



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

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September 8, 2017

Mr. Larry LeDoux  
Superintendent  
Kodiak Island Borough School District  
722 Mill Bay Road  
Kodiak, Alaska 99615

Re: Kodiak Island Borough School District  
OCR Reference No. 10171108

Dear Superintendent LeDoux:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Kodiak Island Borough School District (the District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the District's web pages are not accessible to students and adults with disabilities, including vision impairments. These include, but are not limited to:

- Homepage at [www.kibsd.org](http://www.kibsd.org),
- Facebook Videos at [www.facebook.com/pg/Kibsd/videos/?ref=page\\_internal](http://www.facebook.com/pg/Kibsd/videos/?ref=page_internal),
- Food Services web page [www.kibsd.org/Domain/67](http://www.kibsd.org/Domain/67),
- Student Special Services web page at [www.kibsd.org/Domain/92](http://www.kibsd.org/Domain/92), and
- Community Schools web page at [www.kibsd.org/domain/289](http://www.kibsd.org/domain/289).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit 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, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public entity, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the District, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination

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in its programs and activities based on disability, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and

- whether the District failed to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others, in violation of 28 C.F.R. § 35.160(a).

### **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. See 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 activities, or would impose an undue burden. See 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 are unequal to the opportunity afforded others. See 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. See 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. See 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. See 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**

To date, OCR has investigated this complaint by reviewing information provided by the complainant and conducting a preliminary assessment of the accessibility of several pages from the District's website.

The complaint alleges that the District's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. The complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the District's Homepage, Food Services page, Student Special Services page, Community Schools page and Facebook videos have accessibility issues for individuals with disabilities. She then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR conducted a preliminary examination of the web pages identified by the complainant and found possible compliance concerns as to whether the District's on-line programs, services, and activities were accessible to individuals with disabilities. For example, at the time of OCR's review, there was no alt tag on the District's Homepage for the search function, graphics of posters or logos, and certain images did not have meaningful alternative text. In addition, there was insufficient color contrast on the navigation bar of the Homepage when highlighted. The District's Food Services and Student Special Services page had the same accessibility problems as the Homepage.

Prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On September 6, 2017, the District submitted the enclosed signed Resolution Agreement (agreement) to OCR. When fully implemented, the agreement will resolve the allegations in the complaint.

In light of the commitments the District has made in the agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the District's implementation of the agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the District has fulfilled the terms of the agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the District fails to implement the agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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.

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 complainant may file a complaint alleging such treatment.

The complainant may file a private suit in federal court, whether or not OCR finds a violation.

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

OCR looks forward to receiving the District's first monitoring report by **October 13, 2017**. For questions about implementation of the agreement, please contact Tania G. Lopez, Senior Attorney, who will be monitoring the District's implementation, by telephone at (206) 607-1623 or by e-mail at [tania.lopez@ed.gov](mailto:tania.lopez@ed.gov). For questions about this letter, please contact me by telephone at (206) 607-1674 or by e-mail at [barbara.wery@ed.gov](mailto:barbara.wery@ed.gov).

Sincerely,

Barbara Wery  
Team Leader

Enclosure: Resolution Agreement

cc: Honorable Michael Johnson, Commissioner  
Alaska Department of Education and Early Development

Sedor Wendlandt Evans & Filippi, LLC