



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

July 25, 2017

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Via U.S. Mail & Facsimile (684) 699-6259

Dr. Rosevonne Pato
President
American Samoa Community College
P.O. Box 2609
Pago Pago, American Samoa 96799

Re: American Samoa Community College
OCR Reference No. 10172225

Dear Dr. Pato:

This letter is to inform you of the disposition of the above-referenced complaint filed against American Samoa Community College (college) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), which OCR received on May 3, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the college's web pages are not accessible to students and adults with disabilities, including vision and physical impairments. These web pages include the homepage at www.amsamoa.edu.

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. 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. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following 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 and activities based on disability, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and
- whether the college failed to 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, in violation of 28 C.F.R. § 35.160(a).

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

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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. See 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People 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. See 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. See 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. See 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. See 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. See 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

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 college’s website.

The complaint alleges that the college’s website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision and print disabilities, and individuals with physical impairments. The complainant used website accessibility checkers and reported to OCR that the college’s homepage has accessibility issues for individuals with disabilities. The complainant provided OCR with a list of errors copied and pasted from the website accessibility checkers.

OCR conducted a preliminary examination of the web page identified by the Complainant and found possible compliance concerns as to whether the college’s on-line programs, services, and activities were accessible to individuals with disabilities. For example, OCR found that the homepage had submenus that were inaccessible to keyboard-only and screen reader users, photographs without alternative text describing their content for persons who are blind, links that were not meaningfully or inaccurately labelled, and a document in portable document format that was formatted in such a way that made it inaccessible to screen reader users.

Prior to the completion of OCR’s investigation, the college asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual*. On July 25, 2017, the college submitted the enclosed signed Resolution Agreement (agreement) to OCR. When fully implemented, the agreement will resolve the allegations in the complaint.

In light of the commitments the college has made in the agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the college's implementation of the agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the college has fulfilled the terms of the agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the college fails to implement the agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the agreement, OCR shall give the college written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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. The complainant may file a private suit in federal court, whether or not OCR finds a violation.

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 complainant may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

OCR looks forward to receiving the college's first monitoring reports by **August 23 and 26, 2017**. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring the college's implementation of the agreement, by telephone at (206) 607-1632, or by e-mail at noel.nightingale@ed.gov. For questions about this letter, please contact me by telephone at (206) 607-1612, or by e-mail at paul.goodwin@ed.gov.

Sincerely,

Paul Goodwin
Team Leader

Enclosure: Resolution Agreement