

February 10, 2017

Carmen Fariña
Chancellor
New York City Department of Education
Tweed Courthouse
52 Chambers Street
New York, New York 10007

Re: Case No. 02-16-1175
New York City Department of Education

Dear Chancellor Fariña:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the New York City Department of Education (NYCDOE). OCR investigated the complainant's allegation that the NYCDOE is discriminating, on the basis of disability, because its website is not accessible to individuals with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing 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. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The NYCDOE 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 Section 504 and the ADA.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

Legal Authority:

Section 504 and the ADA prohibit people, 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, respectively. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People with disabilities must have equal access to recipients' programs, services, or 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 the ADA prohibit affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and 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). The ADA 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). 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 the ADA.

Investigation:

OCR examined the pages on the NYCDOE's website identified by the complainant to determine whether these are accessible to persons with disabilities. These web pages included:

- Homepage
<http://schools.nyc.gov/default.html> and,
- Academics and Special Education Page
<http://schools.nyc.gov/Academics/SpecialEducation/default.htm>.

OCR evaluated the above-listed pages and determined that: (i) some important content of the website could only be accessed by people who can use a computer mouse, which means that the website lacked a way for users of special software and those with disabilities affecting fine motor control to skip to the main content of the pages, thereby impeding their ability to efficiently navigate past long headers appearing before the main content; (ii) the titles of web pages did not change when tabbing through the content, thus failing to make the title of the content accessible to those who are blind, many who have low vision, and those with disabilities affecting fine motor control; (iii) form controls were missing, which identify the purpose and function of the otherwise unlabeled search bar/form field for users of special software; (iv) keyboard controls did not access all content and functions, or were not visually apparent, which makes it difficult for keyboard users to navigate the pages; (v) important images were missing text descriptions, referred to as “alt tags,” that describe the images to blind and low-vision users who use special software; (vi) document language was not identified using language attributes, which identifies the language on the page for users of special software such as speech synthesizers; (vii) links were not meaningfully labelled or titled, which makes it difficult for users with disabilities to understand the purpose or context for a link; and (viii) web pages had insufficient contrast, which affected all viewers, including those with visual disabilities and those with certain

cognitive/neurological disabilities. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and impede the NYCDOE's communications with persons with disabilities; therefore, these barriers violate the ADA and Section 504.

Resolution Agreement:

The NYCDOE submitted a signed resolution agreement (Agreement) to OCR on December 23, 2016. When fully implemented, the Agreement will address the findings of noncompliance noted above, as well as resolve issues of accessibility pertaining to the rest of the NYCDOE's website. The NYCDOE committed to take actions including:

- making all new or modified online content and functionality on the NYCDOE's website accessible to people with disabilities;
- developing an interim action plan to prioritize the removal of online barriers;
- posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible; and
- providing website accessibility training to all appropriate personnel.

OCR will monitor the NYCDOE's implementation of the Agreement. When OCR concludes that NYCDOE has fully and effectively implemented the terms and obligations 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 NYCDOE 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 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the NYCDOE written notice of the alleged breach and sixty (60) calendar days to cure the breach.

These findings should not be interpreted to address the NYCDOE'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 NYCDOE 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 individual 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Ronald Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@ed.gov; or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXX XXXXXXXX XXXXXXXXXX