



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

March 20, 2014

Dr. Wayne Brazell
Superintendent
South Carolina Public Charter School District
3710 Landmark Drive, Suite 201
Columbia, South Carolina 29204

Re: Compliance Review No. 11-13-5001

Dear Dr. Brazell:

This letter is to advise you of the resolution of the above-referenced compliance review conducted by the U.S. Department of Education, Office for Civil Rights (OCR). OCR initiated this compliance review to assess whether the South Carolina Public School District's (District) communications with persons with disabilities were as effective as communications with persons who are not disabled. This review investigated all seven of the District's virtual charter schools operated in the 2013-2014 school year, examining the accessibility of the schools' websites to persons with disabilities, especially those requiring the use of assistive technology to access the sites. The schools included in the investigation were: Palmetto State e-Cademy; Provost Academy South Carolina; South Carolina Virtual Charter School; South Carolina Calvert Academy; South Carolina Connections Academy; South Carolina Whitmore School; and Cyber Academy of South Carolina.

OCR initiated this compliance review pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public elementary and secondary education systems, regardless of whether they receive Federal financial assistance from the Department. The District is a public education system that receives Federal financial assistance from the Department and is, therefore, subject to the provisions of these statutes and regulations.

OCR conducted a review of over 100 websites, including all seven schools' external websites and each school's online learning environment. Based on this review, OCR identified compliance concerns with the websites operated in each of the seven virtual charter schools operated by the District. The public websites and online learning environments were not readily

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

accessible to persons who require assistive technology and, therefore, not in compliance with Section 504 and Title II. The District has voluntarily agreed to remedy these concerns as set forth in the enclosed agreement. OCR will monitor the District's completion of the steps outlined in the agreement to ensure that it has fully implemented the provisions of the agreement and is in compliance with the above-referenced regulations. The concerns identified by OCR are outlined further below.

Legal Standards

The Section 504 implementing regulation found at 34 C.F.R. § 104.4 provides:

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

The Title II regulations have similar requirements to Section 504. The regulations include a general prohibition against discrimination at 28 C.F.R. §35.130:

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b) (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

Additionally the Title II regulations have specific requirements for communications, which in pertinent part require at 28 C.F.R. § 35.160:

(a) (1) A public entity shall 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.

On June 29, 2010, OCR and the U.S. Department of Justice Civil Rights Division jointly issued a Dear Colleague Letter to all college and university presidents that addressed the use of emerging technologies. The letter noted that several universities agreed not to purchase, require or recommend use of any dedicated electronic book reader “unless or until the device is fully accessible to individuals who are blind or have low vision” or the universities “provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.”

On May 26, 2011, OCR issued a Dear Colleague Letter, including Frequently Asked Questions (FAQ), to provide further clarification. The FAQ makes clear that the Dear Colleague Letter also applies to elementary and secondary institutions, and further clarifies that students with disabilities, especially students with visual impairments, are to be afforded “the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.” The Dear Colleague Letter explains that the educational institution must ensure that students with disabilities can access the educational opportunities and benefits with “substantially equivalent ease of use” as students without disabilities. Should the educational institution use a device that is not fully accessible, the institution must provide “accommodations or modifications that permit [students with disabilities] to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” The FAQ also makes clear that an accommodation or modification that is available only at certain times or under certain conditions (such as when an aide is available to read to the student) will not be

considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other on-line content. Additionally, the FAQ states that on-line programs are covered under the June 29, 2010, and May 26, 2011 Dear Colleague Letters and stresses the importance of planning to ensure accessibility from the initial design. The policies set forth in these documents apply to all forms of information technology. OCR relied on these general principles for accessibility and effective communication.

Findings of Fact

The District served as the local educational agency (LEA) for six on-line charter schools during the 2012-2013 school year and seven on-line charter schools for the 2013-2014 school year. For the 2013-2014 school year, the seven virtual schools serve approximately 8,700 students with 10.5% qualifying for special education.

The District submitted data to OCR on June 14, 2013. On July 2, 2013, OCR met with District officials and arranged a sample testing session to demonstrate OCR’s procedures when determining the accessibility of a website. Following this meeting, the District expressed an interest in entering into an agreement with OCR to address the concerns identified.

OCR notes there is no District policy that specifically addresses web accessibility beyond general Section 504 policies. OCR assessed the accessibility of the on-line content at each of the seven virtual schools, including the schools’ public recruiting websites and instructional materials (e.g., on-line lessons, books, tests, and supplemental materials). All of the seven schools OCR assessed were operated as separate entities (except for two schools that were operated by the same entity) and had different websites; however, there was some overlap in the supplemental materials provided by third parties used among the schools. OCR’s assessment of each school follows.

