



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 19, 2017

Mr. Tim Clements
Nicola, Gudbranson & Cooper, LLC
1400 Republic Building
25 West Prospect Avenue
Cleveland, OH 44115

Re: OCR Docket #15-17-1353

Dear Mr. Clements:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Imagine Clay Avenue Community School (the School) on March 27, 2017, alleging discrimination based on disability. Specifically, the complaint alleges that certain of the School's web pages are not accessible to individuals with vision, print, and physical impairments.

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 School 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 School, 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 and activities based on disability, 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.
- Whether the School failed to 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, in violation of 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 some pages from the School's website.

The complaint alleges that the School's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, and physical impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the above-referenced pages on School's website have accessibility issues for individuals with vision, print, and physical impairments, based on her “limited check” of the website. The Complainant then provided OCR with a list of errors copied and pasted from the website accessibility checker that was used.

OCR conducted a preliminary examination of some of the web pages identified by the Complainant and found possible compliance concerns as to whether the School's website is accessible to individuals with disabilities. For example, the Parent Page (at the time of

OCR's review), lacked a "skip navigation" or "skip to content" function and visual contrast errors were indicated.

Prior to the completion of OCR's investigation, the School asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On September 15, 2017, the School 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 School 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 School'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 School 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 School 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 School 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 School'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 School 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 School's first monitoring report by September 30, 2017. For questions regarding the monitoring of this complaint, please contact xxxxxxxxxxxxxxxxxxxxxxx, who will be monitoring the School's implementation of the Agreement, by e-mail at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx@ed.gov or by telephone at (216) xxx-xxxx. For questions regarding this letter please contact xxxxxxxxxxxxxxxxxxxxxxx, Supervisory Attorney/Team Leader by e-mail at xxxxxxxxxxxxxxxxx@ed.gov or by telephone at (216) xxx-xxxx.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure