



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

September 30, 2016

Dr. Nancy Kelly
Superintendent of Schools
Upland Unified School District
390 North Euclid Avenue
Upland, California 91786

(In reply, please refer to case no. 09-16-1542.)

Dear Dr. Kelly:

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) is discontinuing its investigation of the above-referenced complaint filed against the Upland Unified School District (District) as of the date of this letter. The complaint alleges that the District is discriminating, on the basis of disability, because certain pages on its website are not accessible to persons with disabilities. These webpages include the:

- Homepage
- Educational Services page
- English as a Second Language (ESL) page
- Special Education page
- Step-Up to Preschool page
- 2016-17 Calendar page
- Board of Education page

OCR accepted the complaint for resolution under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II). Section 504 and that statute's implementing regulations at 34 CFR Part 104 prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. Title II and that statute's implementing regulations at 28 CFR Part 35 prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from this Department and as a public entity, the District is required to comply with these federal civil rights laws.

Access to District websites is covered by Section 504 and Title II. The requirement for the District to provide equal opportunities and equal treatment, and the obligations for the District to engage in effective communications and make modifications to avoid disability-based discrimination, are part of the general non-discrimination requirements of Section 504 and Title II. See 34 CFR 104.4 and 28 CFR 35.130 (prohibiting recipients of federal financial assistance and public entities from excluding qualified persons with disabilities from programs, services,

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and activities); see also 28 CFR 35.160(a) (requiring public entities to ensure communications with applicants, participants, companions, and other members of the public with disabilities are as effective as communications with others). In particular, the District is required to provide reasonable accommodations or modifications so that persons with disabilities can acquire the same information, engage in the same interactions, and enjoy the same programs, services, and activities as non-disabled persons with substantially equivalent ease of use. Stated differently, all District programs, services, and activities—whether in a “brick and mortar,” on-line, or other “virtual” context—must be operated in a manner that complies with Section 504 and Title II.

OCR’s evaluation of the allegation to date indicates that there may be barriers on the District’s website that deny persons with disabilities access to programs, services, and activities offered on its website and may impede the District’s communications with persons with disabilities.

In accordance with Section 302 of OCR’s *Case Processing Manual* a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint. In such a case, the provisions of an agreement to resolve the complaint must be aligned with the complaint allegation or any information obtained during the discontinued investigation and be consistent with applicable regulations. Here, the District requested to resolve the complaint prior to the conclusion of OCR’s investigation. Subsequent discussions with the District resulted in the District signing the enclosed Resolution Agreement (agreement) which, when fully implemented, will resolve the issues raised by this complaint.

The actions the District will take under the agreement include:

- notice on its website to persons with disabilities about how to request access to on-line information or functionality that is currently inaccessible, and information instructing people how to file a formal grievance with the District through the procedural requirements of the Section 504 and Title II implementing regulations;
- policies and procedures to ensure that all new, newly-added, or modified on-line content and functionality will be accessible to persons with disabilities;
- an audit of all website content and functionality;
- a corrective action plan to address all inaccessible content and functionality identified during the audit; and,
- annual website accessibility training to appropriate personnel.

OCR considers that the enclosed agreement, when fully implemented by the District, will resolve the issues raised by the complaint. OCR will monitor the District’s implementation of the agreement, and when OCR concludes the District has fully implemented the terms of the agreement, OCR will terminate its monitoring and close the case. If the District fails to implement the agreement, OCR may resume the investigation.

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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

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 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 Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it 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.

Thank you for your assistance in resolving this complaint. If you have any questions, please contact Naghmeh Ordikhani by telephone at 415-486-5588, or by email at naghmeh.ordikhani@ed.gov.

Sincerely,

/s/

Kendra Fox-Davis
Team Leader

Enclosure: Resolution Agreement

cc: Jordan Bilbeisi, Fagen Friedman & Fulfrost LLP (counsel for Recipient)