South Carolina Virtual Charter School (Virtual)

Background: Virtual, which is managed by K12 Inc., serves students in Kindergarten through twelfth grade and has been operating in South Carolina since the 2008-2009 school year. OCR was provided access to a large number of courses and looked at a sampling of information from different classes, including classes at both elementary and high school levels. Additionally, OCR assessed sample textbooks and worksheets for accessibility. OCR noted that for supplemental materials the school used Noodleverse, a supplemental enrichment program created by K12 Inc. OCR also reviewed the public website that is mainly used for recruiting new students.

Testing Results:

- Images lacked alternative text attributes which enable screen reader software to describe the images on the school’s home page.
- Color contrast issues were present throughout the site.
- A number of items were not available to users of assistive technology, including PDF documents and textbooks, the main navigation bar and the academic navigation bars for the site.
- Multiple buttons were not labeled, including those to operate videos and, therefore, were not inaccessible to assistive technology users.

- Multimedia videos lacked closed captions.
- Pop-up windows were not read by screen readers, and keyboard users could not interact with the radial buttons or text boxes. Additionally, pop-up windows could not be closed with the keyboard.
- Assistive technology users could not interact with the links in certain navigation frames.
- Supplemental materials such as Noodleverse and other animated instructional materials lacked captioning and full keyboard control to access the information (a mouse is required).

Cyber Academy of South Carolina (Cyber)

Background: Cyber, which is also managed by K12 Inc., launched in August 2013 and serves students in kindergarten through ninth grade. OCR was provided access to sample classes from kindergarten through eighth grade. Additionally, OCR looked at supplemental materials on publicly available websites. OCR also reviewed the public website used mainly for recruiting.

Testing Results:

- Images lacked alternative text attributes to enable screen reader software to describe the images.
- Pop-up windows could not be read by assistive technology and navigated or closed by keyboard users.
- The buttons to operate videos were not labeled and, therefore, inaccessible to assistive technology users.
- The videos lacked closed captions.
- The Cyber website links to supplemental materials that were not accessible, did not have captioning, and were not fully usable by only the keyboard.

South Carolina Connections Academy (Connections)

Background: Connections has been operating in South Carolina since the 2008-2009 school year and serves students in kindergarten through twelfth grade. The educational management company for the school is Connections, which was purchased by Pearson in 2011. OCR was provided access to courses at various grade levels and reviewed a sampling of web pages at both the elementary and high school levels. Also, OCR reviewed sample on-line textbooks and worksheets. OCR also looked at the public website used mainly for recruiting and supplemental materials provided by Connections. Of note, Connections has a document called “Accessibility Approach.”¹ According to this document, the school asserts that it provides comparable access to students with disabilities as to those without disabilities. According to the “Accessibility Approach” Document, the school is using Section 508 Technical Standards and Web Content Accessibility Guidelines Version 2.0 (WCAG2) (created by the World Wide Web Consortium, an international organization that develops Web standards).

¹ Unless otherwise indicated, the schools did not provide a statement of accessibility or a policy specifically addressing web accessibility.

Testing Results:

Connections-created content/pages

- Images on the Homepage lacked alternative text attributes to enable screen reader software to describe the images.
- A pop-up window could not be closed with keyboard control. A mouse had to be used to make a selection and close the window making it inaccessible to assistive technology users.
- Animation control toolbar worked only with a mouse, the control buttons were not labeled, and the “text” button that needed to be activated for synchronized captions required a mouse.
- Buttons did not always work from the keyboard and required the use of a mouse.
- PDFs were not fully accessible because there were no table tags or the tags did not match the information on the page and alternative text for images is missing.
- The Flashcards lacked keyboard control.
- Audio recordings of lectures opened an audio file with no captions or transcript.
- A textbook contained inaccessible and unlabeled buttons. The content of the textbook was not available to assistive technology tools.
- The calendar did not permit a user to enter an appointment without using a mouse.

Outside software

- Supplemental instructional materials’ buttons were not keyboard accessible and were not labeled.
- Videos on external websites did not have keyboard controls or captions.

South Carolina Calvert Academy (Calvert)

Background: Calvert is an online public virtual charter high school serving South Carolina students in Kindergarten through eighth grade since the 2009-2010 school year. The educational management company serving the school is Calvert Education Services. OCR was provided access to the Calvert’s Grade 1 through Grade 8 curriculum, including e-Textbooks, lesson manuals, and assessments. Calvert uses multiple outside supplementary materials, some of which were reviewed by OCR. Additionally, OCR reviewed the public website used mainly for recruiting.

