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REGION XI

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November 12, 2021

By email only to: jcevallos@framingham.edu

Dr. F. Javier Cevallos
President
Framingham State University
100 State Street
PO Box 9101
Framingham, Massachusetts 01701-9101

Re: OCR Docket No. 01-21-2153
Framingham State University, Massachusetts

Dear Dr. Cevallos:

This letter is to advise you of the resolution in this matter. The Complainant alleged that digital educational programs delivered through the learning management system software used in her Statistics XXXX course were not accessible to individuals with disabilities, and that timely, equally effective alternatives to access the educational programs outside the inaccessible learning management system were not provided.

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 (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 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 entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

The University must ensure qualified people with disabilities are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity, including those offered on the website or through online programs, in violation of Section 504 and Title II. In addition, the University is required to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, pursuant to Title II, at 28 C.F.R. § 35.160(a).

In order for OCR to determine that the University violated the law, OCR must find (1) that there were technological barriers that impeded the ability of people with disabilities to access online

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programs, services, and activities, and (2) that the University failed to provide equally effective alternative ways for people with disabilities to access the impacted online programs, services, or activities.

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of educational auxiliary aids and/or services. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments and/or auxiliary aids/services in accordance with the recipient's procedures for doing so. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids/services, OCR considers whether: (1) the student provided adequate notice to the recipient that academic adjustments or auxiliary aids/services were required; (2) the academic adjustments or auxiliary aids/services were necessary; (3) the appropriate academic adjustments or auxiliary aids/services were provided; and, (4) the academic adjustments or auxiliary aids/services were of adequate quality and effectiveness.

During its investigation, OCR interviewed the Complainant. OCR also reviewed information and documentation that the Complainant and University submitted to OCR, and met with representatives from XXXXXXXXXXXXXXXXXXXX, Inc. (XXXXXXX). OCR made the following factual determinations; however, as discussed below, OCR did not complete its factual investigation and did not make final legal determinations because the University requested to voluntarily resolve the matter through a resolution agreement prior to the time OCR completed its investigation.

The Complainant informed OCR that she is diagnosed with XXXXXXXXXXXXXXXXXXXXXXXX. She stated that she experiences XXXXXXXXXXXXXXXXXXXXXXXX, which makes it difficult for her to XXXXXXXXXXXXXXXXXXXXXXXX, and she has XXXXXXXXXXXXXXXX when reading. She uses several types of assistive technology to access online and digital educational programs.

The Complainant XXXXXXXXXXXXXXXX the University during the spring 2021 academic semester. That semester, she was enrolled in XXXXXXXXXXXXXXXXXXXXXXXX Statistics (the Course).

Various Math and Statistics courses at the University use XXXXX online learning management systems created by XXXXXXX. The Course used XXXXXXXXXXXXXXXX (XXXX).¹ XXXX includes a variety of features related to the Course; for example, students can use XXXX

¹ The Course used the 12th edition of the textbook available on XXXX; therefore, OCR's investigation pertained to that edition. However, XXXXXXX informed OCR that a 13th edition was also available beginning in the Fall 2016 semester. XXXXXXX explained that newer editions are generally more accessible than older editions, and that all new accessibility improvements are made only to the latest version of each textbook; XXXXXXX does not typically go back and remediate older versions. OCR did not assess the 13th edition of the textbook.

to access the digital course textbook and complete various online activities, including homework problem sets and assessments.

The Complainant stated that she attempted to access XXXX for the Course using online text-to-speech software, such as Natural Reader and Pericles, and the NonVisual Desktop Access (NVDA) screen reader. She stated that she was not able to access all of XXXX's features and functions using assistive technology. Specifically, she experienced barriers when accessing homework problem sets, pre-tests, assessments, and the digital textbook for the Course.²

OCR assessed each aspect of XXXX regarding which the Complainant stated that she experienced barriers to access.³ OCR conducted both automated and manual testing to identify technological barriers to access in XXXX, including checking for appropriate keyboard access and navigation, semantic markup, visual focus indicators, color contrast, and document accessibility.

With respect to homework problem sets, pre-tests, and assessments, OCR determined that each option functioned the same way in XXXX.⁴ When a user selects one of these options, an internet browser pop-up window appears and presents a series of problems. Problems are provided in a variety of ways; for example, in some circumstances, a user must access and assess numerical data points to complete a problem, whereas, in other circumstances, a user must interpret and select graphs that correspond to certain data.

The Complainant informed OCR that she experienced a variety of barriers when accessing homework problem sets, pre-tests, and assessments. For example, she stated that she could not access all features and functions of the problems using her assistive technology; she reported that some problems included mathematical content that was not compatible with her assistive

² The Complainant also stated that she experienced barriers when accessing the XXXXXXXXXXXX feature of XXXX. However, she informed OCR that she could not recall the specific barriers she encountered because she stopped using this feature several weeks into the semester. She stated that she used Microsoft Excel as an alternative to complete her coursework. OCR did not receive any information indicating that Microsoft Excel was not an equally effectively alternative option to using XXXXXXXXXXXX; therefore, OCR did not address the accessibility of XXXXXXXXXXXX.

³ OCR's accessibility testing set up did not perfectly replicate the Complainant's configuration of her assistive technologies, but any differences should not have materially impacted the testing results. When technology applications are considered "accessible," they should generally work well with mainstream assistive technology, configured appropriately.

