

August 13, 2014

Dr. Thomas Rogers
District Superintendent
Nassau County BOCES
71 Clinton Road
P.O. Box 9195
Garden City, New York 11530-9195

Re: Case No. 02-14-1200
Nassau Board of Cooperative Educational Services

Dear Superintendent Rogers:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Nassau County Board of Cooperative Educational Services (BOCES). The complainant alleged that the BOCES discriminated against students on various bases by failing to publish a non-discrimination 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 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: Board Policy No. 0100 “Equal Opportunity and Nondiscrimination”; Board Policy No. 5210 “Student Organizations”; the “District Plan for Site-Based Planning and Shared Decision Making”; “Code of Conduct”; “Code of Conduct Summary 2013-2014”; “Joseph M. Barry Career and Technical Education Center Student Handbook 2013-2014”; “BOCES Long Island High School for the Arts and the Doshi STEM Program at BOCES Student Handbook 2013-2014”; “BOCES Adult Education Catalog of Courses 2013-2014”; “2013-2014 W. T. Clarke High School Student Handbook”; “Willet Avenue Student Handbook”; “Center for Community Adjustment Information Guide”; “New Hire Information Packet”; “Employee Handbook”; “Screenshot of Employee Computer Message”; “Collective Bargaining Agreement with [BOCES] Central Council of Teachers”; “Consultant Agreements with Third Party Organizations” and Board Policy No. 5170 “Complaints and Grievances by Employees.”

OCR reviewed various publications containing BOCES non-discrimination notice, which each state that the BOCES does not discriminate on the basis of race, color, national origin, sex, age, or disability¹ in its programs and activities.² However, the versions of the non-discrimination notice appearing in certain BOCES publications³ failed to state that the BOCES does not discriminate on the basis of age in providing access to its educational programs 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 District publications state that BOCES provides equal access to the Boy Scouts and other designated youth groups. The regulation implementing the Boy Scouts

¹ Publications should be updated to replace references to “handicap” with “disability.”

² In response to OCR’s data request, BOCES submitted “Career Preparatory High School Student Handbook” which did not contain a nondiscrimination notice. BOCES also submitted the “Center for Community Adjustment [CCA] Information Guide” which referred generally to “discrimination and harassment” but did not enumerate any of the protected bases under the regulations OCR enforces.

³ The publications are as follows: Board Policy No. 5210; the District Plan for Site-Based Planning and Shared Decision Making”; “Joseph M. Barry Career and Technical Education Center Student Handbook 2013-2014”; “Joseph M. Barry Career and Technical Education Center Student Handbook 2013-2014”; “BOCES Adult Education Catalog of Courses 2013-2014”; “2013-2014 W. T. Clarke High School Student Handbook”; “Willet Avenue Student Handbook”; and, “Collective Bargaining Agreement with [BOCES] Central Council of Teachers.”

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.⁴

The regulations implementing Section 504, at 34 C.F.R. § 104.8, the Age Discrimination Act, at 34 C.F.R. § 110.25, and Title IX, at 34 C.F.R. §§ 106.8(a) and 106.9(a), require recipients to notify beneficiaries and others of the identity of the recipient's Section 504, Age Discrimination Act and Title IX coordinators; 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. The aforementioned regulations further require that the recipient/public entity make available to all interested individuals the name (or position title), office address and telephone number of the designated employees. Additionally, the regulation implementing Title IX, requires a recipient 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 determined that while the BOCES non-discrimination notice appearing in certain publications identified the BOCES employee(s) designated to coordinate its efforts to comply with some or all of the aforementioned regulations, however, some of the required contact information was omitted from the notice. Other publications did not identify such employee(s) and did not include the required contact information. Although some of the non-discrimination notices stated that discrimination inquiries, including Title IX inquiries, could be referred to designated BOCES personnel, certain publications did not contain all of the required contact information and none of the notices mentioned that Title IX inquiries could also be referred to OCR.

On August 13, 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'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 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.

⁴ 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).

If you have any questions regarding OCR's determination, please contact Tracey R. Beers, Senior Compliance Team Attorney, at (646) 428-3804 or tracey.beers@ed.gov; or Félice Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: XXXXXX XXXXXXXXXXXXX, XXXX