

January 26, 2018

Nick Markarian
Superintendent
Bernards Township School District
101 Peachtree Road
Basking Ridge, New Jersey 07920

Re: Case No. 02-17-1446
Bernards Township School District

Dear Superintendent Markarian:

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 Bernards Township School District (the District). OCR investigated the complainant's allegation that the District discriminated, on the basis of disability, because the District's 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). In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), as amended, 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 the ADA prohibit individuals, 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. Individuals 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:

During the course of the investigation, OCR examined a number of pages on the District's website to determine whether these were accessible to persons with disabilities. These webpages included:

- <http://www.bernardsboe.com/>
- http://www.bernardsboe.com/board_of_education
- <http://www.bernardsboe.com/curriculum>
- <http://www.bernardsboe.com/departments>
- http://www.bernardsboe.com/district_information
- http://www.bernardsboe.com/employment_opportunities
- <http://www.bernardsboe.com/schools>
- <http://www.bernardsboe.com/parents>
- <http://www.bernardsboe.com/students>
- <http://www.bernardsboe.com/staff>
- <http://ridgehigh.bernardsboe.com/>
- <http://williamannin.bernardsboe.com/>
- <http://cedarhill.bernardsboe.com/>
- <http://libertycorner.bernardsboe.com/>
- <http://mountprospect.bernardsboe.com/>
- <http://oakstreet.bernardsboe.com/>

OCR evaluated the above-listed pages and determined that: (i) keyboard controls were not visibly apparent, such that content was not available to those who have low vision, and those with disabilities affecting fine motor control; (ii) important links were missing meaningful text descriptions that describe the links to blind and low-vision users who use special software; (iii)

important images were missing associated text descriptions, referred to as “alt tags,” that describe the images to blind and low-vision users who use special software; and, (iv) text in linked portable document formats (PDFs) was not accessible to blind and low-vision users who use special software. 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,¹ 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. Many of these barriers deny persons with disabilities access to programs, services and activities offered on the website and impede the District’s communications with persons with disabilities.

Before OCR conducted additional investigation of the District’s website, the District expressed an interest in voluntarily resolving this case. In light of the District’s willingness to address its website comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate.

Resolution Agreement

The District signed a resolution agreement (Agreement) on January 26, 2018. When fully implemented, the Agreement will address the issues noted above, as well as resolve issues of accessibility pertaining to the rest of the District’s website. The District committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the District’s website and to conduct 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 11-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 the District’s implementation of the Agreement. Upon completion of the obligations under this Agreement, OCR shall close this case. If the District 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 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the breach.

These findings 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. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement

¹ The contrast issue is overcome by adjusting user controlled settings.

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. You 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 a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this letter 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 Eboné Woods, Compliance Team Attorney, at (646) 428-3898 or ebone.woods@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: xxxxxx