



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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REGION II
NEW JERSEY
NEW YORK
PUERTO RICO
VIRGIN ISLANDS

July 23, 2018

Dr. Donald James
Superintendent
Commack School District
P.O. Box 150
Commack, New York 11725

Re: Case No. 02-17-1514
Commack School District

Dear Dr. James:

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 Commack School District (the District). The complainant alleged 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 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 complaint 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:

OCR examined pages on the District’s website that the complainant identified as examples to determine whether these are accessible to persons with disabilities. These webpages included:

- <http://www.commackschools.org/>
- <http://www.commackschools.org/aps.aspx>
- <http://www.commackschools.org/backpacknews1.aspx>
- <http://www.commackschools.org/communitynews.aspx>
- <http://www.commackschools.org/districtoffice.aspx>
- https://www1.eboard.com/eboard/servlet/DSReportServlet?SITE_NAME=commack
- <http://www.commackschools.org/students.aspx>

OCR evaluated the above-listed pages and determined that: (i) pages 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) keyboard controls were not always visibly apparent, which meant that content was not available to those who are blind or have low vision, and those with disabilities affecting fine motor control; and, (iii) certain linked PDF documents did not have selectable text, which did not allow those who have low vision, or who use a screen reader to access information. 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 further 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 July 23, 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:

- making all current and new content and functionality offered through the District’s website accessible to people with disabilities;
- posting a notice to persons with disabilities about how to request access to online content or functionality that is currently inaccessible;

- developing a process to ensure that, upon request, inaccessible content and functionality will be made accessible in an expedient manner; 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 will 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 CFR §§ 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.

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. 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 a 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 David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or David.Krieger@ed.gov; Jonathon LeBeau, Compliance Team Investigator, (646) 428-3790 or Jonathon.LeBeau@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: Alyson Mathews, Esq.
Alyssa L. Zuckerman, Esq.