



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

October 31, 2017

Frederick W. Clark Jr., Esq.
President
fclark@bridgew.edu

Re: Complaint No. 01-17-2288
Bridgewater State University

Dear President Clark:

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 Bridgewater State University (the University) alleging disability discrimination. Specifically, the complaint alleged that certain of the University's webpages are not accessible to students and adults with disabilities, including vision impairments. These webpages include but are not limited to:

- Homepage at <http://www.bridgew.edu>
- The University at <http://www.bridgew.edu/the-university>
- BSU Facts at <http://www.bridgew.edu/the-university/bsu-facts>
- Mission of the University at <http://www.bridgew.edu/the-university/president-leadership/mission-university>
- Admissions & Aid at <http://www.bridgew.edu/admissions-aid>
- Financial Aid at <http://www.bridgew.edu/admissions-aid/financial-aid>
- Financing Options at <http://microsites.bridgew.edu/financialaid/financing-options>
- Academics at <http://www.bridgew.edu/academics>
- Library at <http://library.bridgew.edu/home>
- Special Academic Programs at <http://www.bridgew.edu/special-academic-programs>

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 and activities receiving financial assistance from the Department. OCR also evaluated this complaint pursuant to its jurisdiction under 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 University is a recipient of financial assistance from the Department and is a public education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

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

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed resolution agreement (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 Agreement.

Legal Standards

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; 28 C.F.R. § 35.130. 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. 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, or 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). 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 information provided by the Complainant and conducting a preliminary assessment of the accessibility of several pages from the University's website.

The complaint alleged that certain pages on the University's website were not in compliance with Section 504 and Title II because they were inaccessible to individuals with certain disabilities, including, but not limited to, vision impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the 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 checkers that she used.

OCR conducted a preliminary examination of the webpages identified by the Complainant and found possible compliance concerns as to whether the University's online programs, services, and activities were accessible to individuals with disabilities. For example, OCR is concerned that the skip navigation link appeared to be broken, keyboard controls could not access the search bar and the scrolling banner, keyboard controls were not visible, and not all linked PDFs had selectable text.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the University expressed an interest in resolving this complaint. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in the complaint. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the University's implementation of the Agreement and continue to do so until it has determined that the University 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 University'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 University 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 Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

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

Enclosure

cc: Alison Little Sabatello, asabatello@rubinrudman.com