



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

July 2, 2015

Elizabeth Rae-O'Donnell, Esq.  
Cummings, McClorey, Davis & Acho, P.L.C.  
33900 Schoolcraft Road  
Livonia, Michigan 48150

Re: OCR Docket #15-14-2216

Dear Ms. Rae-O'Donnell:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on July 25, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR) against Oakland Community College (the College). The complaint alleged that the College's website is not accessible to students with print and physical impairments.

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 from the U.S. Department of Education (the Department). 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 College is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

- Whether the College, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination in its programs, activities, aids, benefits, or services in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4(a) and 104.43 and the regulation implementing Title II at 28 C.F.R. § 35.130.

- Whether the College failed to take appropriate steps to ensure that its communications with students with disabilities are as effective as its communications with others, in violation of the regulation implementing Title II at 28 C.F.R. § 35.160(a).

To investigate the complaint, OCR reviewed and evaluated the College’s public web pages for accessibility, using Section 508 standards as guidelines. After a careful review of the information obtained during the investigation, OCR has concluded that the College’s website is not accessible to persons with disabilities, in violation of the regulations implementing Section 504 and Title II, as alleged. The basis for OCR’s determination is set forth below.

## **Background**

The Complainant alleged that the College’s website is not accessible to individuals with print and physical impairments. The Complainant explained that a student with a reading disability was unable to utilize the College’s website to access pertinent information, including emergency information, e.g., notice of school closures, because the College’s website is inaccessible.

## **Applicable Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, 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. In this usage, “program or activity” encompasses a broad variety of operations associated with the receipt of federal financial assistance from the Department, including all operations of a local education agency or a college or university, as well as all of the operations of department, agency, or other instrumentality of a State or local government or the entity of such a State or local government that distributes such assistance and each such department or agency to which the assistance is extended. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b), further prohibits discrimination on the basis of disability in the provision of any aid, benefit, or service, directly or through contractual, licensing, or other arrangements. A recipient may not deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Title II, at 28 C.F.R. § 35.130, has requirements similar to those in the regulation implementing Section 504. Additionally, the regulation implementing Title II has specific requirements for communication, which, in pertinent part, require that public entities 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. 28 C.F.R. § 35.160(a)(1). Entities subject to Title II are required to provide equally effective

communication, regardless of the medium chosen for their communication. Communication includes the transfer of information and encompasses information conveyed through computer-related applications and online environments.

OCR and the U.S. Department of Justice, Civil Rights Division, issued a Dear Colleague Letter on June 29, 2010 (June 2010 DCL), on access to emerging technologies for individuals with disabilities. OCR then issued another Dear Colleague Letter on May 26, 2011 (May 2011 DCL), along with a questions and answers document (FAQ), in follow up to the June 2010 DCL. The FAQ clarifies that students with disabilities, especially 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 FAQ also clarifies that an accommodation or modification that is available only at certain times 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 online content. The May 2011 DCL states that online programs are also covered and stresses the importance of planning to ensure accessibility from the outset.

While the May 2011 DCL and FAQ focused primarily on electronic book readers, the principles articulated in the documents apply to all forms of information technology. Though the DCL and FAQ discussed students as the affected population, recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of the technology for individuals with disabilities in any populations the recipient engages with its programs or activities, including students and members of the public.

### **Summary of OCR’s Investigation, Analysis, and Conclusion**

The College reported to OCR in October 27, 2014, correspondence that it did not have in place any policies or procedures related to the creation, modification, and editing of the College’s website, including any policies and procedures related to the accessibility of its website. The College also reported that it did not have any self-studies or monitoring reports regarding the accessibility of its website.

OCR reviewed the public areas of the College’s website to determine whether they are accessible to users through assistive technology; specifically, whether the website permits students with disabilities to receive all educational benefits provided by technology in an equally effective and equally integrated manner as students without disabilities.

OCR identified a number of technical deficiencies, including, but not limited to, the following:

- lack of alternative text on all images;
- documents not posted in an accessible format;
- lack of captions on all videos and the inability to operate video controls using assistive technology;
- improperly structured data tables; and
- improperly formatted and labeled form fields.

These identified deficiencies are discussed in more detail below.

- **Lack of alternative text for non-text elements**

A non-text element, such as an image, conveys meaning through a picture. Providing alternative text for non-text elements is extremely important in order to make a web page accessible. The purpose of alternative text is to provide a textual replacement for pictures (images), which conveys the same information as is communicated to a sighted user seeing the image. Screen readers and talking browsers cannot read images, but they can read the alternative text instead. Accordingly, a text equivalent for every non-text element shall be provided. In order to be useful, the text equivalent must convey the same information for a person with a disability as the visual content does for the person without any disability. A review of the College’s website found that the website uses images without providing a text equivalent, rendering some content inaccessible to screen readers and non-visual browsers; thus, these are inaccessible to persons with disabilities who rely on such assistive technology to access web content.

- **Documents not posted in an accessible format**

PDF documents, or those in other image-based formats, are often not accessible to people who are blind and who use screen readers and to people with low vision who use text enlargement programs or different color and font settings to read computer displays. PDF tags provide a hidden structured, textual representation of the PDF content that is presented so that screen reading software can access that information for persons with disabilities. Tags exist for accessibility purposes only and have no visible effect on the PDF file to those not using assistive technology. The PDFs that were encountered during OCR’s review of the College’s website were not properly tagged in order for the documents to be accessible.

