

January 10, 2017

Richard M. Fitzpatrick, Ed. D.
Superintendent of Schools
Upper Freehold Regional School District
27 High Street
Allentown, New Jersey 08501

Re: Case No. 02-16-1472
Upper Freehold Regional School District

Dear Superintendent Fitzpatrick:

This is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the Upper Freehold Regional School District (the District). The complainant alleged that the District is discriminating, on the basis of disability, because certain pages of the District's website are not accessible to individuals with disabilities.

OCR is responsible for enforcing 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 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 (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 District 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 both 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 Title II prohibit any qualified individual with a disability, 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(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:

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

- Homepage: <http://www.ufrsd.net>;
- Lunch Menus: <http://www.ufrsd.net/home/general-information/food-services>;
- Student Services: <http://www.ufrsd.net/home/administration/student-services>;
- Parent Resources: <http://www.ufrsd.net/home/administration/student-services/resources-for-parents>;
- Allentown High School: <http://ahs.ufrsd.net>;
- Stonebridge Middle School: <http://sbms.ufrsd.net>;
- Newell Elementary: <http://nes.ufrsd.net>; and
- Advanced Mathematics and Algebra Academy: <http://www.ufrsd.net/home/choice/advanced-mathematics-algebra>.

OCR evaluated the above-listed pages and determined that keyboard controls were not visibly apparent, which meant that content was not available to those who are blind, many who have low vision, and those with disabilities affecting fine motor control; 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; important images were missing text descriptions, called “alt tags,” that describe the images to blind and low-vision users who use special software; 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; web pages had insufficient contrast, which affected all viewers, including those with visual disabilities and those with certain

cognitive/neurological disabilities; links contained no text or were not meaningfully labeled, which makes it difficult for users with disabilities to understand the purpose or context for a link; web pages failed to identify the language of the page; PDF documents were missing selectable text; HTML coding for non-English words did not indicate language; and headings were empty, which meant that content was not available for those who navigate by heading elements. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede the District's communications with persons with disabilities.

Resolution Agreement:

The District submitted a signed resolution agreement (Agreement) to OCR on December 19, 2016. The District committed to take actions such as:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the District's website and conducting a thorough audit of existing online content and functionality;
- making all new District online 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 letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the District's implementation of the Resolution Agreement. When OCR concludes that the District has fully implemented the terms of the Resolution 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 District fails to implement the Resolution 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 Resolution 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 District 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, OCR 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 released.

If you have any questions, please contact Amy Randhawa, Compliance Team Attorney, at (646) 428-3781 or sandeep.randhawa@ed.gov; Aditi Shah, Compliance Team Attorney, at (646) 428-3897 or aditi.shah@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXXXXX, Esq.