



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

June 15, 2017

Dr. Alex Apostle
Superintendent
Shelton School District No. 309
700 South 1ST Street
Shelton, Washington 98584

Re: Shelton School District No. 309
OCR Reference No. 10171064

Dear Superintendent Apostle:

This is to advise you of the resolution of the above-referenced complaint investigation of the Shelton School District No. 309 (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 (Section 504), 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 (Title II), 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 this 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

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

www.ed.gov

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. 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:

- Homepage at www.sheltonschools.org/SitePages/homepage.aspx,
- Facebook web page at www.facebook.com/SheltonSchools,
- Calendars web page at www.sheltonschools.org/Families/Pages/SchoolCalendars.aspx,
- School Enrollment web page at www.sheltonschools.org/Enrollment/Pages/NewEnrollment.aspx,
- Welcome to Special Services Department web page at www.sheltonschools.org/Departments/SpecialServices/SitePages/Homepage.aspx,
- Child Find web page at www.sheltonschools.org/Departments/specialservices/SitePages/ChildFind.aspx, and
- Welcome to Family Section web page at www.sheltonschools.org/Families/Pages/Homepage.aspx.

OCR evaluated the above-listed pages and determined that on the web pages:

- some important content and functionality 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;
- a video that was linked on a web page had no captioning, denying access to the content by individuals who are deaf and hard of hearing;
- some photographs and graphics on the web pages had missing alternative text or “alt tags” on images where important information was contained, denying access to the content to individuals who are blind;
- some documents included on the web pages were inaccessible to screen reader users; and

- there was insufficient color contrast on some web pages, denying individuals with low-vision access to the content.

These barriers deny persons with disabilities access to programs, services, and activities offered on the website 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 14, 2017. When fully implemented, the agreement will address the findings of non-compliance 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:

- developing a corrective action plan to remove on-line barriers;
- conduct an accessibility audit of a new website launched by the district;
- making all new website content and functionality accessible to people with disabilities;
- posting a notice to persons with disabilities about how to request access to on-line 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 C.F.R. §§ 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 federal 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 complainant 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 14, 2017**. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring the district's implementation of the agreement, by telephone at (206) 607-1632 or by e-mail at noel.nightingale@ed.gov. For questions about this letter, please contact me by telephone at (206) 607-1612 or by e-mail at paul.goodwin@ed.gov.

Sincerely,

Paul Goodwin
Team Leader

Enclosure: Resolution Agreement

cc: Honorable Chris Reykdal, Superintendent of Public Instruction
Porter Foster Rorick LLP