⁴ OCR only had access to review pre-tests and assessments; however, the Complainant informed OCR that homework generally functioned the same way as assessments. One difference between the activities is the number of attempts a user is given to complete the problems. The Complainant stated that she had unlimited attempts to complete homework problems, whereas the number of attempts to complete assessments was limited. OCR found no evidence indicating that the number of attempts a user is given to complete a problem led to unique accessibility barriers in any of the activity types. The Complainant also stated that numbers and variables were randomly generated for homework assignments, and her assistive technology did not always accurately read such content. OCR did not have an opportunity to assess this aspect of the Complainant's complaint. As discussed above, prior to the time OCR completed its investigation, the University agreed to voluntarily resolve the Complainant's allegation through a resolution agreement.

technology and that some problems included visual information, such as graphs, that was not sufficiently labeled.

OCR tested the accessibility of problems presented in XXXX and noted possible concerns related to the way problems are presented in the pop-up windows including, but not limited to, some instances where:⁵

- Certain elements lacked meaningful programmatic labels, posing a barrier for individuals who use assistive technology; and
- Keyboard users could not access all features and functions, posing a barrier for individuals who are unable to use a computer mouse.⁶

With respect to the digital textbook for the Course, users can typically access the textbook in XXXX using the XXXXX feature. With this feature, users are typically able to view and interact with each page of the textbook. In addition, users typically have the ability to highlight the digital textbook, make notes, and create flashcards while reading.

The Complainant informed OCR that she could not access the Course textbook using the XXXXX feature in XXXX. She stated that her assistive technology could not access the content of the pages of the book. She stated that the University provided her an additional Portable Document Format (PDF) version of the textbook, but she also experienced barriers when using this alternative format. Specifically, she stated that the PDF was formatted in such a way that her assistive technology did not always accurately read the content of the book; for example, it was formatted so some numbers, mathematical symbols, and graphs were not read correctly.

OCR tested the accessibility of the XXXXX feature in XXXX and noted possible concerns including, but not limited to:

- Keyboard users could not access all features and functions, posing a barrier for individuals who are unable to use a computer mouse; and
- The content of the textbook pages was inaccessible to assistive technology.

The University informed OCR that it obtained a PDF copy of the Course textbook from XXXXXXXX. The University stated that it did not modify the PDF version prior to providing it to

⁵ As discussed above, OCR did not conduct a complete assessment of all features and functions of XXX using all available assistive technology and computer configurations. Therefore, the concerns that OCR identified and listed throughout this analysis are meant to serve as examples, rather than a comprehensive list, of potential accessibility barriers associated with XXXX.

⁶ OCR initially identified additional barriers to access related to the way statistics problems are presented in the pop-up windows; however, XXXXXXXX implemented changes to the XXXX system to address those barriers during the course of OCR's investigation. XXXXXXXX explained that it identified the same barriers during its assessment of the accessibility of XXXX, and it updated the system accordingly. OCR did not complete a full assessment of other potential barriers to access, however, because the University requested to resolve the matter through a voluntary resolution agreement prior to the time OCR completed its investigation.

the Complainant, apart from separating the overall book into chapter-specific PDF documents. OCR tested the accessibility of a sample chapter PDF document and noted possible concerns including, but not limited to:

- The PDF document lacked sufficient programmatic structure to communicate some content effectively to individuals who use assistive technology; and
- Color contrast was insufficient, posing a barrier for people with low vision.

During the course of OCR's investigation, XXXXXXXX notified OCR that a third version of the textbook is also available on XXXX. Specifically, an HTML version of the book is offered in XXXXXXXXXXXXXXX section of XXXXXXXX's system. OCR reviewed this version and determined that it generally resolved many of the barriers associated with the XXXXX and PDF versions of the book. However, OCR noted some possible concerns including, but not limited to:

- Some important images lacked meaningful alternative text, posing a barrier for people with low vision; and
- Some links used to obtain alternative access to visual information were not meaningfully labeled, posing a barrier for people who use assistive technology.

Based on the foregoing, OCR determined that there were possible concerns about whether students with disabilities were able to meaningfully participate in the University's online programs and activities offered through XXXX, including homework problem sets, pre-tests, and assessments presented in pop-up windows and the Course textbook presented through the XXXXX feature in XXXX or the alternative PDF documents provided by XXXXXXXX.

OCR determined that the Complainant communicated with the University's Disability/Access Services Office (DSO) regarding the Course during the spring 2021 academic semester. Prior to the time OCR completed its investigation and reached a determination about whether the Complainant provided adequate notice to the DSO that academic adjustments or auxiliary aids/services were required, or whether the DSO provided the Complainant with necessary and appropriate academic adjustments or auxiliary aids/services of adequate quality and effectiveness, the University agreed to voluntarily resolve the Complainant's allegation through a resolution agreement.

On November 10, 2021, the University signed the enclosed resolution agreement (Agreement) to voluntarily resolve the Complainant's allegation pursuant to Section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation. 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 complaint. 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. An individual 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 may not harass, coerce, intimidate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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 Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or by email at logan.gerrity@ed.gov.

Sincerely,

/s/

Judith Risch
Co-Lead, National Digital Accessibility Team

Enclosure

Courtesy copy by email only to:

Ann S. McDonald, Esq.
Chief of Staff, General Counsel and Secretary to the Board of Trustees
amcdonald3@framingham.edu