



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

February 26, 2018

Dr. Rebecca Holcombe  
Secretary  
Vermont Agency of Education  
219 North Main Street, Suite 402  
Barre, VT 05641  
By email to: [Rebecca.Holcombe@vermont.gov](mailto:Rebecca.Holcombe@vermont.gov)

Re: Case No. 01-16-1130  
Vermont Agency of Education

Dear Secretary Holcombe:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the Vermont Agency of Education (the Agency) alleging disability discrimination. The complaint alleged that certain of the pages on the Agency's website are not accessible to persons with certain disabilities, including but not limited to vision impairments. These webpages include but are not limited to:

- Home page at:  
<http://education.vermont.gov>
- Special Education page at:  
<http://education.vermont.gov/special-education>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, 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. The Agency is a recipient of financial assistance from the U.S. Department of Education and is a public education system. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504 and Title II.

As explained further below, before OCR completed its investigation, the Agency expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

## **Legal Standards**

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. 34 C.F.R. § 104.4; 28 C.F.R. §35.130(a). Individuals with disabilities must have equal access to recipients' programs, services, and activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden. 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)(2). 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). 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.

## **Factual Background**

To date, OCR has investigated this complaint by reviewing the information the Complainant provided and conducting a preliminary assessment of the accessibility of several pages from the Agency's website.

The complaint alleged that the Agency's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the Agency's webpages listed above had accessibility issues for individuals with disabilities. The Complainant then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR conducted a preliminary examination of the Agency's websites referenced, and found possible compliance concerns as to whether the Agency's website is accessible to individuals with disabilities. A brief review of the Agency's website on February 26, 2018, indicated that the Agency's webpages described above continued to lack various features, such as skip navigation, broken skip links, and visible keyboard controls. In addition, keyboard controls (such as tabbing and arrows) did not access all content, and there was text with low contrast.

## **Conclusion**

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the Agency expressed an interest in resolving this complaint. Subsequent discussions between OCR and the Agency resulted in the Agency signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in this complaint. The

terms of the Agreement are aligned with the complaint allegation and are consistent with the applicable laws and regulations. OCR will monitor the Agency's implementation of the Agreement and continue to do so until it has determined that the Agency has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Agency'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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Agency must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney James Moser at (617) 289-0146 or by e-mail at [james.moser@ed.gov](mailto:james.moser@ed.gov).

Sincerely,

/S/

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc:   XXXXXXXXXXXXXXXXXXXXX  
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