Testing Results:

Calvert-created content/pages

- A number of images throughout the Calvert’s website, including on the Homepage and the links to the lessons within each grade, lacked alternative text attributes to enable screen reader software to describe the images.
- The list of lessons used expandable lists which did not have the appropriate alternative text attributes and therefore could not be read by a screen reader and could not be accessed through the keyboard.
- The website lacked a method for users of assistive technology to navigate past repetitive navigation links.
- The PDF lesson manuals were not properly tagged to be fully read by a screen reader.

- Multimedia presentation buttons, including pause, play, and mute, did not have alternative text and there was no closed captioning for videos on the website.
- The assessments were not available to users of assistive technology because there was no captioning for images nor could answers be fully entered without using a mouse.
- Lessons within the Calvert courses lacked proper alternative text attributes for images, including those required to understand questions and access essential information.

Outside Software

- A number of buttons in the e-Textbooks were not labeled and the books were not properly tagged for users of assistive technology.
- Relevant external websites did not have alternative text attributes for images, captioning for audio or usable keyboard controls. Additionally, external videos lacked equivalent alternatives that are synchronized with the presentation. In one case, the closed captioning for a video spoken in English was in Spanish. Also, users of assistive technology could not access the multimedia controls.
- Supplemental instructional materials buttons were not keyboard accessible and were not labeled.

Provost Academy South Carolina (Provost)

Background: Provost is an online public charter high school serving South Carolina students in grades nine through twelve since the 2010-2011 school year. The educational management company serving Provost is Edison Learning. OCR was provided access to six “demo” courses from the 2011-2012 school year. OCR reviewed a sampling of web pages in the different courses and the sample textbooks for the courses. Provost did not provide the names of supplementary materials used, but OCR identified the supplemental materials while reviewing the site. OCR also reviewed the public website used mainly for recruiting. Of note, Provost provided a statement that “[t]he eSchoolware student and parent portal roles have been enhanced to allow them to be 508 compliant.”

Testing Results:

Provost-created content

- Links on main page were not accessible to a keyboard-only user because the links did not highlight the area of focus.
- The indication of the number of announcements was not tagged properly for a screen reader to access.
- Color contrast issues were present throughout the site.
- A link for providing answers was not tagged completely to permit assistive technology to identify it.
- The “Notepad” feature in each of the courses did not allow users of assistive technology to access the “Save,” “Cancel,” or “X” button to exit out of the Notepad.
- The buttons on the “Calculator” (which is used in several of the courses) were not properly marked, so the screen reader read only “button” and not the number each button represented.
- Instructional video dropdown menus and video controls buttons were not keyboard-accessible nor did they contain alternative text attributes.

- Multiple images were missing alternative text attributes.
- Assessments were inaccessible because the user cannot use a keyboard to select answers.
- Tables containing grades did not have proper labeling to be read by a screen reader.

Outside Software and Content

- External supplemental materials for some of the demo courses lacked alternative text attributes.

Palmetto State E-cademy (Palmetto)

Background: Palmetto is a public virtual charter school founded in 2008 to serve students in grades nine to twelve. Prior to the fall of 2013, Palmetto developed its own content; however, in the fall of 2013, Palmetto began a partnership with Accelerate Education for its course offerings. OCR was provided access to multiple courses and reviewed the public website used mainly for recruiting. Of note, Palmetto informed OCR that accessibility was not a major focus of its initial web development process and acknowledged that the website had several accessibility concerns.² Accelerate Education’s accessibility statement references Section 504 and Section 508 and notes that it constantly adapts its systems to meet regulations and policies so that all students can use its curriculum.

Testing Results:

- Several images lacked alternative text attributes to enable screen reader software to describe the images and were repeated throughout the site.
- Images on several bar graphs intended to allow the students and parents to see academic progress were not tagged for screen reader software and therefore inaccessible.
- Several form fields were not properly labeled.
- The calendar did not provide any instruction on how to input date format and the calendar that opened to select a date was not tagged to be accessible.
- Tool bars on the homepage could not be activated and the dropdown menus could not be accessed by using the keyboard.
- When taking a test or a quiz, a keyboard user could not select an answer because of unlabeled buttons.
- The buttons on the right of the “Course Objectives” panel were not labeled.
- The website required users to submit the majority of assignments through a text editor located within the assignment webpage or through an uploading process; both of these options were not tagged appropriately to be compatible with assistive technology.
- Video recordings of classes did not have captioning and keyboard control buttons available.
- The course management system had multiple buttons that were not tagged and thus were not accessible.
- The public website lacked keyboard control buttons for multiple tabs, captioning on videos, and alternative text for images.

