



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

March 24, 2017

Mr. Manny P. Arvon
Superintendent
Berkeley County Schools
401 South Queen Street
Martinsburg, WV 25401

Re: OCR No. 03161868

Dear Mr. Arvon:

This is to advise you of the resolution of the above-referenced complaint investigation of Berkeley County Schools (the District) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on September 19, 2016, alleged that the District is discriminating, on the basis of disability, because its website is not accessible to persons 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 District 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 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 or by public entities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People 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

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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:

OCR examined the pages on the District’s website identified by the complainant to determine whether they are accessible to persons with disabilities. These web pages included:

- Homepage: <http://www.berkeleycountyschools.org/>
- The Accessibility Page: <http://www.berkeleycountyschools.org/Page/8436>
- The Virtual Backpack Page: <http://www.berkeleycountyschools.org/Page/6513>
- The Special Education Page: <http://www.berkeleycountyschools.org/domain/43>
- The Technology Page: <http://www.berkeleycountyschools.org/page/287>
- The Adult & Community Education Page:
<http://www.berkeleycountyschools.org/domain/15>

OCR evaluated the above-listed pages and determined that some important content of the website could only be accessed by people who can use a computer mouse, 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; a video did not have captions; and, some links were not labeled. These barriers deny persons with disabilities access to programs, services, and activities offered on the website, impede the District’s communications with persons with disabilities and, therefore, violate Title II and Section 504.

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 entering into a voluntary resolution agreement is appropriate.

Resolution Agreement:

The District submitted a signed resolution agreement (Agreement) to OCR on March 17, 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 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 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 the District's implementation of the Agreement. When OCR concludes the District 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 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 concludes OCR's investigation of the complaint. 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 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, 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.

Thank you for the assistance the District personnel, especially Ms. Laura Sutton, extended to OCR in resolving this complaint. We look forward to receiving the District's first report about its implementation of the Agreement by April 1, 2017. If you have any questions, please contact Team Attorney Aysha Ames at (215) 656-5792 or aysha.ames@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader/Supervisory Attorney

cc: Ms. Laura Sutton, Esq. (via email only to lsutton@k12.wv.us)

Enclosure: Resolution Agreement