

September 30, 2016

Virginia M. Barry, Ph.D.  
Commissioner  
New Hampshire Department of Education  
101 Pleasant Street  
Concord, NH 03301-3494

Re: Case No. 01-16-1124  
New Hampshire Department of Education

Dear Dr. Barry:

This letter is to advise you of the resolution of the above-referenced complaint investigation of the New Hampshire Department of Education (NH DOE) by the U.S. Department of Education, Office for Civil Rights (OCR). The complaint alleged that NH DOE was discriminating, on the basis of disability, because certain pages on its website were 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 regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, et seq., and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. NH DOE is a recipient of financial assistance from the U.S. Department of Education and is a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint 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 individuals, 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. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. Individuals with disabilities must have equal access to covered entities' 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. 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. 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. 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 NH DOE’s website to determine whether they are accessible to persons with disabilities. These web pages included:

- Home page at:  
<http://education.nh.gov>
- Special Education webpage at:  
[http://education.nh.gov/instruction/special\\_ed/index.htm](http://education.nh.gov/instruction/special_ed/index.htm)
- Deaf and Hard of Hearing Parent and Families webpage at:  
<http://nhdeafhed.org/parents>

OCR evaluated the above-listed pages and determined that keyboard controls were not effective, making it more difficult for users with physical and visual impairments to access website content and functions, especially if the page was not structured correctly; some important content of the website was only accessible with the use of a computer mouse, limiting the accessibility for individuals who are blind, have low vision or have fine motor control issues; links were not all meaningfully labeled or titled, requiring users of screen readers to rely on the related text around the link to give context to the link; forms had no determined name or label, making it difficult for users of screen readers or those who use keyboards to understand or navigate a page; the language of non-English words was not identified, affecting the ability of a non-native English speaker who uses a screen reader to understand the text; and visual contrast between the background and foreground was low, which affected the readability of the site content for all viewers, including those with color blindness, low vision, and certain cognitive/neurological disabilities.

Prior to the conclusion of OCR’s investigation, NH DOE expressed an interest in voluntarily resolving this complaint. 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 NH DOE's website. In light of NH DOE's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Resolution Agreement:

NH DOE submitted a signed resolution agreement (Agreement) to OCR on September 8, 2016. Pursuant to the Agreement, NH DOE committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on NH DOE'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 an 18-month 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 the NH DOE's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor NH DOE's implementation of the Agreement. When OCR concludes that NH DOE 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 NH DOE fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including the enforcement of 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 NH DOE 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 NH DOE and its counsel extended to OCR in resolving this complaint. We look forward to receiving NH DOE's monitoring reports demonstrating its

compliance with the Agreement. If you have any questions, please contact Patricia Cox, Lead Investigator, by telephone at (617) 289-0042 or at [patricia.cox@ed.gov](mailto:patricia.cox@ed.gov).

Sincerely,

/s/

Diane M. Henson  
Regional Director

Encl.

cc: Erin B. McIntyre, Esq.