



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

915 2<sup>ND</sup> AVE., SUITE 3310  
SEATTLE, WA 98174-1099

September 2, 2016

REGION X  
ALASKA  
AMERICAN SAMOA  
GUAM  
HAWAII  
IDAHO  
MONTANA  
NEVADA  
NORTHERN MARIANA  
ISLANDS  
OREGON  
WASHINGTON

Mr. Scott McCallum  
Superintendent  
Washington State School for the Blind  
2214 East 13<sup>th</sup> Street  
Vancouver, Washington 98661-4120

Re: Washington State School for the Blind  
OCR Reference No. 10161239

Dear Superintendent McCallum:

This is to advise you of the resolution of the above-referenced complaint investigation of the Washington State School for the Blind (WSSB) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on June 13, 2016, alleged that WSSB 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 (Section 504), as amended, 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 (Title II), as amended, 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, WSSB 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 recipients of federal financial assistance and public entities from, on the basis of disability, denying qualified disabled persons an equal opportunity to participate in or benefit from aids, benefits, or services that are delivered either directly or through contractual, licensing, or other arrangements. 34 C.F.R. §104.4 and 28 C.F.R. §35.130. People with disabilities must have equal access to the 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. 28 C.F.R. §35.164. 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 WSSB’s website to determine whether they are accessible to persons with disabilities. These web pages included the video clips web page at: [www.wssb.wa.gov/Content/offcampus/Video.asp](http://www.wssb.wa.gov/Content/offcampus/Video.asp).

OCR evaluated the above-listed web page and determined that, among other things, videos were not captioned or not accurately captioned, so they were inaccessible to people who are deaf. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede WSSB’s communications with persons with disabilities.

Prior to the conclusion of OCR’s investigation, WSSB 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 WSSB’s website; OCR would have sought to learn, for example, whether WSSB 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 WSSB’s willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

### **Resolution Agreement**

WSSB submitted a signed Resolution Agreement (agreement) to OCR on August 26, 2016. WSSB committed to take actions such as:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on WSSB’s new website and conduct a thorough audit of existing on-line 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 on-line barriers over an 18-month period;

- posting a notice to persons with disabilities about how to request access to on-line 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 WSSB's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor WSSB's implementation of the agreement. When OCR concludes that WSSB 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 WSSB 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 WSSB 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 complainant 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 WSSB extended to OCR in resolving this complaint. We look forward to receiving WSSB's first report about its implementation of the agreement by September 16, 2016. If you have any questions, please contact Noel Nightingale, Lead Attorney, by telephone at (206) 607-1632, or by e-mail at [noel.nightingale@ed.gov](mailto:noel.nightingale@ed.gov).

Sincerely,

Paul Goodwin  
Team Leader

Enclosure: Resolution Agreement