



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

December 19, 2016

Dr. June Atkinson
State Superintendent
North Carolina Department of Public Instruction
NC Education Building
6301 Mail Service Center
Raleigh, NC 27699-6301

RE: OCR Complaint No. 11-16-1787

Dear Dr. Atkinson:

This is to advise you of the resolution of the above-referenced complaint investigation of the North Carolina's Education Services for the Deaf and Blind (the District) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on August 15, 2016, alleged that the District is discriminating, on the basis of disability, because certain pages on its website are not accessible to persons with disabilities.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.

Before OCR completed its investigation, the District 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 Standards

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 covered entities' 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

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

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

During the course of the investigation OCR examined a number of pages on the District’s website to determine whether they are accessible to persons with disabilities. These web pages included:

- *Home page* (<http://www.governormorehead.net/>)
- *About GMS page* (http://www.governormorehead.net/about_gms)
- *Academics- Assessments page* (<http://www.governormorehead.net/assessment>)
- *Student Link page:* (http://www.governormorehead.net/student_life)
- *Residential Life Services page*
(http://www.governormorehead.net/residential_life_services)
- *Athletics page* (http://www.governormorehead.net/gms_athletics)
- *GMS PTA page* (http://www.governormorehead.net/gms_parent_involvement)
- *Literary Resources for Students and Families page*
(http://www.governormorehead.net/literacy_resources_for_students_and_families)

OCR evaluated the above-listed pages and determined that important images were missing text descriptions, called “alt tags,” that describe the images to blind users who use special software; 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. This barrier denies persons with disabilities access to programs, services, and activities offered on the website and may impede the District’s communications with persons with disabilities.

Prior to the conclusion of OCR’s investigation, 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 would be appropriate.

Resolution Agreement

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on November 30, 2016 which, when fully implemented, will resolve the allegations raised in this complaint. The District committed to take actions such as:

- 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;
- Making all new website content and functionality accessible to people with disabilities;
- 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.

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 District's implementation of the Agreement until the District 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.

Conclusion

This concludes OCR's investigation of the complaint. This letter 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 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, or participates in an OCR proceeding. 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 District's cooperation in the resolution of this complaint. If you have any questions, please contact the assigned attorney, Zorayda Moreira-Smith at 202-453-6946 or Zorayda.Moreira-Smith@ed.gov.

Sincerely,
/S/
Kristi R. Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX