



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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August 18, 2017

Patrick M. Coen
Superintendent
Burlington Community School District
1429 West Avenue
Burlington, IA 52601

Re: OCR Docket # 05-17-1206
Burlington Community School District

Dear Superintendent Coen:

This is to advise you of the resolution of the above-referenced complaint investigation of the Burlington Community School District (District) by the United States Department of Education (Department) Office for Civil Rights (OCR). The complaint, which was received on February 23, 2017, alleged that the District is discriminating on the basis of disability. Specifically, the Complainant alleged that certain of the District's web pages are not accessible to individuals with vision and print disabilities and fine motor difficulties. These web pages include the District's:

- Homepage - <http://www.bcsds.org>
- Burlington High School webpage - <http://bchs.bcsds.org>
- Aldo Leopold Middle School webpage- <http://alms.bcsds.org>
- Sunnyside Elementary School webpage- <http://sSES.bcsds.org>
- Food Services webpage - <http://www.bcsds.org/food-services>
- Academic Programs and Special Services webpage - <http://crss.bcsds.org/home>, and
- Technology webpage - <http://btd.bcsds.org>
- Parenting Tips - <https://www.loveandlogic.com/articles-advice/parents>
- Facebook - <https://www.facebook.com/loveandlogicinstitute>
- YouTube - <https://m.youtube.com/user/LoveandLogic1>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504, Title II and their implementing regulations.

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 provide that no qualified persons with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by recipients of federal financial assistance or by public entities.¹ Persons with disabilities must have equal access to the programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden.² Under Section 504 and Title II, individuals with disabilities must be afforded an opportunity that is equal to the opportunity afforded others to participate in or benefit from aids, benefits, and services³ and must be provided with aids, benefits, or services that provide an equal opportunity as others to achieve the same result or the same level of achievement.⁴ 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.⁵ 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.⁶ 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.

Recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by technology and equal treatment in the use of the technology for all individuals with disabilities who access their programs or activities, including members of the public.

Investigation to Date

During the course of the investigation, OCR examined a number of the District’s webpages to determine whether they are accessible to persons with disabilities, including the District’s homepage; high school, middle school and elementary school webpages, Food Services webpage, Academic Programs and Special Services webpage, Technology webpage, parenting tips, and Facebook and YouTube webpages.

¹ 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

² 28 C.F.R. § 35.164

³ 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii)

⁴ 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii)

⁵ 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv)

⁶ 28 C.F.R. § 35.160(a)(1)

OCR conducted a preliminary evaluation of the above-listed pages and determined that parts of the website lacked keyboard controls for persons with a mobility impairment who cannot use a mouse; some graphics had no associated text to convey important information to individuals with visual impairments or blindness who use screen readers; parts of the website used color combinations that made text difficult or impossible for people with low vision to see; and some pdf documents lacked selectable text and thus could not be read by screen readers used by persons with visual impairments. These barriers may deny persons with disabilities access to programs, services and activities offered on the website and impede the District's communications with persons with disabilities.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving this complaint. In order to conclude OCR's investigation of this complaint, OCR would have had to conduct interviews, review documents, and examine a broader range of pages on the District's website. Moreover, in light of the District's willingness to address its website accessibility issues without further investigation and given that the District contracted with a vendor to audit its website, OCR determined entering into a voluntary resolution agreement is appropriate.

Resolution Agreement:

The District submitted a signed resolution agreement (Agreement) to OCR on August 15, 2017. When fully implemented, the Agreement will address the accessibility issues noted above in addition to resolving issues of accessibility pertaining to the rest of the District's website. The District agrees to fulfill all the terms of this Agreement, including:

- Posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible;
- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the District's website and developing a proposed plan for new content as well as a corrective action plan;
- Making all new website content and functionality accessible to people with disabilities; 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 implemented the terms 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 and the District's counsel in this matter, Rebecca Reif, extended to OCR in resolving this complaint. If you have any questions, please contact Tamara Perry at (312) 730-1510 or by email at Tamara.Perry@ed.gov.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure

cc: Rebecca Reif (via e-mail at rreif@Ahlerslaw.com)