



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

September 15, 2017

IN RESPONSE, PLEASE REFER TO: 03171201

Mr. Nelson K. Spencer
Superintendent
30 Central Avenue
Welch, WV 24801

Dear Mr. Spencer:

This letter is to inform you of the disposition of the above-referenced complaint filed against McDowell County Schools (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on March 13, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the District's web pages are not accessible to students and adults with disabilities, including vision impairments. These include, but are not limited to:

- The District's homepage (<http://boe.mcdo.k12.wv.us/>);
- Special Education (<http://boe.mcdo.k12.wv.us/domain>);
- Food Service (<http://boe.mcdo.k12.wv.us/Domain/13>);
- Project Aware (<http://boe.mcdo.k12.wv.us/Page/3663>);
- Title I (<http://boe.mcdo.k12.wv.us/Domain18>);
- Title IX, Section 504 (<http://boe.mcdo.k12.wv.us/Domain/701>);
- Transportation (<http://boe.mcdo.k12.wv.us/Domain/19>); and
- Mount View High School (<http://boe.mcdo.k12.wv.us/Domain/229>).

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. 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 District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

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

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the District, 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 and activities based on disability, 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 District failed to 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, in violation of 28 C.F.R. § 35.160(a).

Legal Authority:

Section 504 and Title II prohibit people, 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 and 28 C.F.R. § 35.130. People with disabilities must have equal access to recipients' programs, services, or 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, and 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). 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.

Investigation To Date:

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 District's website.

The complaint alleges that the District's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the District's homepage, special education, food service, project aware, title I, title IX and section 504, transportation, and Mt. View High school webpages have accessibility issues for individuals with disabilities. She then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR conducted a preliminary examination of the web pages identified by the Complainant but did not find any compliance concerns on those webpage. However, OCR found possible manual compliance concerns during spot checks of the District's employment page.

Prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On September 6, 2017, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the District has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings 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 to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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 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 District 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.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by [DATE]. For questions about implementation of the Agreement, please contact Diane Riddick, Equal Opportunity Specialist, who will be monitoring the District's implementation, by e-mail at diane.riddick@ed.gov or by telephone at 215-656-8583. For questions about this letter, please contact Beth Gellman-Beer at 215-656-6935 or at beth.gellman-beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader

Enclosure: Resolution Agreement

Cc: Joe Norris