



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

June 5, 2015

Ms. Maya Woods-Cadiz
Superintendent
American Indian Public Charter School
3637 Magee Avenue
Oakland, California 94619

(In reply, please refer to # 09-14-1364.)

Dear Superintendent Woods-Cadiz:

On May 22, 2014, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against the American Indian Public Charter School (Recipient). The complaint alleged discrimination on the basis of disability. Specifically, OCR investigated whether the Recipient excluded individuals with disabilities from participation in programs and activities because the Recipient campus is not accessible to individuals with disabilities.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 (Title II) over disability discrimination complaints filed against public educational entities. The Recipient receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the Recipient expressed interest in resolving the allegation through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

I. Legal Standards

The program accessibility requirements of Section 504's implementing regulations are found at 34 C.F.R. §§104.21-104.23; comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§35.149-35.151. Both 34 C.F.R. §104.21 and 28 C.F.R. §35.149 provide that no qualified person with a disability be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any school program or activity because the school's facilities are inaccessible to or unusable by disabled persons.

The Section 504 regulations, at 34 C.F.R. §104.22, and the Title II regulations, at 28 CFR §35.150, apply to “existing facilities,” defined as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with regard to existing facilities, the school must operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. OCR also interprets the existing facility standard to apply to buildings that are leased by the school, regardless of date of construction, unless construction or alteration work on such buildings was done by or for the school on or after the applicable dates.

Accessibility of existing facilities (including leased facilities) is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities. However, in evaluating existing facilities, facility accessibility standards such as the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) may be used as a guide to understanding whether persons with disabilities can participate in the program, activity or service.

The Recipient may comply with the existing facility standard through the reassignment of programs and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs and activities accessible to disabled persons. The Recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods, the Recipient must give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

Section §104.22(f), also requires the Recipient to adopt and implement procedures to ensure that, as to existing facilities, interested persons can obtain information regarding the services, activities, and facilities that are accessible to persons with disabilities. The Title II implementing regulations, at 28 C.F.R. §35.163(a), has similar requirements.

II. Resolution

The Recipient, without admitting any violation of federal law, voluntarily agreed to enter into the attached Resolution Agreement with OCR to resolve the complaint. The Resolution Agreement requires the Recipient to create and implement a program access plan for the remainder of the 2014-2015 school year for the Recipient’s current location, relocate the school to a fully accessible location no later than the beginning of the 2015-2016 school year, and create and distribute a guidance memorandum regarding physical and program access.

OCR has determined that, once implemented, the Resolution Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Resolution Agreement and may reopen the investigation if the Recipient does not comply with the Resolution

Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions regarding this letter, please contact Abony Alexander, OCR attorney, at (415) 486-5590 or abony.alexander@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosures

cc: Hollis R. Peterson (by email only)