



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 19, 2017

Ms. Michelle Whitney
Superintendent
Pasco School District
1215 W. Lewis Street
Pasco, Washington 99301-5472

Re: Pasco School District No. 1
OCR Reference No. 10171063

Dear Superintendent Whitney:

This is to advise you of the resolution of the above-referenced complaint investigation of the Pasco School District (the district) by the U. S. Department of Education (Department), Office for Civil Rights (OCR). The complaint, which OCR received on November 21, 2016, alleged that the district is discriminating, on the basis of disability, because its website is not accessible to persons with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 United States Code (U.S.C.) § 794, *et seq.*, and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, the district is subject to OCR's jurisdiction under Section 504 and Title II.

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

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. See 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People with disabilities must have equal access to recipients' programs,

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services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden. See 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. See 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. See 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. See 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. See 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:

OCR examined the pages on the district’s website identified by the complainant to determine whether they are accessible to persons with disabilities. These web pages included the:

- homepage at www.psd1.org;
- nutrition services web page at www.psd1.org/Domain/1018;
- free and reduced meal information web page at www.psd1.org/Page/7478; and
- special services web page at www.psd1.org/Domain/49.

OCR notified the district that other pages on its website, including the calendars web page at www.psd1.org/domain/10#sw-maincontent, may also present barriers to access for persons with disabilities.

OCR evaluated the above-listed web pages and found that they contained barriers to access for people with disabilities, including but not limited to the following:

- some important content and functionality of the website could only be accessed by people who can use a computer mouse, which meant that content and functionality was not available to those people who are blind, many of whom have low vision, and those people with disabilities affecting fine motor control;
- some links were unlabeled and some links did not provide content when separated from surrounding text, denying content to people who are blind;
- some icons on the web pages had no “alt tags” describing their content, denying access to the content to people who are blind;

- documents in portable document format that were inaccessible to screen reader users; and
- there was insufficient color contrast on some web pages, denying access to the content to people with low vision.

These barriers deny persons with disabilities access to programs, services, and activities offered on the website and impede the district's communications with persons with disabilities and, therefore, violate Title II and Section 504.

Before OCR conducted additional investigation of the district's website, the district expressed an interest in voluntarily resolving this case. In light of the district's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement is appropriate.

Resolution Agreement:

The district submitted a signed resolution agreement ("agreement") to OCR on June 16, 2017. When fully implemented, the agreement will address the findings of noncompliance noted above, as well as resolve issues of accessibility pertaining to the rest of the district's website. The district committed to take actions including:

- making all new website content and functionality accessible to people with disabilities;
- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the district's website and conducting a thorough audit of existing online content and functionality;
- developing a corrective action plan to prioritize the removal of online barriers over an 18-month period;
- posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible; and
- providing website accessibility training to all appropriate personnel.

OCR will monitor the district's implementation of the agreement. When OCR concludes the district has fully and effectively implemented the terms and obligations of the agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the district fails to implement the agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the agreement, OCR will give the district written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the complaint. These findings 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. The complainant may have the right to file a private suit in court whether or not OCR finds a violation.

Please be advised that the district may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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

OCR looks forward to receiving the district's first monitoring report by July 13, 2017. For questions about implementation of the agreement, please contact Noel Nightingale, lead attorney, who will be monitoring the district's implementation, by telephone at (206) 607-1632, or by e-mail at noel.nightingale@ed.gov. For questions about this letter, you may also contact me by telephone at (206) 607-1612, or by e-mail at paul.goodwin@ed.gov.

Sincerely:

/ s /

Paul Goodwin
Supervisory Attorney

Enclosure: Resolution Agreement

cc: Honorable Chris Reykdal
Superintendent of Public Instruction

Ms. Sarah Thornton
Assistant Superintendent of Legal Affairs
Pasco School District