



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

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NEW JERSEY
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September 2, 2016

Andrew Friedman
President and CEO
Learning Ally
20 Roszel Road
Princeton, New Jersey 08540

Re: Case No. 02-16-1225
Learning Ally

Dear Mr. Friedman:

This is to advise you of the resolution of the above-referenced complaint investigation of Learning Ally by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on March 7, 2016, alleged that Learning Ally discriminated based on disability because certain pages of Learning Ally's website are not accessible to those with disabilities including, but not limited to, those with visual and hearing impairments.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 United States Code (U.S.C.) § 794, *et seq.*, and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. As a recipient of federal financial assistance from the Department, Learning Ally is subject to OCR's jurisdiction under Section 504.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

Legal Authority:

Section 504 prohibits 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. 34 C.F.R. § 104.4. People with disabilities must have equal access to a recipients' programs, services, or activities unless doing so would impose an undue burden. 34 C.F.R. § 104.12. Section 504 prohibits 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). 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). 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). 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.

Investigation To Date:

During the course of the investigation, OCR examined a number of pages on Learning Ally's website to determine whether they are accessible to persons with disabilities. These web pages included:

- The Homepage (<http://www.learningally.org>);
- The Volunteer page (<http://www.learningally.org/volunteer>);
- The Parent's page (<http://www.learningally.or/Parents/ParentHome.aspx>);
- The "About Us" page (<http://www.learningally.org/AboutUs.aspx>); and,
- The "Success Stories" page (<http://www.learningally.org/AboutUs/successstories.aspx>).

OCR evaluated the above-listed pages and determined that important links did not have a meaningful label and some keyboard controls were not visually apparent, which limits the access of blind and low-vision users to pages on the website; parts of the website used color combinations that made text difficult or impossible for people with low vision to see; the form fields on several important webpages were not properly tagged and could not be accessed by an assistive technology user; and several videos lacked captioning, preventing hearing impaired users from accessing video content.

These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede Learning Ally's communications with persons with disabilities.

Resolution Agreement:

Learning Ally submitted a signed resolution agreement (Agreement) to OCR on September 2, 2016. Learning Ally committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on Learning Ally's website and conducting a thorough audit of existing online content and functionality;
- Making all new website content and functionality accessible to people with disabilities;
- Developing a corrective action plan to prioritize the removal of online barriers over an 18-month period;
- Posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible; and
- Providing website accessibility training to all appropriate personnel.

These findings should not be interpreted to address Learning Ally's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor Learning Ally's implementation of the Agreement. When OCR concludes Learning Ally has fully implemented the terms of the Agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If Learning Ally fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including to enforce the specific terms of the Agreement.

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 Learning Ally may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. 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. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions about OCR's determination, please contact Kathleen Ryder, Compliance Team Attorney, at (646) 428-3825 or kathleen.ryder@ed.gov; Ronald Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Edward Bray, Director, Public Policy & Advocacy, (*via email* xxxxx@learningally.org)