



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

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REGION XV
MICHIGAN
OHIO

November 7, 2017

Richard E. Kroopnick
Richard E. Kroopnick, PLC
30500 Northwestern Highway, Suite 500
Farmington Hill, Michigan 48334

Re: OCR Docket #15-16-1030

Dear Mr. Kroopnick:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Waterford School District (the District) on October 22, 2015, alleging discrimination based on disability. Specifically, the complaint alleged that:

1. The District failed to appropriately evaluate a student (the Student) when it failed to complete an agreed upon Assistive Technology Consultation to determine if he required assistive technology services; and
2. Portions of the District's website are inaccessible to individuals with disabilities.

OCR is responsible for enforcing 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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 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 entities. As a recipient of Federal financial assistance and as a public entity, the Academy is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- Whether the District failed to evaluate a student who the District had reason to believe required additional and/or different disability-related services in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35.
- Whether the District excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to

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discrimination under any of its programs or activities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

- Whether the District failed to take appropriate steps to ensure that its communications with individuals with disabilities are as effective as its communications with others, in violation of the regulation implementing Title II at 28 C.F.R. § 35.160(a).

Legal Authority:

Section 504 mandates that recipients afford children with disabilities meaningful access to an education. A violation of 34 C.F.R. §§ 104.33 and 104.35 can be found where a recipient has failed to ensure that qualified persons with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay. Although the Section 504 regulation does not set forth specific timeframes by which districts must complete evaluations of students, OCR considers state-required timeframes for evaluations as well as districts' own internal guidelines to determine whether the evaluation has been completed within a reasonable time. The Michigan Administrative Rules for Special Education (MARSE), at R 340.1721b, require that, within 10 school days of receipt of a written request for any evaluation, a district must provide the parent with written notice and request written parental consent to evaluate. This section further requires that the time from receipt of parental consent for an evaluation to a notice of an offer of a FAPE or a determination of ineligibility be no more than 30 school days, unless an extension is agreed to by the parent and the district in writing.

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:

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and Recipient; and conducting a preliminary assessment of the accessibility of some pages from the District’s website.

The complaint alleges that the District failed to appropriately evaluate a student (the Student) when it failed to complete an agreed upon Assistive Technology Consultation to determine if he required assistive technology services. OCR staff reviewed the District’s Data and the data is replete with mention of the request or consideration of an Assistive Technology Consultation (ATC), however, there is no information that indicates that the Student received the ATC or that the ATC was unnecessary given any services the Student was provided through the implementation of the Student’s Individualized Education Program (IEP). In addition, the District did not provide an explanation of an ATC or how the IEP team administered an ATC for the Student.

In addition, the complaint alleges that the District’s website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. OCR conducted a preliminary examination of some of the web page on the District’s website and found possible compliance concerns as to whether the District’s website is accessible to individuals with disabilities. For example, on the Home page (at the time of OCR’s review), keyboard controls were not visually apparent and did not allow access to all content and functions, linked PDFs did not have selectable text, and visual contrast was found to be very low.

Prior to the completion of OCR’s investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual (CPM)*. On November 2, 2017, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the District has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the District’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the

Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation. Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report by **January 12, 2018**. For questions about implementation of the Agreement, please contact xxxxxxxxxxxx xxxxxxxxxxxx who will be monitoring the District's implementation, by e-mail at xxxxxxxxxxxx.xxxxxxxxxx@ed.gov or by telephone at (216) xxx-xxxx. For questions about this letter, please contact xxxx xxxxxx, Supervisory Attorney/Team Leader, at (216) xxx-xxxx.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure