



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

February 1, 2018

VIA E-MAIL ONLY

Dr. Eric Conti
Superintendent
Burlington Public Schools
123 Cambridge Street
Burlington, MA 01803
conti@bpsk12.org

Re: Complaint No. 01-18-1075
Burlington Public Schools

Dear Dr. Conti:

This letter is to inform you of the disposition of the above-referenced complaint filed against Burlington Public Schools (District), alleging disability discrimination. Specifically, the Complainant alleged that the following pages on the District's website are not accessible to persons with certain disabilities, including, but not limited to, vision impairments:

- Homepage:
http://www.burlington.org/residents/schools/burlington_public_schools/index.php
- Food Services:
http://www.burlington.org/departments/schools/burlington_public_schools/food_services.php
- Registration:
http://www.burlington.org/departments/schools/burlington_public_schools/district_departments/test/index.php
- Calendars:
http://www.burlington.org/departments/schools/burlington_public_schools/calendars_and_events.php
- Bus Schedules: http://www.burlington.org/bps_bus_schedules.php

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 and activities receiving financial assistance from the U.S. Department of Education. OCR also enforces 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. Under Title II, 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 U.S. Department of Education and is a public education system.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504 and Title II.

Legal Standards

Section 504 and Title II prohibit individuals, 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; 28 C.F.R. § 35.130. Individuals with disabilities must have equal access to recipients' programs, services, and 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, or 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). 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.

Factual Background

To date, OCR has investigated this complaint by reviewing information provided by the Complainant. The complaint alleged that certain pages on the District's website were not in compliance with Section 504 and Title II because they were inaccessible to individuals with certain disabilities, including, but not limited to, vision impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the webpages listed above had accessibility issues for individuals with disabilities. The Complainant then provided OCR with a list of errors copied and pasted from the website accessibility checkers that she used.

Conclusion

Prior to OCR completing its investigation, the District requested a 302 voluntary resolution agreement pursuant to Section 302 of OCR's *Case Processing Manual*. Subsequent discussions between OCR and the District resulted in the District signing the attached Resolution Agreement which, when fully implemented, will resolve the issues raised in the complaint. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the District's implementation of the Agreement until it has determined that the District has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. 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. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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. If OCR receives such a request, it will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Attorney Michelle Kalka at (617) 289-0025 or by e-mail at Michelle.Kalka@ed.gov.

Sincerely,

/s/
Meena Morey Chandra *W/P EYK*
Acting Regional Director

Enclosure

cc: Deborah Ecker (DEcker@k-plaw.com)