

August 21, 2014

Joanne Antonacci  
District Superintendent  
Monroe2-Orleans Board of Cooperative Educational Services  
3599 Big Ridge Road  
Spencerport, New York 14559

Re: Case No. 02-14-1183  
Monroe 2-Orleans Board of Cooperative Educational Services

Dear Superintendent Antonacci:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Monroe 2-Orleans Board of Cooperative Educational Services (BOCES). The complainant alleged that the BOCES discriminates against students by failing to publish a nondiscrimination notice that is in compliance with the laws and regulations OCR enforces.

OCR is responsible for enforcing: Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department); Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department; the Age Discrimination Act of 1975 (the Age Discrimination Act), 42 U.S.C. § 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in programs and activities receiving financial assistance from the Department; 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 Department; 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, with respect to complaints alleging discrimination on the basis of disability that are filed against certain public entities; and the Boy Scouts of America Equal Access Act (the Boy Scouts Act), 20 U.S.C. § 7905, and its implementing regulation at 34 C.F.R. Part 108, which address equal access to school facilities and certain other youth groups.

The BOCES 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 Title VI, Title IX, the Age Discrimination Act, Section 504, the ADA, and the Boy Scouts Act.

The complainant alleged that the BOCES discriminates against students on various bases by failing to publish a nondiscrimination notice that is in compliance with the laws and regulations OCR enforces.

The regulations implementing Title VI, Title IX, Section 504, the Age Discrimination Act, and the Boy Scouts Act contain requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation and/or that it does not discriminate. (*See* 34 C.F.R. §§ 100.6(d), 106.9, 104.8, 110.25, and 108.9, respectively.) The regulation implementing Title II of the ADA also contains a notice requirement that applies to all entities of state or local government, whether or not they receive federal financial assistance. (*See* 28 C.F.R. § 35.106).

In its investigation, OCR reviewed documentation that the BOCES submitted and information available to the public on the BOCES website. OCR made the following determinations.

The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires a recipient to notify beneficiaries and others that it provides equal access to the Boy Scouts and other designated youth groups.<sup>1</sup> OCR determined that the BOCES non-discrimination notice, as published in its Policy #1440 – Non Discrimination (Policy 1440), indicated that the BOCES does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities; however, the notice failed to state that the BOCES provides equal access to the Boy Scouts and other designated youth groups.<sup>2</sup>

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires a recipient of financial assistance to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and notify its students and employees of the name, office address and telephone number of this employee; and notify students, employees and others that inquiries concerning the application of the regulation may be referred to the Title IX coordinator or to OCR. Further, the regulations implementing Section 504, at 34 C.F.R. § 104.8, and the Age Discrimination Act, at 34 C.F.R. § 110.25, require recipients to notify beneficiaries and others of the identity of its Section 504 and Age Discrimination Act coordinators;<sup>3</sup> and the regulation implementing the ADA, at 28 C.F.R. § 35.107(a), requires public entities that employ 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA and make available to all interested individuals the name, office address, and telephone number of this employee.

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<sup>1</sup> The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires this by reference to the regulation implementing Title VI at 34 C.F.R. § 100.6(d).

<sup>2</sup> OCR noted, however, that the notice published on the BOCES website at <http://www.monroe2boces.org/index.cfm> contains a reference to equal access to the Boy Scouts and other designated youth groups.

<sup>3</sup> The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.25(b), states that the notification must identify the responsible employee by name or title, address and telephone number.

OCR determined that the notice published on the BOCES website, referred to the “Title VII and Civil Rights Compliance Officer” (the Officer) and provided a telephone number but not the address for the Officer. Further, the notice contained in Policy 1440 indicated that the Civil Rights Compliance Officer was appointed to handle complaints “relative to civil rights,” and specifically stated that the Officer was to ensure compliance with Title IX, Section 504, and the ADA but did not refer to the Age Discrimination Act, or provide the address and telephone number for the Officer. Additionally, OCR determined that the notice contained in BOCES’ Regulation #2000R – Anti Harassment in the BOCES; Policy #5120 - Equal Employment Opportunity; Policy #6460 - Equal Educational Opportunity (Students); and Policy #6440 – Sexual Harassment (Students), which the BOCES provided to OCR, do not contain the name, title, address, and/or telephone number of the BOCES’ Title IX, Age Discrimination Act, Section 504, and/or ADA coordinator/designee. Although the versions of the notice found on the website and in the aforementioned policies, state that Title IX complaints/inquiries could be referred to the Officer, the notices do not mention OCR.

OCR additionally determined that there is no notice of non-discrimination included in the following publications that the BOCES provided to OCR: Parent Packet; the BOCES Template Contract with Vendors; the BOCES notice of appointment for employment, or the BOCES Code of Conduct (also published on-line).<sup>4</sup>

On August 18, 2014, the BOCES voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR’s Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the BOCES fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the BOCES’ 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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the BOCES 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 complainant may file another complaint alleging such treatment.

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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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<sup>4</sup> The BOCES Code of Conduct is published at:  
<http://www.monroe2boces.org/files/filesystem/code%20of%20conduct%202014-15.pdf>

If you have any questions regarding OCR's determination, please contact Jane Tobey Momo, Compliance Team Attorney, at (646) 428-3763 or [jane.momo@ed.gov](mailto:jane.momo@ed.gov); or, Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or [nadja.r.allen.gill@ed.gov](mailto:nadja.r.allen.gill@ed.gov).

Sincerely,

/s

Timothy C.J. Blanchard

Encl.