



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

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August 13, 2014

Dr. Patrick Michel
District Superintendent
Hamilton-Fulton-Montgomery Board of Cooperative Educational Services
2755 State Highway 67
Johnstown, N.Y. 12095

Re: Case No. 02-14-1198
Hamilton-Fulton-Montgomery Board of Cooperative Educational Services

Dear Dr. Michel:

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 Hamilton-Fulton-Montgomery Board of Cooperative Educational Services (the 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.

In its investigation, OCR reviewed documentation that BOCES submitted. OCR made the following determinations.

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

OCR determined that the BOCES publishes its nondiscrimination notice in the following publications: employment applications; the 2014-2015 “Services Guide;” the 2013-2014 Licensed Practical Nursing Program Student Handbook; the “Job Opportunities” section of its website; the “Parental Resources – Annual Notifications” section of its website; the “Amsterdam High School Student Program Enrollment” for school year 2014-2015; and the Career and Technical Center Staff Handbook.

OCR reviewed the publications containing a BOCES non-discrimination notice, which each state that the BOCES does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs and activities. However, the version of the non-discrimination notice appearing in the “Parental Resources – Annual Notifications” section of its website failed to state that the BOCES does not discriminate on the basis of age in providing access to its educational programs, courses, and activities. The regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.25, requires that recipients notify beneficiaries of its obligations under the regulation.

OCR determined that none of the aforementioned publications stated that the BOCES provides equal access to the Boy Scouts and other designated youth groups. The regulation implementing the Boy Scouts Act, at 34 C.F.R. § 108.9, requires that recipients notify beneficiaries and others that it provides equal access to the Boy Scouts and other designated youth groups.¹

Additionally, the regulation implementing Title IX, at 34 C.F.R. §§ 106.8(a) and 106.9(a), requires recipients 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 all its students and employees of the name, office address, and telephone number of this employee; and to notify students, employees, and others that inquiries concerning the application of the regulation may be referred to the Title IX coordinator or to OCR. OCR found that two publications, the 2013-2014 Licensed Practical Nursing Program Student Handbook and the Career and Technical Center Staff Handbook, do not identify an employee to coordinate its efforts to comply with and carry out the responsibilities under Title IX, and do not provide any of the required contact information. OCR also determined that several of the notices failed to contain the office address of the coordinator.² None of the aforementioned publications stated that Title IX inquiries could be referred to OCR in addition to a BOCES designated employee(s).

Further, 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

¹ 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).

² Specifically, OCR determined that the BOCES’ employment applications, its 2014-2015 “Services Guide,” the “Job Opportunities” section of its website, and its “Amsterdam High School Student Program Enrollment” for school year 2014-2015 do not include this information.

telephone number of this employee. OCR also determined that several of the notices failed to contain the office address of the coordinator.³

On August 12, 2014, the BOCES agreed to implement the enclosed resolution agreement, which addresses the above-mentioned compliance concerns. OCR will monitor implementation of the resolution agreement. If the BOCES fails to implement the terms of the resolution agreement, OCR will resume its investigation.

This letter sets forth OCR's determination in an individual 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.

Please be advised that the BOCES may not harass, coerce, 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 letter 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.

If you have questions regarding OCR's determination, please contact David Hensel, Compliance Team Attorney, at (646) 428-3778 or david.hensel@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

Timothy C. J. Blanchard

Enc.

cc: XXXX X XXXX, XXX.

³ Specifically, OCR determined that the BOCES' employment applications, its 2014-2015 "Services Guide," the "Job Opportunities" section of its website, and its "Amsterdam High School Student Program Enrollment" for school year 2014-2015 do not include this information.