



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

September 12, 2017

Via U.S. mail and email (superintendent@wjccschools.org)

Dr. Olwen Herron
Acting Superintendent
Williamsburg-James County Public Schools
P.O. Box 8783
Williamsburg, VA 23187

RE: OCR Complaint Nos. 11-16-1407 and 11-16-1440
Resolution Letter

Dear Dr. Herron,

This letter is to advise you of the outcome of the complaints that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received against Williamsburg James City County Public School Division (the Division). In both complaints the Complainant alleged that that certain pages of the Division's website are not accessible to students and adults with disabilities including, but not limited to, vision impairments. Complaint 11-16-1407 included the following webpages:

- <https://wjccschools.org/departments/student-services/special-education/>
- <https://wjccschools.org/departments/student-services/homeless-education/>
- <https://wjccschools.org/departments/technology/>
- <https://wjccschools.org/community/community-resources-for-wjcc-families/>
- <https://wjccschools.org/vue/>

Complaint 11-16-1440 included the following webpages:

- <https://wjccschools.org>
- <https://wjccschools.org/departments/student-services/special-education>
- <https://wjccschools.org/departments/student-services/homeless-education>
- <https://wjccschools.org/departments/technology>
- <https://wjccschools.org/community/community-resources-for-wjcc-families>
- https://wjccsis.wjccschools.org/login_parent_pxp.aspx?regeneratesessionid=true
- <https://wjccschools.org/about-wjcc/contact-us>
- <https://wjccschools.org/departments/special-programs/early-childhood-education>
- <https://wjccschools.org/departments/operations/child-nutrition-services/free-reduced-lunch>

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

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, as amended (Title II), 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 recipient is subject to OCR’s jurisdiction under Section 504 and Title II.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

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:

OCR examined the pages on the Division’s website identified by the complainant to determine whether they are accessible to persons with disabilities.

OCR initially evaluated the above-listed pages and determined that some important content of the website could only be accessed by people who can use a computer mouse, which meant that content was not available to those who are blind, many who have low vision, and those with

disabilities affecting fine motor control; videos did not have captions; and parts of the website used color combinations that made text difficult or impossible for people with low vision to see. These barriers deny persons with disabilities access to programs, services, and activities offered on the website, impede the recipient's communications with persons with disabilities and, therefore, violate Title II and Section 504.

During the investigation, OCR held a meeting with screen sharing software where we explained the barriers to access that had been identified by OCR. Before OCR conducted additional investigation of the Division's website and other webpages controlled by the Division, the Division expressed an interest in voluntarily resolving this case. In light of the recipient's willingness to address the remaining barriers to access on webpages controlled by the Division without further investigation, OCR determined entering into a voluntary resolution agreement is appropriate.

Resolution Agreement:

The recipient submitted a signed resolution agreement (Agreement) to OCR on July 10, 2017. When fully implemented, the Agreement will address the findings of noncompliance noted above as well as resolve issues of accessibility pertaining to webpages controlled by the Division. The recipient committed to take actions including:

- developing a corrective action plan to prioritize the removal of online barriers over an 18-month period; and
- posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible in the description box for all videos on its website or YouTube page.

OCR will monitor the recipient's implementation of the Agreement. When OCR concludes the recipient 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 recipient 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 recipient] written notice of the alleged breach and sixty (60) calendar days to cure the breach.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on July 10, 2017 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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 Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact the OCR attorneys assigned to these complaints, Megan Ballard at 202-453-6739 or Megan.Ballard@ed.gov, or Erica McKnight at 202-453-5910 or Erica.McKnight@ed.gov.

Sincerely,

/s/

Ralph A. Suris, Chief Attorney
Acting Team Leader, Team V
Office for Civil Rights
District of Columbia Office

Enclosure: Resolution Agreement

cc: Pakapon Phinyowattanachip, Counsel for Division
Via email to ppakapon@reedsmith.com