

November 17, 2017

Dr. Wayne J. Riley
President
State University of New York – Downstate Medical Center
Office of the President
450 Clarkson Avenue MSC 1
Brooklyn, New York 11203

Re: Case No. 02-17-2447
State University of New York – Downstate Medical Center

Dear President Riley:

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 State University of New York – Downstate Medical Center (the DMC). The complainant alleged that the DMC discriminates, on the basis of disability, because the DMC's website is not accessible to individuals with disabilities.

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 U.S. Department of Education (the Department). OCR also is 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 DMC is a recipient of financial assistance from the Department and is a public postsecondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

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

Legal Authority:

Section 504 and the ADA 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, respectively. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. Individuals with disabilities must have equal access to recipients' programs, services, or 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 the ADA prohibit 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); 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). The ADA also requires public entities to take steps to ensure that communications with individuals 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). 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 and the ADA.

Investigation:

The complainant alleged that the DMC discriminates, on the basis of disability, because the DMC's website is not accessible to individuals with disabilities. As examples, the complainant identified barriers to access on the following webpages:

- <http://www.downstate.edu>
- <http://www.downstate.edu/a-z>
- http://sls.downstate.edu/financial_aid
- http://sls.downstate.edu/financial_aid/assistance/index.html
- http://sls.downstate.edu/financial_aid/assistance/federal_work_study.html
- <http://library.downstate.edu>
- <http://www.downstate.edu/contact.html>
- <http://www.downstate.edu/education.html>
- <http://www.downstate.edu/diversity/disabilities.html>

Before OCR completed its evaluation of the identified webpages and/or conducted any additional investigation of the website, the DMC expressed an interest in voluntarily resolving this case. In light of the DMC's willingness to address its website comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate.

Resolution Agreement

The DMC signed a resolution agreement (Agreement) on November 17, 2017. When fully implemented, the Agreement will resolve any issues of accessibility pertaining to the DMC's website. The DMC committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the DMC'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.

OCR will monitor the DMC's implementation of the Agreement. When OCR concludes that the DMC has fully and effectively implemented the terms and obligations 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 the DMC fails to implement the Agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the Agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give the DMC written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This letter should not be interpreted to address the DMC'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 DMC 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 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. 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, please contact Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or logan.gerrity@ed.gov; or Crystal Johnson, Senior Investigator, at, (646) 428-3821 or crystal.johnson@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXXXXXX XXXXXXXX, Esq.