

August 5, 2016

MaryEllen Elia
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Re: Case No. 02-16-1195
New York State Education Department

Dear Commissioner Elia:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the New York State Education Department (the NYSED). The complainant alleged that the NYSED discriminated based on disability because certain pages of the NYSED website are not accessible to students and adults with disabilities including, but not limited to, those with visual and hearing impairments. The webpages the complainant alleged were inaccessible include:

- <http://www.p12.nysed.gov/specialed/>;
- <http://www.p12.nysed.gov/specialed/applications/>;
- <http://www.p12.nysed.gov/specialed/finance/home.html>;
- <http://www.p12.nysed.gov/specialed/lawsregs/home.html>;
- <http://www.p12.nysed.gov/specialed/publications/>; and
- <http://www.p12.nysed.gov/specialed/aim/>.

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 NYSED 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 the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b), prohibits discrimination on the basis of disability in the provision of any aid, benefit, or service, directly or through contractual, licensing, or other arrangements. A recipient may not deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Title II, at 28 C.F.R. § 35.130, has requirements similar to those in the regulation implementing Section 504. Additionally, the regulation implementing Title II has specific requirements regarding communication, which, in pertinent part, require that public entities 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. 28 C.F.R. § 35.160(a)(1). Entities subject to Title II are required to provide equally effective communication, regardless of the medium chosen for their communication. Communication includes the transfer of information and encompasses information conveyed through computer-related applications and online environments.

In its investigation, on May 18, 2016, OCR conducted a manual review of the webpages cited in the complaint, using diagnostic software. Based on its review, OCR found the following deficiencies:

1. **Office of Special Education Homepage (<http://www.p12.nysed.gov/specialed/>)**
 - Search bars have empty form labels

2. **Special Education Applications Page (<http://www.p12.nysed.gov/specialed/applications/>)**
 - Search bars have empty form labels
 - Non-trivial graphics and images do not have meaningful ALT text
 - Links are not meaningfully labelled or titled
 - Linked PDF document does not have selectable text

3. **Special Education Budget and Finance Page (<http://www.p12.nysed.gov/specialed/finance/home.html>)**
 - Search bars have empty form labels
 - Non-trivial graphics and images do not have meaningful ALT text
 - Links are not meaningfully labelled or titled

4. Education Laws and Regulations Page

(<http://www.p12.nysed.gov/specialed/lawsregs/home.html>)

- Search bars have empty form labels
- Links are not meaningfully labelled or titled

5. Publications Page (<http://www.p12.nysed.gov/specialed/publications>)

- Search bars have empty form labels
- Links are not meaningfully labelled or titled

6. Accessible Instructional Materials (AIM) Page

(<http://www.p12.nysed.gov/specialed/aim>)

- Search bars have empty form labels
- Non-trivial graphics and images do not have meaningful ALT text
- Links are not meaningfully labelled or titled
- Linked PDF documents do not have selectable text

OCR determined that the deficiencies identified constitute barriers that deny persons with disabilities access to programs, services, and activities offered on the website and may impede the NYSED's communications with persons with disabilities.

On August 5, 2016, the NYSED entered into the enclosed resolution agreement in order to resolve the allegation without further investigation.

This letter should not be interpreted to address the NYSED'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 NYSED may not harass, coerce, intimidate, 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 document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; Lance Neyland, Compliance Team Attorney, at (646) 428-2616 or lance.neyland@ed.gov; Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXXXXXXXXXXX