



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

January , 2018

Via Email

Matthew H. Malone, Ph.D.  
Superintendent of Schools  
Fall River Public Schools  
[mmalone@fallriverschools.org](mailto:mmalone@fallriverschools.org)

Re: Complaint No. 01-16-1294  
Fall River Public Schools

Dear Dr. Malone:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Fall River Public Schools (the District) alleging disability discrimination. Specifically, the complaint alleged that certain of the District's webpages are not accessible to students and adults with disabilities, including vision impairments. These pages include but are not limited to:

- Homepage at <http://www.fallriverschools.org>
- Special Education at <http://www.fallriverschools.org/student-services.cfm>
- Office of Technology at <http://www.fallriverschools.org/technology.cfm>
- Title I for Parents at <http://www.fallriverschools.org/parent-program.cfm>
- Administration at <http://www.fallriverschools.org/asuperintendent.cfm>
- Sites for Student with Disabilities at [http://www.fallriverschools.org/Parent%20Info/Special\\_Ed\\_website.pdf](http://www.fallriverschools.org/Parent%20Info/Special_Ed_website.pdf)
- Our Menus at <https://schools.whitsons.com/ma/fall-river-public-schools?page=menu>

OCR investigated this complaint pursuant to its jurisdiction under 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 and activities receiving financial assistance from the Department. OCR also investigated this complaint pursuant to its jurisdiction under Title II of the Americans with Disabilities Act of 1990 (Title II), 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 certain public entities. The District is a recipient of financial assistance from the Department and is a public education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed resolution agreement (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 Agreement.

### **Legal Standards**

Section 504 and Title II prohibit individuals, 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; 28 C.F.R. § 35.130. Individuals with disabilities must have equal access to recipients' programs, services, and 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 benefit from aids, benefits, or 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). 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.

### **Factual Background**

The Complainant alleged that certain pages on the District's website were not in compliance with Section 504 and Title II because they were inaccessible to individuals with certain disabilities, including, but not limited to, vision impairments. The Complainant used website accessibility checkers (Power Mapper and WAVE) and reported to OCR that the webpages had accessibility issues for individuals with disabilities. The Complainant then provided OCR with a list of errors copied and pasted from the website accessibility checkers that she used.

### **Conclusion**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this complaint. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in the complaint. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the District's implementation of the Agreement and continue to do so until it has determined that the District has complied with the

terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. 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 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 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, assists, or participates in a proceeding under a law enforced by OCR. 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.

If you have any questions, you may contact Patricia Cox, Investigator, at (617) 289-0042 or by e-mail at [Patricia.Cox@ed.gov](mailto:Patricia.Cox@ed.gov).

Sincerely,

Meena Morey Chandra *W/P AMM*  
Acting Regional Director

Enclosure

cc: Michael Joyce, [mjj@snclegal.com](mailto:mjj@snclegal.com)