



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

February 23, 2018

Brian Haas  
Executive Director's Office  
10 New Bond Street  
Worcester, MA 01606  
Email: bhaas@akfcs.org

Re: Complaint No. 01-18-1024  
Abby Kelley Foster Charter Public School

Dear Mr. Brian Haas:

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 the Abby Kelley Foster Charter Public School (the School) alleging disability discrimination. Specifically, the complaint alleged that certain of the School's webpages are not accessible to students and adults with disabilities, including vision impairments. These webpages include but are not limited to:

- Homepage at <http://www.akfcs.org>
- About at <http://www.akfcs.org/district-offices>
- Schools at <http://www.akfcs.org/schools>
- District at <http://www.akfcs.org/districtoffices>
- Athletics at <http://www.akfcs.org/athletics>
- Parents & Students at <http://www.akfcs.org/parentsstudents>
- Admissions at <http://www.akfcs.org/parentsstudents/enrollment>
- Meal Program at <http://www.akfcs.org/parentsstudents/lunch-program>
- Faculty & Staff at <http://www.akfcs.org/faculty-staff>
- Foundation at <http://www.akfcs.org/giving/akf-foundation>

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 and activities receiving financial assistance from the Department. OCR also evaluated 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The School 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.

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

Before OCR completed its investigation, the School 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.

### **Summary of Preliminary Investigation**

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and conducting a preliminary assessment of the accessibility of several pages from the School's website.

The complaint alleged that certain pages on the School'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 (PowerMapper and WAVE) and reported to OCR that the webpages listed above 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.

OCR conducted a preliminary examination of the webpages identified by the Complainant and found possible compliance concerns as to whether the School's online programs, services, and activities were accessible to individuals with disabilities. For example, webpages lacked skip navigation, keyboard controls did not allow access all content or functions, certain images did not have meaningful alternative text, and visual contrast errors were noted.

## **Conclusion**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the School expressed an interest in resolving this complaint. During this investigation, the School took affirmative steps to engage with its vendor to identify accessibility solutions for its website. Subsequent discussions between OCR and the School resulted in the School 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 School's implementation of the Agreement and continue to do so until it has determined that the School 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 School'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 School 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.

OCR thanks the School for its assistance in resolving this matter. If you have any questions, you may contact Tokufumi Noda, Civil Rights Attorney, at (617) 289-0017 or by e-mail at Tokufumi.Noda@ed.gov.

Sincerely,

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: Amy S. DiDonna, Esq.