



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

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CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

June 28, 2017

Dr. Prentiss Lea  
Superintendent  
Community High School District 128  
50 Lakeview Parkway, Suite 101  
Vernon Hills, IL 60061

Re: OCR Docket # 05-17-1134

Dear Dr. Lea:

This is to advise you of the resolution of the above-referenced complaint investigation of the Community High School District 128 (District) by the U.S. Department of Education (Department) Office, for Civil Rights (OCR). The complaint, which was received on January 3, 2017, alleged that the District is discriminating on the basis of disability. Specifically, the complaint alleged that certain of the District's web pages are not accessible to individuals with vision and print disabilities and fine motor difficulties. The webpages identified as inaccessible include the District's:

- District homepage, <https://d128.org>
- Libertyville High School, <https://lhswildcats.org/>
- Vernon Hills High School, <https://vhscougars.org/>
- School Report Cards, <https://d128.org/school-report-cards>
- Digital Learning Center, <https://d128.org/chromebook>
- Facebook, <https://www.facebook.com/District128/>
- Information Technology, <https://d128.org/information-technology> , and
- School Board Meetings – videos, <https://d128.org/viewing-board-meetings>

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II and their implementing regulations.

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.<sup>1</sup> 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.<sup>2</sup> 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 services<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.

## **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. These webpages included the District’s homepage; the Libertyville High School webpage; the Vernon Hills High School webpage; the District’s School Report Cards webpage; the District’s Digital Learning Center webpage; the District’s Facebook webpage; the District’s Information Technology webpage and the School Board Meetings – videos webpage.

OCR’s preliminary evaluation of the above-listed pages revealed the following: parts of the website lacked keyboard controls for persons with a mobility impairment who cannot use a mouse; some graphics had no associated text to convey important information to individuals with visual impairments or blindness who use screen readers; parts of the website used color combinations that made text difficult or impossible for people with low vision to see; some pdf documents lacked selectable text and thus could not be read by screen readers used by persons with visual impairments; and some videos lacked captioning where important information was

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<sup>1</sup> 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

<sup>2</sup> 28 C.F.R. § 35.164

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

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

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

<sup>6</sup> 28 C.F.R. § 35.160(a)(1)

conveyed audibly for persons with hearing impairments. 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 complaint. 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. Moreover, in light of the District's willingness to address its website comprehensively without further investigation and given that the District contracted with a vendor to redesign its website, and has begun to address some of the accessibility barrier concerns, OCR determined entering into a voluntary resolution agreement is appropriate.

### **Resolution Agreement**

The District submitted a signed resolution agreement (Agreement) to OCR on June 28, 2017. When fully implemented, the Agreement will address the accessibility issues noted above in addition to resolving issues of accessibility pertaining to the rest of the District's website. Under the terms of the Agreement, the District will have 90 days from the date of the Agreement to demonstrate that no barriers to access for people with disabilities using or attempting to use the District's online programs, services and activities exist on its new website. If, after 90 days, OCR confirms that no such barriers exist, the Agreement will be terminated, no further reporting will be required, and this matter will be closed. If OCR continues to identify barriers to access after this 90-day period, the District agrees to fulfill all the remaining terms of this Agreement, including:

- Developing a plan for new content;
- Making all new website content and functionality accessible to people with disabilities; and
- Providing website accessibility training to all appropriate personnel.

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

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. 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 and its counsel, Mr. Kevin B. Gordon, extended to OCR in resolving this complaint. We look forward to receiving District's first reports about its implementation of the Agreement by September 27, 2017. If you have any questions, please contact Tamara Perry, Attorney, at 312-730-1510 or by email at [tamara.perry@ed.gov](mailto:tamara.perry@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

cc: Mr. Kevin B. Gordon, Scariano, Himes and Petrarca

Enclosure