



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV  
MICHIGAN  
OHIO

November 6, 2013

Mr. James E. McCord  
Superintendent  
Virtual Community School of Ohio  
4480 Refugee Road, Suite 304  
Columbus, Ohio 43232-4459

Re: OCR Docket #15-11-5002

Dear Mr. McCord:

This letter is to advise you of the resolution of the above-referenced compliance review of the Virtual Community School of Ohio (the School), initiated in February 2011 by the U.S. Department of Education's Office for Civil Rights (OCR).

This review was conducted pursuant to OCR's authority under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (Department). OCR also has authority as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public elementary and secondary education systems, regardless of whether they receive Federal financial assistance from the Department. The School is a public elementary and secondary education system; it is its own Local Education Agency (LEA). As an LEA it is a recipient of Federal financial assistance from the Department and is, therefore, subject to the provisions of these statutes and regulations.

The compliance review assessed whether the School discriminates against students with disabilities by failing to ensure they receive a free appropriate public education (FAPE). This included assessing whether the School identifies, evaluates, places, and provides procedural safeguards for students with disabilities in conformance with Section 504 and Title II; whether the School has a designated employee to coordinate its efforts to comply

with Section 504 and Title II; whether the School has adopted and published grievance procedures that provide for the prompt and equitable resolution of complaints under Section 504 and Title II; and whether the School has provided individuals with visual disabilities with equal opportunity to participate in or benefit from its web-based education program and whether access to the web-based education program is as effective as is that proved to other students.

Based on its investigation, OCR identified compliance problems in each of the examined areas. OCR concluded that the School is in violation of Section 504 and Title II. The School has voluntarily agreed to remedy these issues, as set forth in the enclosed resolution agreement. The letter summarizes the applicable legal standards, the information gathered during the review, and how the review was resolved. OCR will closely monitor the School's completion of the steps outlined in the resolution agreement to ensure that the School has fully implemented them and is in compliance with applicable Section 504 and Title II requirements.

## **Background**

During the course of this review to date, OCR has reviewed documents the School provided, including the findings of a review of the School by the Ohio State Department of Education regarding compliance with the Individuals with Disabilities Education Act (IDEA); School policy documents; enrollment data; and student Section 504 plans. OCR also interviewed staff at the School, including staff involved in the School's provision of computer-based services.

The School is an internet-based, public charter school that was established in 2001. The School serves approximately 1200 students in grades K-12 who reside throughout the state of Ohio. During the 2012-2013 school year, 634 of the School's enrolled students were identified as having a disability or disabilities; 41 of these students were served through Section 504 plans. During the same school year, the School employed 11 regular education teachers and three special education teachers for grades K-8 and seven regular education teachers and two special education teachers for grades 9-12, as well as a Director of Special Education, a Section 504 Coordinator, and an "IEP specialist." The School did not report employing any speech and language therapists, occupational therapists, aides, or other, similar auxiliary staff.

The School's website states that it is "an ideal setting for students who need specialized instruction, students with disabilities, students removed from school for disciplinary reasons, students who desire to work at an accelerated pace and students who philosophically do not want to attend a traditional school." <http://www.vcslearn.org/discover-vcs/about-us/>. The website's "Special Education" page states that the flexible schedule offered by the School "can create an ideal scenario for students with special needs. Students who find it difficult to attend a traditional brick and mortar school are relieved to be able to attend school from home on a schedule that works best for them."

The School's website states that it is open to any students who meet the school's age, grade, and geographic enrollment criteria and whose parents choose to apply and that the School "provides appropriate services for students with disabilities." Students enroll in the School through an on-line application available on the website.

