



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION III
DELAWARE
KENTUCKY
MARYLAND
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WEST VIRGINIA

September 14, 2016

IN RESPONSE, PLEASE REFER TO: 03164026

Michael J. Martirano, Ed.D.
State Superintendent
West Virginia Department of Education
1900 Kanawha Boulevard East
Charleston, WV 25305

Dear Dr. Martirano:

This is to advise you of the resolution of the above-referenced complaint investigation of the West Virginia Department of Education (the WVDE) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on February 9, 2016, alleged that the WVDE website is not accessible to students and adults with vision and other physical impairments.

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 WVDE 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 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. 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:

During the course of the investigation OCR examined a number of pages on the WVDE’s website to determine whether they are accessible to persons with disabilities. These web pages included:

- The WVDE’s homepage (<http://wvde.state.wv.us/parents21/k12.html>)
- The Special Education page (<http://wvde.state.wv.us/osp/>)
- The Parenting Help page (<http://wvde.state.wv.us/parents21/k12.html>)

OCR evaluated the above-listed pages and determined that parts of the website had keyboard controls that were not visually apparent; had keyboard controls that do not access all content or functions; had some document language missing; and there was no skip navigation button despite the complex amount of data on the website. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede the WVDE’s communications with persons with disabilities.

Prior to the conclusion of OCR’s investigation, the WVDE expressed an interest in voluntarily resolving this case. 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 WVDE’s website; OCR would have sought to learn, for example, whether the WVDE had received previous complaints of inaccessible website content or functionality, and how those complaints were resolved; and whether its information technology staff members and people responsible for uploading content or maintaining web pages had received training in website accessibility. In light of the WVDE’s willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Resolution Agreement:

The WVDE submitted a signed resolution agreement (Agreement) to OCR on September 1, 2016. The WVDE committed to take actions such as:

- 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.

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address the WVDE's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the WVDE's implementation of the Agreement. When OCR concludes the WVDE 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 WVDE fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including to enforce the specific terms of the Agreement.

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 WVDE 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 WVDE and its Staff Attorney, Sherri Goodman Reveal, extended to OCR in resolving this complaint. We look forward to receiving the WVDE's first reports about its implementation of the Agreement by December 30, 2016. If you have any questions, please contact me at (215) 656-6935, or by email at beth.gellman-beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader

Enclosure: Resolution Agreement

cc: Sherri Goodman Reveal, Staff Attorney