



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

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MICHIGAN
OHIO

May 17, 2017

John C. Clark, Esq.
Giarmarco, Mullins & Horton, P.C.
Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, Michigan 48084-5280

Re: OCR Docket #15-17-1050

Dear Mr. Clark:

This letter is to inform you of the disposition of the above-referenced complaint filed against Pontiac Academy for Excellence (the Academy) with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on October 24, 2016, alleging discrimination based on disability. Specifically, the complaint alleged that certain of the Academy's web pages are not accessible to students and adults with disabilities including, but not limited to, with vision and print disabilities, hearing impairments, and fine motor impairments. These include:

- Home page: <http://www.pontiacacademy.org/>;
- Calendar: <http://www.pontiacacademy.org/calendar/>;
- About Us: <http://www.pontiacacademy.org/our-district/>;
- Events: <http://www.pontiacacademy.org/home/events/>;
- Parent Resources: <http://www.pontiacacademy.org/links-and-resources-2/>;
- Contact Us: <http://www.pontiacacademy.org/contact/>;
- Student resources: <http://www.pontiacacademy.org/links-and-resources/>; and
- Breakfast and Lunch menus: <http://www.pontiacacademy.org/additional-information/menus/>.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 (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 entities. As a recipient of Federal financial assistance from the Department and a public entity, the Academy is subject to Section 504, Title II and their implementing regulations. Accordingly, OCR had jurisdiction to investigate this complaint.

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

- whether the Academy, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination in its programs, activities, aids, benefits, or services in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and
- whether the Academy failed to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions 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 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 conducting a preliminary assessment of the accessibility of several pages from the Academy’s website.

The complaint alleged that the Academy’s website is not in compliance with Section 504 and Title II because it is inaccessible to students and adults with disabilities including, but not limited to, with vision and print disabilities, hearing impairments, and fine motor impairments. The Complainant used website accessibility evaluation tools (PowerMapper, A-Checker, and WAVE) and reported to OCR that the Academy website homepage, calendar page, about us page, events page, parent resources page, contact us page, student resources page, and breakfast and lunch menus page have accessibility issues for individuals with disabilities. She then provided OCR with a list of errors copied and pasted from the website accessibility evaluation tools that she used.

OCR conducted a preliminary examination of the eight specific web pages identified by the Complainant and found possible compliance concerns as to whether the Academy’s website is accessible to individuals with disabilities. For example, at the time of OCR’s review, “skip navigation” or “skip to content” links were not provided, forms did not have label or title elements, keyboard controls were not visually apparent and it was unclear if keyboard controls allowed access to all content and functions, links were not meaningfully labelled, non-trivial graphics did not have alternative text, and a video did not have captioning.

Prior to the completion of OCR’s investigation, the Academy asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). On May 15, 2017, the Academy submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

Resolution and Conclusion

In light of the commitments the Academy 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, however, monitor the Academy’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 Academy 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 Academy 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 Academy 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 Academy'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 Academy 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.

OCR looks forward to receiving the Academy's first monitoring report by July 3, 2017. For questions about implementation of the Agreement, please contact OCR attorney Kimberly Kilby, who will be monitoring the Academy's implementation, by e-mail at Kimberly.Kilby@ed.gov or by telephone at (216) 522-2574. For questions about this letter, please contact Donald Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure