



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

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MICHIGAN
OHIO

March 30, 2016

Sherry McMillan, Esq.
Director, Legal Affairs
Oakland Schools
2111 Pontiac Lake Road
Waterford, Michigan 48328

Re: OCR Docket #15-15-1358

Dear Ms. McMillan:

This letter is to inform you of the disposition of the above-referenced complaint filed on July 9, 2015, against the Oakland Schools intermediate school district (the ISD) alleging discrimination on the basis of disability. Specifically, the complaint alleged that ISD websites located at <http://www.oakland.k12.mi.us/> and <http://ostconline.com/> were inaccessible to persons with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and as a public entity, the ISD is subject to these laws. Accordingly, OCR had jurisdiction to investigate the complaint.

Based on the complaint allegation, OCR opened an investigation into the following issues:

- whether the ISD, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination in its programs, activities, aids, benefits, or services in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and

- whether the ISD failed to take appropriate steps to ensure that its communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communications with others, in violation of the regulation implementing Title II at 28 C.F.R. § 35.160(a).

To date, OCR investigated the complaint by reviewing information provided by the Complainant. The complaint alleged that the ISD's websites were inaccessible to adults and students with visual and print impairments and hearing impairments. The complaint identified specific elements at both of the above websites as inaccessible to users with screen readers, including PDF documents that were not appropriately accessible, numerous pages with mark-up errors, pages and tables without captions or labels, and pages with identical titles.

Prior to the completion of OCR's investigation, the ISD explained that it had plans to update both websites at issue in the complaint and requested to voluntarily resolve the matter pursuant to Section 302 of OCR's Case Processing Manual (CPM). Accordingly, the ISD signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the issues raised in the complaint.

Applicable Legal Standards and OCR Policy

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. In this usage, "program or activity" encompasses a broad variety of operations associated with the receipt of Federal financial assistance from the Department, including all operations of a local education agency, as well as all of the operations of department, agency, or other instrumentality of a State or local government or the entity of such a State or local government that distributes such assistance and each such department or agency to which the assistance is extended. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b), further prohibits discrimination on the basis of disability in the provision of any aid, benefit, or service, directly or through contractual, licensing, or other arrangements. A recipient may not deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Title II, at 28 C.F.R. § 35.130, has requirements similar to those in the regulation implementing Section 504. Additionally, the regulation implementing Title II has specific requirements for communication, which, in pertinent part, require that public entities take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are

as effective as communications with others. 28 C.F.R. § 35.160(a)(1). Entities subject to Title II are required to provide equally effective communication, regardless of the medium chosen for their communication. Communication includes the transfer of information and encompasses information conveyed through computer-related applications and online environments.

OCR and the U.S. Department of Justice, Civil Rights Division, issued a Dear Colleague Letter on June 29, 2010 (June 2010 DCL), on access to emerging technologies for individuals with disabilities. OCR then issued another Dear Colleague Letter on May 26, 2011 (May 2011 DCL), along with a questions and answers document (FAQ), in follow-up to the June 2010 DCL. The FAQ clarifies that students with disabilities, especially visual impairments, are to be afforded “the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.” The FAQ also clarifies that an accommodation or modification that is available only at certain times will not be considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other online content. The May 2011 DCL states that online programs are also covered and stresses the importance of planning to ensure accessibility from the outset.

While the May 2011 DCL and FAQ focused primarily on electronic book readers, the principles articulated in the documents apply to all forms of information technology. Though the DCL and FAQ discussed students as the affected population, recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of the technology for individuals with disabilities in any populations the recipient engages with its programs or activities, including students and members of the public.

Resolution and Conclusion

As noted above, prior to the completion of OCR’s investigation, the ISD expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR’s CPM. The CPM, at Section 302, provides that a complaint may be resolved at any time before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that fully addresses the complaint allegation(s) and issues. Such a request does not constitute an admission of liability on the part of the ISD, nor does it constitute a determination by OCR that the ISD has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegation(s) or the information obtained during the investigation and consistent with applicable regulations. OCR has determined that it is appropriate to resolve the complaint allegations prior to the completion of its investigation. Accordingly, on March 28, 2016, the ISD submitted the enclosed Agreement to OCR, which, when fully implemented, will resolve the allegations in the complaint.

In light of the signed Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the ISD's implementation of the Agreement. Should the ISD fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the ISD's compliance with the Section 504 and Title II regulations.

This concludes OCR's investigation of the complaint and should not be interpreted to address the ISD'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.

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

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We look forward to receiving the ISD's first monitoring report by August 30, 2016. For questions about implementation of the Agreement, please contact Sarah Poppleton, who will be monitoring the ISD's implementation, by e-mail at Sarah.Poppleton@ed.gov or by telephone at (216) 522-2674. For questions about this letter, please contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Emily Babb
Acting Director

Enclosure