



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

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November 25, 2016

James J. Grossane, Ed.D.
Superintendent of Schools
Smithtown Central School District
26 New York Avenue
Smithtown, New York 11787

Re: Case No. 02-16-1505
Smithtown Central School District

Dear Superintendent Grossane:

This letter is to inform you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Smithtown Central School District (the District). The complainant alleged that the District discriminated based on disability because certain pages of the District's website were not accessible to individuals with disabilities including, but not limited to, those with visual and hearing impairments.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

This letter summarizes the applicable legal standards, the information gathered during the investigation, OCR's determinations, and how the investigation was resolved.

Regulatory Authority

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability 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. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), extends this prohibition to public entities.

The regulations implementing Section 504 and the ADA, at 34 C.F.R. § 104.4(b) and 28 C.F.R. § 35.130(b), respectively, further prohibit discrimination on the basis of disability in the provision of any aid, benefit, or

service, directly or through contractual, licensing, or other arrangements. Covered entities may not deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Additionally, the regulation implementing the ADA has specific requirements for communication, which, in pertinent part, require that public entities 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. 28 C.F.R. § 35.160(a)(1).

Investigation and Findings

During the course of the investigation, OCR examined the homepage on the District's website, at <http://www.smithtown.k12.ny.us>, to determine whether it was accessible to persons with disabilities.

OCR evaluated the homepage and determined that important images were missing text descriptions, referred to as "alt tags," that describe the images to blind and low-vision users who use special software; there was lack of sufficient contrast between text and background, which could impede readability by individuals with visual impairments, including those with moderately low vision who do not use contrast-enhancing assistive technology; 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; and the website lacked a way for users of special software and those with disabilities affecting fine motor control to skip to the main content of the pages, thereby impeding their ability to efficiently navigate past long headers appearing before the main content. These barriers deny persons with disabilities access to programs, services and activities offered on the website and impede the District's communications with persons with disabilities.

Based on the foregoing, OCR determined that the District violated the regulation implementing Section 504, at 34 C.F.R. § 104.4, and the regulation implementing the ADA, at 28 C.F.R. §§ 35.130 and 35.160(a)(1), by maintaining a website that excludes qualified persons with disabilities from its online programs, activities, aids, benefits and services. Specifically, the District does not afford individuals with disabilities the same ease of use, completeness of information, or functionality through its website as is provided to individuals without disabilities.

Resolution Agreement

The District submitted a signed Resolution Agreement to OCR on November 16, 2016. In accordance with the Resolution Agreement, the District agreed 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.

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. OCR will monitor the District's implementation of the Resolution Agreement. When OCR concludes that the District has fully implemented the terms of the Resolution Agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the District fails to implement the Resolution Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including enforcing the specific terms of the Resolution Agreement.

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 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 should occur, the complainant may file a separate complaint alleging such harassment or intimidation.

Under the Freedom of Information Act, it may be necessary to release this document 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Ronald Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@ed.gov; or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXX X XXXXXXX XXX