

June 30, 2017

Norman Atkins
Founder and Board Chair
Uncommon Schools
c/o RHF
826 Broadway, 9th Floor
New York, New York 10003

Re: Case No. 02-17-1015
Uncommon Schools

Dear Mr. Atkins:

This letter is to notify you of the determination made by the United States Department of Education (Department), Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Uncommon Schools. The complainant alleged that Uncommon Schools discriminates 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 (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 U.S. Department of Education (the Department). Additionally, OCR 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. Uncommon Schools 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:

The regulations implementing Section 504 and Title II 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 and 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 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 the regulation implementing Section 504 and the regulation implementing Title II prohibit affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that are 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:

In its investigation, OCR reviewed documentation that the complainant and Uncommon Schools submitted. OCR also interviewed Uncommon Schools' personnel. OCR made the following determinations.

Uncommon Schools is a nonprofit network of 49 public charter schools across Massachusetts, New Jersey, and New York. All of its schools are managed by a home office based in New York City, and by regionally based teams.

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

- Homepage (<http://www.uncommonschools.org/>);
- Our Mission (<http://www.uncommonschools.org/our-approach/the-opportunity-gap>);
- Frequently Asked Questions (<http://www.uncommonschools.org/our-approach/faq-what-is-charter-school>);
- Core Values (<http://www.uncommonschools.org/our-approach/core-values>);
- Our Schools (<http://www.uncommonschools.org/our-schools/all-charter-schools-by-city>);
- Our Stories (<http://www.uncommonschools.org/our-stories/all-videos>);
- Roxbury Prep (<http://roxburyprep.uncommonschools.org>).

OCR evaluated the above-listed pages¹ and determined that video content did not have captions, which made it inaccessible to people who are deaf and for those using a screen reader. These barriers deny persons with disabilities access to programs, services, and activities offered on the

¹ OCR initially reviewed the web pages on November 23, 2016, and subsequently reviewed the web pages again on March 30, 2017, and April 5, 2017, after Uncommon Schools indicated that it had revised the web pages at issue.

website and impede the recipient's communications with persons with disabilities; therefore, these barriers violate the regulations implementing Section 504 and the ADA. Further, OCR noted during the evaluation of the above-listed pages that there was insufficient color contrast that made it difficult or impossible for viewers with visual disabilities, such as low vision, to see the text.²

During the course of OCR's investigation, Uncommon Schools stated that in response to the instant OCR complaint, it conducted a compliance check on the seven web pages identified and remedied certain issues such that the seven pages are now fully accessible to all users; however, OCR evaluated the revised web pages and identified certain barriers remained as described above. Uncommon Schools further asserted that it is in the process of conducting a complete check of its remaining web pages on its website, and to the extent any compliance issues are identified therein, "they will be promptly corrected." During the course of this investigation, Uncommon Schools informed OCR that they retained a new vendor, XXXXX XXX, who is in the process of redesigning a new website for launch in September 2017.

Resolution Agreement:

Uncommon Schools submitted a signed resolution agreement (Agreement) to OCR on June 30, 2017. 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 Uncommon Schools' website. Uncommon Schools committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the recipient'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.

OCR will monitor Uncommon Schools' implementation of the Agreement. When OCR concludes Uncommon Schools 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 Uncommon Schools 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 Uncommon Schools written notice of the alleged breach and sixty (60) calendar days to cure the breach.

These findings should not be interpreted to address Uncommon Schools' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This

² The contrast issue is partially overcome by adjusting user controlled settings but even with adjustment of settings some text on the webpages is not visible.

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 Uncommon Schools 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions about OCR's determination, please contact Marykate O'Neil, Compliance Team Attorney, at (646) 428-3814 or marykate.oneil@ed.gov; Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@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: XXX XXXX, Shareholder