



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
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PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
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PENNSYLVANIA
WEST VIRGINIA

November 20, 2017

IN RESPONSE, PLEASE REFER TO: 03172431

Seamus Carey, President
Office of the President
Transylvania University
300 North Broadway
Lexington, KY 40508 USA

Dear President Carey,

This letter is to inform you of the resolution of the above-referenced complaint filed against the Transylvania University (the University) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on July 10, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the University's web pages are not accessible to students and adults with disabilities, including vision impairments. These include:

- Homepage- <http://www.transy.edu>
- About - <http://www.transy.edu/about/>
- Who We Are – <http://www.transy.edu/about/who-we-are>
- Disability Services- <http://www.transy.edu/campus/disability-services>
- Admission & Aid- <http://www.transy.edu/admission>
- Financial Aid- <http://www.transy.edu/admission/financial-aid>
- Life After Transy- <http://www.transy.edu/After Transy>
- Home at Transylvania- <http://www.transy.edu/campus>
- Library- <http://transy.edu/academics/library>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and as a public entity, the University is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the University, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination in its programs and activities based on disability, in violation of the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and

- whether the University failed to 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, in violation of 28 C.F.R. § 35.160(a).

Legal Authority:

Section 504 and Title II prohibit 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 or by public entities. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. People 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 Title II 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). Title II also requires public entities to take steps to ensure that communications with people 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 Title II.

Investigation to Date:

The complaint alleged that the University's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the University's above-referenced webpages have accessibility issues for individuals with disabilities. She then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

Prior to the completion of OCR's investigation, the University asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On November 16, 2017, the University submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the University has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the University has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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 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 University 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 harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

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

Thank you for the assistance that University's counsel, Thomas M. Williams, extended to OCR in resolving this complaint. OCR looks forward to receiving the University's first monitoring report by January 15, 2018. For questions about implementation of the Agreement, please contact Robert Ford, Equal Opportunity Specialist, who will be monitoring the University's implementation, by e-mail at robert.ford@ed.gov or by telephone at 215-656-8537. For questions about this letter, please contact Beth Gellman-Beer at 215-656-6935 or at beth.gellman-beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Team Leader

Enclosure: Resolution Agreement

cc: Michele Gaither Sparks (by mail)
Thomas M Williams