## **Services for Students with Disabilities**

### **Legal Standards**

#### **A. Evaluation and Placement**

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires recipients operating a public elementary and secondary education program or activity to provide a free appropriate public education to each qualified student with a disability in their jurisdictions. The regulation defines a FAPE as the provision of regular or special education and related aids and services that are: 1) designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met; and 2) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Where, as in the area of evaluation and placement and procedural safeguards for students with disabilities, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards. Implementation of an individualized education program (IEP) developed in accordance with IDEA is one means of meeting this standard. 34 C.F.R. § 104.33(b)(2).<sup>1</sup>

The Section 504 implementing regulation, at 34 C.F.R. § 104.35, provides in relevant part that recipients shall conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The regulation also requires that in interpreting evaluation data and making placement decisions, a recipient shall draw upon information from a variety of sources, including aptitude and achievement tests and teacher recommendations, as well as the student's physical condition, social and cultural background, and adaptive behavior. The regulation requires recipients to establish procedures to ensure that the information obtained from all such sources is properly

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<sup>1</sup> ODE's Office for Exceptional Children undertook a review under the IDEA of the School's practices in 2010-2011. Through a records review, ODE found evidence of areas of non-compliance that are relevant to the instant review, such as records not evidencing that determinations of disability were being made by an appropriate group, that evaluations addressed all areas of suspected disability, and that the evaluation team reviewed evaluation data. ODE, therefore, required the School to submit new evaluation records for the State to review, to reconvene IEP/Evaluation Team Report (ETR) teams to conduct a new ETR for students, and, in some cases, to include all qualified professionals, including the parents, to review existing evaluation data. The School and ODE provided OCR with an update concerning ODE's monitoring of the issues identified, demonstrating that the School had addressed the issues to ODE's satisfaction and that ODE had so notified the School on June 14, 2012. As the Section 504 implementing regulation states that compliance with the IDEA procedural requirements with respect to these issues is one means of achieving Section 504 compliance, OCR did not further investigate as part of this compliance review issues relating to the evaluation and provision of services to students with disabilities at the School under IDEA.

documented and carefully considered. If a recipient determines, based on the facts and circumstances of an individual case, that medical documentation or a medical assessment by a licensed physician is necessary to complete an appropriate evaluation, the recipient may ask the parents or guardians if they have medical documentation. If the answer is no, or if a parent or guardian is unwilling to provide medical documentation, then it is the recipient's responsibility to arrange for a medical evaluation at no cost to the parents. The regulation provides that placement decisions, which are based on information developed during the evaluation, must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

If a student with a disability transfers with a Section 504 plan to a recipient from another school district, a group of persons at the recipient knowledgeable about the student, the meaning of the evaluation data, and the placement options must review the plan and supporting evaluation documentation to determine if they meet Section 504 requirements. If they do, the recipient may adopt and implement the plan without conducting a new evaluation. If the recipient receiving the transferring student determines that the evaluation and/or plan does not meet Section 504 requirements or wishes to conduct its own evaluation, the recipient must promptly evaluate the student consistent with the Section 504 procedures at 34 C.F.R. § 104.35 and determine the appropriate educational program for the student. There is no Section 504 bar to the receiving recipient's honoring the previous plan, to the extent possible, during the interim period.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(d), requires recipients to reevaluate students with disabilities periodically.

### **B. Procedural Safeguards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.36, requires recipients to establish and implement, with respect to actions regarding the identification, evaluation, and educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, the right to examine relevant records, and an impartial hearing.

### **C. Section 504 Coordinator**

Section 504's implementing regulation requires recipients that employ 15 or more people to designate at least one person to coordinate its efforts to comply with Section 504 (typically referred to as the "Section 504 Coordinator"). The regulation also requires recipients to take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, of the identity of the Section 504 Coordinator. 34 C.F.R. §§ 104.7(a) and 104.8(a). Title II contains a similar requirement at 28 C.F.R. § 35.107(a), which specifies that a public entity that employs 50 or more persons shall make available to all interested individuals

the name, office address, and telephone number of the designated individual. The Section 504/Title II Coordinator must have sufficient knowledge of the legal requirements of Section 504 and Title II to effectively carry out his or her responsibilities.

#### **D. Notice of Nondiscrimination**

Section 504's implementing regulation, at 34 C.F.R. § 104.8, requires recipient institutions to take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, and unions and professional organizations holding collective bargaining agreements and professional agreements with the recipient, that it does not discriminate on the basis of disability. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities and shall include identification of its Section 504 Coordinator. Title II contains a similar notice requirement at 28 C.F.R. § 35.106.

#### **E. Grievance Procedure**

The Section 504 regulation at 34 C.F.R. § 104.7(b) states, in part, that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation, at 28 C.F.R. § 35.107(b), provides that a public entity shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II.

