



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
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NORTH DAKOTA
WISCONSIN

September 23, 2016

Mr. Mark Hansen
Superintendent
Elmbrook Schools
13780 Hope Street
Brookfield, WI 53005

Re: OCR Docket # 05-16-1166

Dear Mr. Hansen:

This is to advise you of the resolution of the above-referenced complaint investigation of the Elmbrook Schools (District) by the U. S. Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on February 18, 2016, alleged that the District is discriminating on the basis of disability. Specifically, the Complainant alleged:

1. That certain of the District's web pages are not accessible to students and adults with disabilities including, but not limited to, vision impairments, print disabilities and physical impairments. These web pages include the homepage, the Special Education page, Assistive Technology page, and the Early Childhood page.
2. The District's website does not include information about the District's Section 504 coordinator.
3. The District's website does not include information about the District's Section 504 grievance procedures.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 United States Code (U.S.C.) § 794, et seq., and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131-12134, et seq., and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

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

Legal Authority

Section 504 and Title II provide that no qualified persons with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by recipients of federal financial assistance or by public entities.¹ Persons with disabilities must have equal access to the programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden.² Under Section 504 and Title II, individuals with disabilities must be afforded an opportunity that is equal to the opportunity afforded others to participate in or benefit from aids, benefits, and services³ and must be provided with aids, benefits, or services that provide an equal opportunity as others to achieve the same result or the same level of achievement.⁴ 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.⁵ 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.⁶ 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.

Recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by technology and equal treatment in the use of the technology for all individuals with disabilities who access their programs or activities, including members of the public.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(a), requires a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with Section 504. The Section 504 regulation, at 34 C.F.R. § 104.8(a), also requires a recipient to provide notice of the employee designated to coordinate its efforts to comply with Section 504. The regulation implementing Title II, at 28 C.F.R. § 35.107(a), requires a public entity that employs 50 or more persons to designate at least one person to coordinate its efforts to comply with Title II and also requires a public entity to provide notice of the employee designated to coordinate its efforts to comply with Title II.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires a recipient that employs 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for prompt and equitable resolution of complaints. As a

¹ 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

² 28 C.F.R. § 35.164

³ 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii)

⁴ 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii)

⁵ 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv)

⁶ 28 C.F.R. § 35.160(a)(1)

part of those procedures, a recipient should provide reasonable notice of the procedures. The regulation implementing Title II, at 28 C.F.R. § 35.107(a), requires a public entity that employs 50 or more persons to adopt and publish grievance procedures that provide for prompt and equitable resolution of complaints.

Investigation To Date

During the course of the investigation OCR examined a number of pages on the District's webpages to determine whether they are accessible to persons with disabilities, including the homepage, the Special Education page, Assistive Technology page, and the Early Childhood page.

OCR conducted a preliminary evaluation of the above-listed pages and had concerns with the accessibility of certain features to persons with disabilities, including visually impaired persons (blind and low vision), mobility impaired persons, and hearing impaired persons. These concerns include that images were missing form labels for persons who are blind and use a screen reader, missing "alt tabs", descriptions or text labels for persons who are blind and use a screen reader, and certain items had low contrast, which may render the item unreadable for persons with low vision. These barriers may deny persons with disabilities access to programs, services, and activities offered on the website and may impede the District's communications with persons with disabilities.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this case. In order to conclude OCR's investigation of this complaint, OCR would have had to conduct interviews, review documents, and examine a broader range of pages on the District's website. In light of the District's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

With respect to allegation 2, the Complainant asserted that the District's website does not provide notice of the District's Section 504 coordinator. As noted above, the regulations implementing Section 504 require a recipient to designate a Section 504 coordinator and provide appropriate notice of that person. The District has designated an individual as its 504 Coordinator for Students. The District provided notice of this designation to parents, students and others at various places, including in Board Policy 6006, and a document, Parent and Student rights under Section 504 and Title II of the ADA. Therefore, after a careful review, OCR has determined that the evidence was insufficient to establish a violation of the applicable regulations with regard to allegation 2.

With respect to allegation 3, the Complainant asserted that the District does not provide notice of the District's Section 504 grievance procedures. As noted above, the regulations implementing Section 504 and Title II require a recipient to adopt grievance procedures that provide for prompt and equitable resolution of complaints. OCR received documentation that the District has adopted and published on its web-site, Board Policy 6006, which

included an complaint procedure or grievance procedures. Therefore, after a careful review of this information, OCR has determined that the evidence was insufficient to establish a violation of the applicable regulations with regard to allegation 3.

Resolution Agreement

The District submitted a signed resolution agreement (Agreement) to OCR on September 21, 2016. The District committed 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;
- 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 concludes OCR's investigation of the complaint. These findings 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 Agreement. When OCR concludes the District has fully implemented the terms of the 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 Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including the enforcement of the terms of the enclosed 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, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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, OCR will seek to protect, to the extent provided by law, personally identifiable

information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance the District, especially the District's attorney, Ms. Mary Hubacher, extended to OCR in resolving this complaint. We look forward to receiving the District's first reports about its implementation of the Agreement by November 30, 2016. If you have any questions, please contact Susan Johlle, Attorney, at (312) 730-1586 or by email at Susan.Johlle@ed.gov or Dan Altschul, Senior Attorney, at (312) 730-1563 or by email at Dan.Altschul@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure