



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

October 17, 2017

Mr. John Collins, Superintendent
West Memphis School District
301 South Avalon
West Memphis, AR 72301

RE: OCR Case No. 06171823
West Memphis School District

Dear Mr. Collins:

This letter is to inform you of the disposition of the above-referenced complaint filed against West Memphis School District (WMSD) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of WMSD's web pages are not accessible to students and adults with disabilities, including vision impairments.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, WMSD is subject to Section 504, Title II and their implementing regulations.

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

Whether WMSD 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, as identified in the complaint, include WMSD's:

- a. Homepage (<http://www.wmsd.net/>);
- b. About Us (<http://www.wmsd.net/about-us>);
- c. Parents & Students (http://www.wmsd.net/parents_students);
- d. State & Federal Requirements (http://www.wmsd.net/state_fed_req);
- e. Departments/Food & Nutrition
(<https://sites.google.com/a/wmsd.net/departments/home>);

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

- f. Departments/Special Services
(<https://sites.google.com/a/wmsd.net/departments/awm-corner>);
- g. Departments/Gifted & Talented
(<https://sites.google.com/a/wmsd.net/departments/school-board>);
- h. Departments/Instructional Center
(<https://sites.google.com/a/wmsd.net/departments/schools>); and
- i. Academies of West Memphis High School (<http://awm.wmsd.net/home>)

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 WMSD’s website.

The complaint alleges that WMSD’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 certain of WMSD’s web pages have accessibility issues for individuals with disabilities. The Complainant also 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 possible compliance deficiencies as to whether WMSD’s website is accessible to

individuals with disabilities. For example, at the time of OCR’s review of the nine (9) cited pages indicated the occasional keyboard controls that are not always apparent and/or that do not access all content and functions; the absence of any provided skip navigation; links that are not meaningfully labeled or texted; as well as issues with visual contrast.

Resolution:

Prior to the completion of OCR’s investigation, WMSD asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual (CPM)*. On October 12, 2017, WMSD submitted to OCR the enclosed Resolution Agreement (the Agreement) you signed as Superintendent. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments WMSD 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 WMSD’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 WMSD has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If WMSD 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 WMSD 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 WMSD’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 file a private suit in federal court, whether or not OCR finds a violation.

Please be advised that WMSD 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, that individual may file a complaint alleging such treatment.

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 WMSD's first monitoring report by December 11, 2017 (RA, Item #6). If you have any questions about this letter or the Agreement, please contact Thomas W. Stack, the Attorney assigned to investigate this complaint, at 215-661-9650 (thomas.stack@ed.gov), or me at 214-661-9687 (terri.gonzales@ed.gov).

Sincerely,

Terri Gonzales
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office

Enclosure: *Resolution Agreement*

Cc: Brad Beavers
Beavers & Cline
P.O. Box 924
Forrest City, AR 72336