### **Findings of Fact**

#### **A. Evaluation and Placement**

The School's website contains a link on its homepage to a page entitled "Special Education": <http://www.vcslearn.org/discover/vcs/special-education>. The page contains general information about Section 504. It describes a Section 504 plan as a "legally binding education plan" "designed to create modifications and accommodations for students with special needs." It further states that, while a Section 504 plan should not be confused with an IEP, "in some instances students transitioning from special education to general education classroom placement may qualify for a 504 plan" and notes that students not qualifying for an IEP may qualify for a Section 504 plan. It provides a definition of disability under Section 504 and lists the steps in the 504 process as: referral, scheduling and holding a 504 meeting, development of a plan, if appropriate, and setting a date to review the plan. The website also states that students can be referred for a Section 504 plan by a teacher, a parent/guardian, a school-based intervention team or support staff, a physician, or a therapist. Students may also self-refer.

The School informed OCR that, for students who might qualify under the IDEA, it uses the “Special Education Model Policies and Procedures” issued by ODE. The School does not have written policies and procedures concerning the identification, evaluation, placement, and provision of special education and/or related aids and services to students with disabilities under Section 504.

When asked who at the School is responsible for identifying and referring students to determine whether to evaluate them to see if they qualify for services under Section 504, the Coordinator acknowledged that the School does not identify students with learning disabilities who may need to be evaluated. She stated that identification is difficult because, given the online nature of the school, teachers do not see students in person. The Coordinator stated that, if a staff member suspects a child might have a disability, he/she would let the Director of Special Education (the Director) know, but she could not remember a situation where this occurred, except when a teacher suspected a student had an emotional disability (not a learning disability). The School has open enrollment; all students who apply are accepted. The Coordinator stated, however, that parents can identify a child (or students can identify themselves) as a student with a disability, via the School’s application packet, which includes a checklist with an area to check for special needs documentation. The application asks that, if the student enrolling has special needs, then parents/guardians should provide the School with the most recent IEP and evaluation team report, as well as any copies of psychological testing. The application materials do not mention what to do if a student has a Section 504 plan. Once a student enrolls and the School receives a transcript, parents are asked if their child has a Section 504 plan or an IEP but are not asked if their child has a disability. The Coordinator also stated that students let her know if they are on a Section 504 plan.

The Coordinator informed OCR that the School places a student on a Section 504 plan only when a student’s parent or a student indicates that the student was on a Section 504 plan before applying to the School or when a parent or students requests services under a Section 504 plan. She typically refers parents to the Director, who will then determine if the individual student qualifies for services under IDEA. If students are determined not to be eligible for services under IDEA, the Director refers them to the Coordinator, and a student whose parents, or the student himself/herself, who still wants services for a disability may be placed on a Section 504 plan. The Coordinator informed OCR that every parent or student who requests services under a Section 504 plan is provided services. The Coordinator also said she does not refer every matter to the Director; she may speak with the parent and sometimes with the student and determine whether the student needs services under Section 504.

The Coordinator stated that the School does not complete its own testing/evaluations of students. She said that she is not aware of the School having completed an evaluation of any student, nor of the School ever paying for an evaluation. When parents indicate that their child is having learning difficulties or may possibly have a disability, she informs the parents that some kind of documentation is needed and asks if they have any documentation that will provide additional information. This could include medical evaluations or any other professional information. The School does make referrals to

outside sources for the parent/guardian to follow-up to obtain medical or other information. The Coordinator said she might refer a parent to a clinic in the area where the student could be evaluated. She stated that the School does not have a psychologist except for academic testing. The Coordinator explained that, while she encourages parents to provide documentation, it is not required.

The Coordinator stated that she has not had any training in evaluating documentation or types of disabilities. The services that a student with a disability may need are based on the documentation and information that a parent can provide to the School, as well as information from the student's previous placement, if available. Teachers also sometimes provide information. Once documentation is provided, she and the parents complete a Section 504 plan for the student. She suggests and makes recommendations regarding the services for the student.

The Coordinator reported that she participates in all student Section 504 meetings and that these are completed primarily over the telephone, as students are spread throughout Ohio. The Director participates if she is available. The Coordinator stated that the School does not complete a report summarizing what was done in an evaluation. Parents receive copies of the Section 504 plans, and teachers have access to plans online through a password-protected program. She lets teachers know by email about students who are on Section 504 plans.