- **Lack of captions on videos and inability to operate video controls using assistive technology**

Alternative content for video should include both captions for spoken words and auditory descriptions of relevant actions taking place on the screen. These alternatives should be synchronized with the actions taking place on the screen. Captioning for the audio portion is important as individuals who are deaf or hard of hearing will not be able to hear the auditory content. Synchronized captioning is required so someone reading the captions could also watch the speaker and associate relevant body language with the text of the speech. Individuals who are blind or have low vision may require audio descriptions to access the visual information in multimedia. Audio descriptions are verbal descriptions of the actions and images displayed in a video that are inserted during pauses in the regular dialogue or audio track. Audio descriptions are necessary if significant information that is presented visually is not discernable from the dialogue or audio track.

OCR’s review found that videos on the College’s website lack captions and audio descriptions. For example, the videos posted on the College’s “Financial Aid TV” page, regarding the College’s financial aid process, does not include captions or audio descriptions; thus, users who are deaf or hard of hearing may be unable to access information conveyed verbally, and users

who are blind or have low vision may be unable to discern what is happening that is not indicated in dialogue. Also, the video players on the College’s website have controls that lack the ability to control them with a keyboard, which causes significant concern for keyboard users. Additionally, the buttons on the controls are not labeled so that they can be controlled by assistive technology users.

- **Improperly structured data tables**

The purpose of data tables is to present information in a grid, or matrix, and to have columns or rows that show the relationship of the information in the grid. When screen readers read straight through data tables—especially large ones—it is easy for users to get lost. In order for a data table to be appropriately accessible, the table must have the proper markup designation in HyperText Markup Language (HTML). When the proper HTML markup is in place, users of screen readers can navigate through data tables one cell at a time, and they will hear the column and row headers spoken to them so that the information and relationship of information in the various columns and rows are understandable.

The tables encountered during OCR’s review of the College’s website were not properly marked up; therefore, table formatting will prevent assistive technology from reading and interacting with them correctly. Examples of improperly structured tables were found on the College’s “ACCESS” page, which is the page for the College’s disability services office.

- **Improperly formatted and labeled form fields**

When electronic forms are designed to be completed online, the form should allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues. The accessibility issue with forms concerns whether or not users with disabilities can determine the purpose of a specific form control and interact with it. When forms are not coded correctly, a person with a disability will not have access to the information and instructions, form elements, and cues that are necessary to fill out and submit the form. For example, screen readers try to guess which text corresponds to the on-screen prompt for a given control. Often assistive technology guesses correctly, but sometimes it guesses incorrectly as well. Programmatically associating the label and form controls through HTML code eliminates the guesswork and ensures that the proper label is identified with the proper form field so that a person with a disability is able to fill out the form.

The forms encountered during OCR’s review of the College’s website were not properly marked up; therefore, the improperly formatted and labeled forms will prevent assistive technology from reading interacting with them correctly. An example of such a form was found on the College’s “Student E-mail” page, which allows individuals to access the College’s e-mail system.

- **Other website accessibility concerns**

Other technical deficiencies impacting the ease of use and/or access to content on the College’s website include scripting (computer programming) language with respect to the website’s Main

Navigation menu, which appears on every page and the Calendar page. Web page authors have a responsibility to provide script information in a fashion that can be read by assistive technology. When web page authors do not put functional text with a script, a screen reader will often read the content of the script itself in a meaningless jumble of numbers and letters. Although this jumble is text, it cannot be interpreted or used. With respect to the Main Navigation menu, OCR's review found that the menu is not accessible to a wide variety of assistive technology users including, but not limited to, screen reader users, keyboard only users and speech recognition users. OCR's review found that, with respect to the Calendar page, there are portions of the calendar that include information that is not read by assistive technology.

The College's website also lacks a method for skipping repetitive navigation links, which can decrease efficiency and usability for keyboard users and those using screen reading software.

### **Conclusion and Resolution**

Based on the foregoing, OCR concludes that there is sufficient evidence to support a finding that the College's website is not accessible to persons with disabilities, in violation of the regulations implementing Section 504, at 34 C.F.R. §§ 104.4 and 104.43, and Title II, at 28 C.F.R. §§ 35.130 and 35.160(a)(1).

On June 30, 2015, the College provided OCR with the enclosed signed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. In summary, the resolution agreement requires the College to: (1) draft a policy, for OCR's review and approval, to ensure information provided through the College's website(s) (including its online learning environment and course management systems, e.g., Blackboard) are accessible to students, prospective students, employees, guests, and visitors with disabilities, particularly those with visual, hearing, or manual impairments or who otherwise require the use of assistive technology to access information provided through the website (Website Accessibility Policy or WAP); (2) develop an implementation and remediation plan (the implementation plan) to ensure adherence with its WAP; (3) provide notice of the WAP and implementation plan; (4) provide training on how to ensure accessibility in web design and implementation consistent with the College's WAP and the implementation plan; (5) complete an initial website audit to examine whether information provided through the website is currently accessible, considering any compliance concerns identified through the above-referenced review process and its own evaluation measured against the technical standard(s) adopted by the WAP; and (5) develop and implement the corrective action strategy to make its website accessible to individuals with disabilities, particularly students with visual, hearing, or manual impairments or who otherwise require the use of assistive technology to access the website.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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 College 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 harmed individual may file another 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 document and related correspondence and records, upon request. In the event that OCR receives such a request, we 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.

If you have questions regarding this letter, please contact Supervisory Attorney/Team Leader xxxx x xxxx at xxx-xxx-xxxx. The OCR contact person for the monitoring of the agreement is xx xxxxxx xxxxxx, who may be reached at xxx-xxx-xxxx or by e-mail at [xxxxxx.xxxxxx@ed.gov](mailto:xxxxxx.xxxxxx@ed.gov). We look forward to receiving the College's first monitoring report, which is due by **November 30, 2015**, and should be directed to xx xxxxxx.

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure