



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

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July 29, 2016

Superintendent Kristen Baesler
State Superintendent
North Dakota Department of Public Instruction
600 E. Boulevard Ave., Dept. 201
Bismarck, ND 58505-0440

Re: OCR #05-16-1149
North Dakota Department of Public Instruction

Dear Superintendent Baesler:

This is to advise you of the resolution of the above-referenced complaint investigation of the North Dakota Department of Public Instruction (NDDPI) alleging discrimination on the basis of disability. The complaint alleged that NDDPI is discriminating, on the basis of disability, because certain pages on its website are not accessible to persons with disabilities.

OCR is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, *et seq.*, and its implementing regulations at 34 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, NDDPI 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 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

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

² 28 C.F.R. § 35.164

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 pages on NDDPI’s website to determine whether they are accessible to persons with disabilities. These web pages included:

- The homepage; <https://www.nd.gov/dpi>
- Special Education webpage; <https://www.nd.gov/dpi/students-parents/SpecialEducation/>
- Migrant Education webpage; <https://www.nd.gov/dpi/students-parents/Migrant/>; and
- Special Education Survey webpage. <https://www.nd.gov/dpi/students-parents/SpecialEducation/specialed-parentsurvey/>

OCR conducted a preliminary evaluation of the above-listed pages and had concerns with the accessibility of certain features to persons with disabilities, including visually impaired persons (blind and low vision), mobility impaired persons, and hearing impaired persons. These concerns include an absence of skip navigation links, form controls with missing labels so visually impaired persons might not have access to forms on web pages, important images were missing text descriptions, called “alt tags,” that describe the images to blind and low-vision users who use special software and items that had low contrast so they may not be usable by persons with low vision. These barriers may deny persons with disabilities access to programs, services, and activities offered on the website and may impede NDDPI’s communications with persons with disabilities.

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)

Prior to the conclusion of OCR's investigation, NDDPI 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 NDDPI's website. OCR would also have examined whether NDDPI had received previous complaints of inaccessible website content or functionality, and how those complaints were resolved, as well as 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 NDDPI's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

Resolution Agreement

NDDPI submitted a signed resolution agreement (Agreement) to OCR on June 30, 2016. NDDPI committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on NDDPI'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 a 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 NDDPI's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor NDDPI's implementation of the Agreement. When OCR concludes that NDDPI 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 NDDPI fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including by enforcing 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.

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Please be advised that NDDPI 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 that NDDPI and its Director of Communication, Ms. Kay Mayer, extended to OCR in resolving this complaint. We look forward to receiving NDDPI's first report about its implementation of the Agreement by August 31, 2016. If you have any questions, please contact Lauren Lowe at Lauren.Lowe@ed.gov or (312) 730-1584.

Sincerely,

/s/

Aleeza M. Strubel
Supervisory Attorney

Enclosure