When asked whether the School has any ongoing procedures or a process to identify students with disabilities who are already enrolled in the School, the Coordinator reiterated that, when it is brought to the School's attention, the School acts; there is not any process *per se* used to locate students who need services. She noted again that it is difficult to provide some aspects of services, such as being able to observe students, because they are not in a classroom.

The Coordinator stated that she contacts teachers and parents regularly in order to find out if students' educational needs are being met. She said that she has not had any problems noted by teachers regarding implementing plans. When parents have called her about problems, the School makes adjustments or modifications on the plans. She said that she measures how well the Section 504 plans are working by whether the student is making progress and by discussing the matter with teachers, parents, and students.

The "Special Education" page on the School's website states that, after a student's Section 504 plan is developed, the "team sets a review date for the plan." While the Coordinator indicated, as stated above, that the School revisits students' Section 504 plans to ensure they are designed to provide the students with a FAPE, she provided OCR with no information to support that the School has a procedure in place to complete reevaluations. Some of the Section 504 plans submitted to OCR indicate planned dates for reevaluation; most did not. The Coordinator stated that she has not had any problems concerning students not being able to access information that is being communicated online. She said that, if that did occur, the School would make the adjustments that are needed.

## **B. Procedural Safeguards**

The Coordinator stated that, in a case where a student would be found ineligible for a Section 504 plan, the parents would receive paperwork about their rights to challenge the determination. She said this notice is contained on the Section 504 plan documentation. She also stated that she advises all parents of their rights regarding their children who have disabilities and that, whenever they have a meeting to determine whether a student qualifies as a student with a disability under Section 504, the parents are provided a written notice regarding their rights. This notice is the same written notice routinely provided by not only the School, but by many other districts throughout Ohio, to students identified under IDEA, titled "Whose IDEA is This?" This brochure indicates that notice of the request for an impartial hearing will be given not only to the state, but also to the School. In Ohio, state hearing officers do not hear cases raising only Section 504 issues, so the School would be responsible for contracting with an impartial hearing officer. The Coordinator indicated that the School has not had any due process cases since she has been with the School.

## **C. Section 504 Coordinator**

The person designated to ensure the School's compliance with Section 504 and Title II (the Coordinator) has served in that position since 2010. She stated that she has not had any training from the School regarding Section 504 policies and procedures but that she learned about Section 504 during her graduate college years and from various resources that she has obtained, and she discusses possible Section 504 matters with the School's Director of Special Education (the Director). She stated that, as Coordinator, she invites parents to meetings, meets with parents and students, prepares Section 504 plans for students, reviews Section 504 plans, and ensures that Section 504 plans are implemented. OCR reviewed the School's website, the primary, initial source of information about the School for parents/guardians, and found only a telephone number to call if one is interested in information regarding special education services (as distinguished from Section 504 services).

## **D. Notice of Nondiscrimination**

The School's website currently includes the following statement of nondiscrimination:

It is the policy of Virtual Community School of Ohio to provide equal opportunities in all of its educational programs and operations and in all areas of employment practice, and to ensure that there shall be no discrimination against any employee or applicant or student on the basis of age, race, color, religion, disability, sex, national origin or ancestry. Virtual Community School of Ohio is an Equal Opportunity Employer.



### **E. Grievance Procedures**

The Coordinator said that she is not aware of any grievance procedure that the School offers. A search of the School's website did not identify any mention of Section 504 grievance procedures or other disability grievance procedures.

### **Analysis and Conclusion**

Based on this review, OCR determined that the School has not established policies and procedures or practices under Section 504 to ensure that it provides a FAPE to each qualified student with a disability at its School. OCR's investigation revealed that the School does not comply with the evaluation and placement requirements set forth in Section 504, at 34 C.F.R. § 104.35. The School does not conduct appropriate evaluations before placing students with disabilities on Section 504 plans. Specifically, the School does no testing or other evaluation of students who may have disabilities, including arranging and paying for medical assessments if needed. Instead, the School refers parents to outside providers who may perform testing or other evaluation, but it does not bear the cost of those referrals, as required if a Section 504 team determines that such testing is necessary to appropriately evaluate a student. In addition, the School does not draw upon a variety of sources but rather relies on information provided by parents and guardians and, as available, former schools and teachers. The School also does not examine the Section 504 plans of new students to determine whether they are appropriate before adopting and implementing the plans, even though many plans would not have previously provided for placement of the student in an on-line educational environment. OCR's investigation also revealed that the School does not conduct periodic reevaluations of students on Section 504 plans. In addition, the School failed to comply with Section 504's implementing regulation that requires that placement decisions be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options; rather, the Coordinator may decide that a student has a disability and determine what services are required for the student based solely on a discussion with the student's parents/guardians.

