



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620  
DALLAS, TX 75201-6810

REGION VI  
ARKANSAS  
LOUISIANA  
MISSISSIPPI  
TEXAS

Michael A. Cardona, Superintendent  
San Marcos Consolidated Independent School District  
501 South LBJ Drive  
San Marcos, TX 78666

Re: San Marcos CISD  
OCR No. 06161786

Dear Superintendent Cardona:

This letter is to inform you of the disposition of the above-referenced complaint filed against San Marcos CISD (SMCISD) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on August 24, 2016, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the SMCISD's web pages are not accessible to students and adults with disabilities, including vision impairments. These include, but are not limited to:

- SMCISD's Home page  
<http://www.smcisd.net/Departments.cfm?subpage=113>
- SMCISD's Child Nutrition page  
<http://www.smcisd.net/Departments.cfm?subpage=116>
- SMCISD's Special Education page  
<http://www.smcisd.net/Departments/cfm?subpage=182>
- SMCISD's Free and Reduced Meal Application  
<http://www.smcisd.net/Departments.cfm?subpage=17967>
- SMCISD's Parents page  
<http://www.smcisd.net/parents/cfm>
- SMCISD's Homelessness and Foster Care page.  
<http://www.smcisd.net/parents.cfm?subpage=24438>

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 SMCISD 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.*

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

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

Whether the SMCISD discriminates against individuals with disabilities on a systemic basis because certain of the recipient's web pages are not accessible to students and adults with disabilities including, but not limited to, vision impairments. These inaccessible web pages include:

- a. SMCISD's Home Page
- b. SMCISD's Special Education page;
- c. SMCISD's Free and Reduced Meal Application;
- d. SMCISD's Child Nutrition Page;
- e. SMCISD's Parents page;
- f. SMCISD's Homelessness and Foster Care page.

#### 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 SMCISD's website.

The complaint alleges that the SMCISD'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 SMCISD's home page, child nutrition page, special education page, free and reduced meal application page, parents page, and homelessness and foster care page had 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 and found a number of possible compliance concerns as to whether the SMCISD's website is accessible to individuals with disabilities. For example, on all of the pages OCR examined, some content and functionality could not be accessed using keyboard controls, the keyboard controls were not visually apparent, skip navigation was not provided, links were not meaningfully labeled or titled, and non-trivial graphics did not have meaningful alternative text. Additionally, on some of the pages, the visual contrast was insufficient, and HTML coding did not indicate language on pages that contained non-English words.

Prior to the completion of OCR's investigation, the SMCISD asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On May 30, 2017, the SMCISD 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 SMCISD 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 SMCISD'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 SMCISD 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 SMCISD 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 SMCISD 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 SMCISD'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 SMCISD 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 SMCISD's first monitoring report by October 1, 2017. If you have any questions, please contact the attorney/investigator, Kulsoom Naqvi, by telephone at (214) 661-9640 or by e-mail at: Naqvi.Kulsoom@ed.gov. You may also contact me by telephone at (214) 661-9608 or by e-mail at: Paul.Coxe@ed.gov.

Sincerely,

Paul E. Coxe  
Team Leader/Supervisory Attorney  
Office for Civil Rights  
Dallas Office

Enclosure: Resolution Agreement