



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

September 11, 2017

Meg Mayo-Brown
Superintendent
Barnstable Public Schools, School Administration
230 South Street
Hyannis, MA 02601

Via Email: meg@barnstable.k12.ma.us

Re: Complaint No. 01-17-1103
Barnstable Public Schools

Dear Superintendent Mayo-Brown:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Barnstable Public Schools (the District). Specifically, the complaint alleged that the following pages on the District's website were not accessible to persons with certain disabilities, including, but not limited to, vision impairments:

- Homepage available at <http://www.barnstable.k12.ma.us/>;
- Annual Back to School Student Information available at <https://www.barnstable.k12.ma.us/domain/889>;
- Barnstable EdTV available at <http://www.barnstable.k12.ma.us/domain/244>;
- Curriculum Home available at <https://www.barnstable.k12.ma.us/domain/394>;
- Food Services available at <http://www.barnstable.k12.ma.us/domain/59>;
- Special Education available at <http://www.barnstable.k12.ma.us/domain/393>;
- Technology Department available at <http://www.barnstable.k12.ma.us/domain/40>;
- Calendar available at <https://www.barnstable.k12.ma.us/Page/2>.

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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, 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 U.S. Department of Education

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

and is a public education system. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504 and Title II.

Before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal Standard

Section 504 and Title II 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. 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 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.

Factual Background

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 alleged that certain pages on the District's website were not in compliance with Section 504 and Title II because they were inaccessible to persons with certain disabilities, including, but not limited to, vision impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the webpages listed above had accessibility issues for individuals with disabilities. The Complainant 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 online programs, services, and

activities were accessible to individuals with disabilities. For example, on several of the webpages identified by the Complainant the keyboard controls were not visually apparent, making it more difficult for users with physical and visual impairments to access website content and functions. Further, some content on the webpages was only accessible with the use of a computer mouse, limiting the accessibility for individuals who are blind, have low vision or have fine motor control issues. In addition, certain images did not have meaningful alternative text, some links were not meaningfully labeled, and some PDFs lacked selectable text. Lastly, on several webpages, the visual contrast between the background and foreground was low for certain text, which affects the readability of the site content for all viewers, including those with color blindness, low vision, and certain cognitive/neurological disabilities.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the District signed the enclosed Resolution Agreement on September 5, 2017 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney Jacob Tabor at (617) 289-0123 or by e-mail at Jacob.Tabor@ed.gov.

Sincerely,

Meena Morey Chandra *W/P AMM*
Acting Regional Director

Enclosure