² However, Palmetto stated it is committed to ensuring that its website content and design is compliant with current accessibility standards as outlined by the W3C Web Accessibility Initiative.

South Carolina Whitmore School (Whitmore)

Background: Whitmore, which serves grades nine through twelve, has been operating in South Carolina since the 2011-2012 school year. It receives its entire curriculum from CompuHigh, LLC, which has been in operation since 1994. OCR was provided access to multiple courses. OCR also reviewed the public website used mainly for recruiting and outside supplementary materials used by the school. Although Whitmore’s site does not have an accessibility statement beyond a general non-discrimination statement, CompuHigh has an accessibility statement on its site, which states: “All course content developed by CompuHigh abides by the web-related technical standards for implementing Section 508 of the Rehabilitation Act of 1973.”

Testing Results:

- Several form fields lacked labels and thus could not be completed by an assistive technology user.
- Buttons for the rich text box were not properly labeled.
- In several instances where multimedia was used, there were no synchronized captions and the buttons were not properly labeled.
- A number of images on the site lacked alternative text attributes.
- Video recordings of lectures did not have synchronized captions or the video control buttons were not keyboard accessible.
- The fillable fields in the enrollment form were not labeled and were not accessible to a screen reader.
- Colors used in the calendar to show important information could not be seen by a screen reader.

Conclusion

Based upon the above analysis, there are number of concerns about the accessibility of the websites used by each of these schools. The most frequent concerns were lack of alternative text attributes on buttons, especially on video controls, lack of synchronized captioning, inaccessible PDFs, and animations that were not fully labeled. Additionally, materials provided by third party vendors (at times, the same materials used by different schools) are consistently inaccessible. Based on this information, the virtual schools are not in compliance with Section 504 or Title II. Specifically, the virtual schools’ websites do not permit a person with disabilities, particularly those with visual, hearing, or manual impairments or who otherwise require the use of assistive technology to access educational programs at the schools in an equally effective or integrated manner as compared to someone without a disability. Accordingly, there is not a “substantially equivalent ease of use” for students or parents with disabilities. Because these schools offer complete on-line instruction, there are no possible alternatives to the websites, and requiring a student to attend a different school would not afford a student with a disability the same choices as students without disabilities.

Pursuant to the terms of the voluntary resolution agreement, the District has agreed to ensure that the seven schools’ websites are accessible to students, prospective students, employees, guests, and visitors with disabilities. The District will create a web accessibility committee to direct resources and provide technical assistance as schools work to ensure web-accessibility. The District will develop and implement a web Accessibility Policy that requires all schools that

provide instruction to be readily accessible and useable and will require each school to develop and implement a detailed accessibility plan setting forth the steps to be taken in order to ensure that all programs and activities at the school meet the standards set forth in the Accessibility Policy, including recruiting materials and public websites, direct instructional materials, supplemental materials, on-line textbooks, mobile applications, testing, resources for parents/guardians, and audio and video recording recasts. Each school will regularly complete an accessibility report that measures the school's compliance with the Accessibility Policy and will submit audit reports annually that describe steps taken to maintain the website's accessibility, as well as steps taken to ensure that new programs and content are accessible. The District will develop and provide training on how to ensure accessibility in web design and implementation and will certify to OCR that the District meets the requirements of the Accessibility Policy.

Please be advised that this letter and the enclosed agreement cover only the issues investigated as part of this compliance review and should not be construed to address any other Section 504 or Title II issues not investigated at this time. Letters of finding are fact-specific dispositions of individual cases. They are not formal statements 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 District has agreed to provide data and other information to demonstrate implementation of the Agreement, in a timely manner and in accordance with the reporting requirements of the Agreement. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies and practices are administered in a nondiscriminatory manner. OCR may conduct additional visits and 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 in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Section 504 and Title II.

OCR would like to thank Robert Compton, and the District staff, for their cooperation during the course of this compliance review. From the inception of our review, the District has been extremely cooperative and welcoming. We look forward to working with you in the future and continuing to work productively with you and your staff as we monitor the District's implementation of the enclosed agreement.

If you have any questions, please feel free to contact Judith Risch, Civil Rights Attorney, at (202) 453-5925 or email: judith.risch@ed.gov. You may also contact her at (202) 453- 6020.

Sincerely,

/s/

Alice B. Wender
Regional Director