Moreover, the School failed to comply with Section 504's implementing regulation that recipients establish a system of procedural safeguards that includes notice, the right to examine relevant records, and an impartial hearing. The School does not provide notice to parents of their procedural safeguards relating to the identification, evaluation, and placement of students under Section 504, the right to examine relevant records, and the right to an impartial hearing concerning Section 504 decisions about identification, evaluation, and placement.

The School also does not comply with Section 504 and Title II requirements relating to Section 504/Title II Coordinators. While the School has designated the Coordinator as its Section 504/Title II Coordinator, neither the School's website nor any materials reviewed by OCR identify the Coordinator as the School's Section 504/Title II Coordinator or provide her contact information, as required by the implementing regulations for those

statutes. 34 C.F.R. §§ 104.7(a) and 104.8(a); 28 C.F.R. § 35.107(a). In addition, the School has not provided training to the Coordinator to ensure that she has sufficient knowledge of the legal requirements of Section 504 and Title II to effectively carry out her responsibilities as the Section 504/Title II Coordinator.

The School also failed to comply with the regulations implementing Section 504 and Title II requiring recipients such as the School to adopt and publish a grievance procedure that incorporates appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by those laws. The School does not have published grievance procedures, as required by 34 C.F.R. §§ 104.7(b); 28 C.F.R. § 35.107(b).

### **Web Accessibility**

#### **Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.4 provides:

(a) *General.* No qualified [disabled] person shall, on the basis of [disability], be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of [disability]:

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(iii) Provide a qualified [disabled] person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to [disabled] persons or to any class of [disabled] persons unless such action is necessary to provide qualified [disabled] persons with aid, benefits, or services that are as effective as those provided to others;

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(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified [disabled] persons to discrimination on the basis of [disability], (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to [disabled] persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

The Title II regulation has similar requirements to Section 504 at 28 C.F.R. § 35.130:

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b) (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

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(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

Additionally, the Title II regulation has specific requirements for communications at 28 C.F.R. § 35.160:

(a) (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

On June 29, 2010, OCR and the U.S. Department of Justice Civil Rights Division jointly issued a Dear Colleague Letter to all college and university presidents that addressed the use of emerging technologies. The letter noted that several universities agreed not to purchase, require or recommend use of any dedicated electronic book reader “unless or until the device is fully accessible to individuals who are blind or have low vision” or the universities “provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.”

On May 26, 2011, OCR issued a Dear Colleague Letter regarding the use of emerging technologies to elementary and secondary officials and postsecondary officials, with an attached Frequently Asked Questions (FAQ) document.<sup>2</sup> The letter stated that “[a]s the use of emerging technologies in the classroom increases, schools at all levels must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of the technology for all students, including students with disabilities.” The FAQ states that the principles of equal opportunity, equal treatment, and the obligation to make accommodations or modifications to avoid disability-based discrimination apply to elementary and secondary schools under the general nondiscrimination provisions in Section 504 and Title II and that the application of these principles to elementary and secondary schools is also supported by the requirement to provide a FAPE to students with disabilities. The FAQ makes it clear that students with disabilities, especially those with visual impairments, are to be afforded “the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.” The Dear Colleague Letter states that the educational institution must ensure that students with disabilities can access the educational opportunity and benefit with “substantially equivalent ease of use” as students without disabilities. Should the educational institution use a device that is not fully accessible, the institution must provide “accommodations or modifications that permit [students with disabilities] to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” The FAQ further clarifies that an accommodation or modification that is available only at certain times (such as an aide to read to the student) will not be considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other on-line content. The FAQ also makes it clear that on-line programs are also covered and stresses the importance of planning to ensure accessibility from the outset.

