



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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November 3, 2014

Rafael Román Meléndez, Ph.D.
Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

Re: Case No. 02-14-1254
Puerto Rico Department of Education

Dear Secretary Meléndez:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Puerto Rico Department of Education (the PRDOE). The complainant alleged that the PRDOE's website is not accessible to individuals with visual impairments because the website is not fully compatible with certain assistive technology that converts text-to-speech.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), 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 the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The PRDOE is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR reviewed information and documentation that the complainant and the PRDOE provided. OCR also interviewed the complainant.

The complaint alleged that the PRDOE's website is not accessible to individuals who are blind or have visual impairments because the website is not fully compatible with certain assistive technology that converts text to speech. In support of his allegation, the complainant asserted that he cannot access PDF documents featured on the PRDOE's website, because PDF documents are not formatted to allow text-to-speech conversion using assistive technology.

Under Title II of the ADA, qualified individuals with disabilities may not be excluded from participation in or denied the benefits of the services, programs, or activities of, nor be subjected to discrimination by, public elementary and secondary school districts. Both Title II of the ADA and Section 504 prohibit such districts from affording individuals with disabilities with an opportunity to participate in or benefit from the district's aids, benefits, and services that is unequal to the opportunity afforded others.¹ 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.² Districts may provide an individual with a disability, or a class of individuals with disabilities, 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.³

Additionally, the regulation implementing Title II of the ADA, at 28 C.F.R. § 35.160(a)(1), provides that “a public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”

During the course of its investigation, the Department's Assistive Technology Team conducted a review of the PRDOE's website at OCR's request, to determine whether the website and documents contained therein are accessible to individuals who are blind or have visual impairments. The Team tested the assistive technology that converts text-to-speech on the PRDOE's website, by randomly sampling three webpages. The Team concluded that all three webpages had accessibility defects that would prevent a screen reader type of assistive technology, such as “JAWS” or “ZoomText,” from accurately conveying the information displayed on the webpages.⁴

During the course of OCR's investigation, the PRDOE communicated its willingness to voluntarily resolve the complaint prior to the conclusion of OCR's investigation. Accordingly, on October 24, 2014, the PRDOE voluntarily entered into a resolution agreement (attached) with OCR. OCR will monitor implementation of the resolution agreement. If the PRDOE fails to implement the terms of the resolution agreement, OCR will resume its investigation by requesting additional information and documentation, as well as conducting more extensive testing of the PRDOE's website.

This letter should not be interpreted to address the PRDOE'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 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.

Please be advised that the PRDOE may not harass, coerce, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect to the extent

¹ 28 C.F.R. § 35.130(b)(1)(ii) and 34 C.F.R. § 104.4(b)(1)(ii).

² 28 C.F.R. § 35.130(b)(1)(iii) and 34 C.F.R. § 104.4(b)(1)(iii).

³ 28 C.F.R. § 35.130(b)(1)(iv) and 34 C.F.R. § 104.4(b)(1)(iv).

⁴ For example, one of the three webpages did not contain recognizable text. Additionally, none of the webpages specified the language used; therefore, a screen reader could not always accurately convey the information. Lastly, the webpages were either missing or had incorrect “tags” (i.e., labels that identify certain page content.)

provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have questions regarding OCR's determination, please contact Ronald L. Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@ed.gov; Anthony Spinelli, Compliance Team Investigator, at (646) 428-3789 or anthony.spinelli@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C. J. Blanchard

Enc.

cc: xxxxxxxx x xxxxxxxx xxx