the Division on February 24, 2016, if the Division fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 cooperation of the Division staff and that of Dannielle Hall-McIvor, Assistant City Attorney, in the resolution of this complaint. If you have any questions regarding this letter, please contact Betsy Trice, the OCR attorney assigned to this complaint, at 202-453-5931 or [betsy.trice@ed.gov](mailto:betsy.trice@ed.gov).

Sincerely,

/S/

Michael Hing  
Supervisory Attorney, Team I  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Dannielle Hall-McIvor, Assistant City Attorney, Virginia Beach City Attorney's Office (via email)