### **Findings of Fact**

OCR examined whether the School has provided individuals with visual disabilities with equal opportunity to participate in or benefit from its web-based education program and whether access to the web-based education program is as effective as is that proved to other students. While the review focused on whether the School’s on-line program is accessible to individuals with vision-related disabilities, OCR notes that individuals with other types of disabilities, such as learning disabilities, also may experience difficulties accessing the School’s on-line program due to web accessibility issues. In addition, parents, prospective applicants, and others interested in the School might also have vision-related or other disabilities and would therefore have difficulty accessing information about the School’s program that is found on the School’s website.

Only three students enrolled at the School for the 2011-2012 school year were identified as having vision-related disabilities; the School provided services to those students pursuant to their individualized education programs (IEPs) developed under IDEA. The

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<sup>2</sup> <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.html>

students' IEPs provided for a variety of services, such as modified curriculum, shortened assignments, a scribe, small groups, abridged reading, large print, a large screen monitor, and extended time. Services were to be provided in the home environment. There is no explanation in the IEPs as to how, for example, the School would provide small groups or scribes with internet-based learning. The School's Special Education Director indicated family members could assist the students.

The Director informed OCR that one student left the School in 2012, another arrived at the School with assistive technology in place and has since graduated, and the third is provided with large print and still attends the School.

During the course of its investigation, OCR reviewed the School's website and online learning environment. As the School has not adopted a web accessibility policy or otherwise articulated standards for ensuring accessibility, OCR used standards set forth in Section 508 of the Rehabilitation Act (Section 508), 29 U.S.C. § 794d, as amended, and in W3C's Web Content Accessibility Guidelines (WCAG) (jointly referred to hereinafter as "the Accessibility Standards") as guidelines.<sup>3</sup>

OCR reviewed a representative sampling of the School's webpages, such as:

- (1) pages on which people are likely to enter the website (*e.g.*, a homepage);
- (2) pages with different layouts and functionality, such as tables, forms, or dynamically generated results; those with informative images, such as diagrams or graphs; and those with scripts or applications that perform a particular task or function; and
- (3) pages most likely to garner the most traffic from visitors and/or which provide the most important information regarding the program, such as information pertaining to admissions, curriculum requirements, code of conduct, and extra-curricular activities.

OCR also selected a sampling of classes in the School's online learning environment based on the enrollment of the three students with visual impairments, including classes from the high school, middle school, and elementary school and classes that spanned a variety of disciplines, such as science, language arts, math, and government.

OCR's review of the School's website and its online learning environment identified a number of concerns. For example, OCR found that the website contains some images without text equivalents, rendering that content inaccessible to screen reading software,

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<sup>3</sup> The use of the Accessibility Standards by OCR does not imply that conformance to Section 508, WCAG, and/or other electronic and information technology standard is either required or sufficient to comply with either Section 504 or Title II. Rather, OCR's limited application of the Accessibility Standards served only as an investigative line of inquiry, assessing the designated website against specific technical requirements, which may indicate potential compliance concerns under Section 504 and Title II.

non-visual browsers, and Braille readers.<sup>4</sup> In addition, there are some photographs used throughout the School's website and within its media library, which depict students participating in various programs or activities, that are inaccessible. Images posted by teachers within the online learning environment also lacked text equivalents. For example, in one online learning environment class, the teacher provided no alternative text on over 1,400 images. Teachers also directed students to lessons on external websites that lacked text equivalents, including navigational items and course content.

In addition, documents posted on the School's website, including the curriculum catalog, application packet, and program information for the Branching Program, were all posted in Portable Document Format (PDF format), an image-based format that may not be accessible to people who use screen readers or those with low vision, but the PDFs were not properly tagged for the document to be accessible.<sup>5</sup> Also, in all courses reviewed, each course instructor had control of the information and content posted on his or her individual class site and often posted critical documents in PDF format, such as information regarding class assignments and sections of course materials. Such information was not offered in an alternative, accessible format.

The School's website also used color and font sizes in areas of critical program information, such as the online Enrollment Application and its Calendar of Events, that may not be accessible to persons with disabilities. Similarly, electronic forms used by the School to be completed online were not constructed so that persons using assistive technology could complete and submit the forms.

