

November 10, 2016

Kimberly Harrington  
Acting Commissioner  
New Jersey Department of Education  
100 River View Plaza  
P.O. Box 500  
Trenton, New Jersey 08625

Re: Case No. 02-16-1218  
New Jersey Department of Education

Dear Commissioner Harrington:

This is to advise you of the resolution of the above-referenced complaint investigation of the New Jersey Department of Education (NJDOE) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on March 1, 2016, alleged that the NJDOE is discriminating, on the basis of disability, because certain pages of the NJDOE's website are not accessible to individuals with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 United States Code (U.S.C.) § 794, *et seq.*, and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, the NJDOE is subject to OCR's jurisdiction under Section 504 and Title II.

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

Legal Authority:

Section 504 and Title II prohibit any qualified handicapped person, 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(a) and 28 C.F.R. § 35.130. People with disabilities must have equal access to

covered entities' 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 Title II 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). 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). 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 Title II.

#### Investigation to Date:

During the course of the investigation, OCR examined a number of pages on the NJDOE's website to determine whether they are accessible to persons with disabilities. These web pages included, but were not limited to:

- Homepage (<http://www.state.nj.us/education/>);
- Commissioner's Message page (<http://www.state.nj.us/education/highlights/message.htm>);
- Special Education page (<http://www.state.nj.us/education/specialed/overview.shtml>);
- Parent Resources page (<http://www.state.nj.us/education/highlights/back.htm>);
- Model Curriculum page (<http://www.state.nj.us/education/modelcurriculum/sci/videos/>); and
- Section 504 page (<http://www.state.nj.us/education/students/safety/behavior/504/>).

OCR evaluated the above-listed pages and determined that keyboard controls did not work with videos posted on the web site and did not work with video controls (i.e. stop, play, etc.) which made it difficult for keyboard users to access video content uploaded to the site; video content did not have captioning which made it inaccessible for those using a screen reader; the web pages and videos had very low contrast which impacted all viewers, including those with visual disabilities and those with certain cognitive/neurological disabilities; and 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. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede the NJDOE's communications with persons with disabilities.

Resolution Agreement:

The NJDOE submitted a signed resolution agreement (Agreement) to OCR on November 9, 2016. The NJDOE committed to take actions such as:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the NJDOE's website and conducting a thorough audit of existing online content and functionality;
- making all new website content and functionality accessible to people with disabilities;
- developing a corrective action plan to prioritize the removal of online barriers over an 18-month period;
- 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.

Conclusion:

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address the NJDOE's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the NJDOE's implementation of the Agreement. When OCR concludes that the NJDOE has fully implemented the terms 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 NJDOE fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including to enforce the specific terms of the Agreement.

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 NJDOE may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. 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. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions, please contact Coleen Chin, Senior Attorney, at (646) 428-3809 or [coleen.chin@ed.gov](mailto:coleen.chin@ed.gov); or Ernest King, Compliance Team Attorney, at (646) 428-3777 or [ernest.king@ed.gov](mailto:ernest.king@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXXXXX, Esq.