Other factors impacting the ease of use and/or access to content located on the School's website included:

- dropdown menus of the main navigation bar not available to users who must navigate with a keyboard;
- lack of a method for a user to skip repetitive navigation links;
- including a photo gallery without text equivalents;
- pages not organized so that they were readable without requiring an associated style sheet; and
- videos and other multimedia without accessible features, such as keyboard-only controls, audio descriptions, and text captions synchronized with the video images.

Factors impacting the ease of use and/or access to content located on the School's online learning environment included:

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<sup>4</sup> There were significant concerns regarding text equivalents in the School's website prior to its redesign and launch on February 16, 2012. The number of technical deficiencies in this technical area were reduced, but not cured, by the new website.

<sup>5</sup> PDF tags provide a hidden structured, textual representation of the PDF content that is presented to screen readers. They exist for accessibility purposes only and have no visible effect on the PDF file.

- course content, class assignments, instructions, or other critical information provided in inaccessible PDF format;
- videos and other multimedia without accessible features, such as keyboard-only controls, audio descriptions, and text captions synchronized with the video images;
- assignments and quizzes not available to users who must navigate with a keyboard;
- pictures and other images lacking text equivalents; and
- assigned lessons provided by linking to inaccessible, third-party content on external websites.

### **Analysis and Conclusion**

OCR determined that the School's website and online learning environment do not comply with the Accessibility Standards and are not accessible, generally, as demonstrated by the extensive list of concerns OCR identified above. There were no alternatives afforded to provide such access. It is a virtual school and the School has not made its website accessible. Based on the above, OCR has concluded that the School has not provided individuals with disabilities, including visual impairments, with an equal opportunity to participate in or benefit from its web-based education program and that access to its website and web-based education program is not as effective for individuals with disabilities as that provided to individuals without disabilities.

\* \* \* \* \*

Pursuant to the terms of the resolution agreement that the School entered into voluntarily in order to resolve this matter, the School has committed to provide FAPE to each qualified student with a disability at its School. The School agreed to develop Section 504 policies and procedures to provide for the evaluation and placement of students at no cost to parents and guardians in accordance with appropriate evaluation, reevaluation, and placement procedures. The School will notify parents and guardians and students of these policies and procedures and provide training to all staff. The School will offer to evaluate or reevaluate students with disabilities enrolled in the last two years to determine whether they need compensatory special education and/or related aids or services. If needed, the School will promptly provide compensatory services to the student. The School will publish contact information for its Section 504/Title II Coordinator and ensure that the Coordinator is appropriately trained. The School will also develop and publish grievance procedures that provide for the prompt and equitable resolution of disability discrimination complaints.

The School has agreed to ensure that its website and the online learning environment are accessible to individuals with disabilities, to develop an accessibility policy, and to review and monitor the website to ensure its accessibility.

Based on the commitments the School has made in the resolution agreement described above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information demonstrating implementation of the resolution agreement in a timely manner in accordance with the reporting requirements of the resolution agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the School has fulfilled the terms of the resolution agreement and is in compliance with Section 504 and Title II with regard to the issues in the review.

OCR will closely monitor implementation of the resolution agreement signed to resolve this compliance review. OCR will not close the monitoring of this resolution agreement until it has determined that the School has complied with the terms of the resolution agreement and is in compliance with Section 504 and Title II. If the School fails to implement the resolution agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the resolution agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the resolution agreement, OCR shall give the School written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Please be advised that this letter and the enclosed agreement cover only the issues investigated as part of this compliance review and should not be construed to address any other issues not address in this letter. Letters of finding are fact-specific dispositions of individual cases. They are not formal statements 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.

OCR would like to thank you and your staff for your cooperation during the course of this review. OCR looks forward to working with you during OCR's monitoring of the School's implementation of the enclosed resolution agreement. Responsibility for oversight of the monitoring is being assigned to Tanya Williams Sample of my staff. Ms. Sample may be reached at (216) 522-4487 or at [Tanya.Sample@ed.gov](mailto:Tanya.Sample@ed.gov).

If you have any questions about this letter, please contact Ms. Karla Ussery, Team Leader, at (216) 522-4970.

Sincerely,

/s/

Catherine D. Criswell  
Director

Enclosure