



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
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REGION III
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September 27, 2017

IN RESPONSE, PLEASE REFER TO: 03172437

President Thomas Leary
Luzerne County Community College
1333 S. Prospect Street
Nanticoke, PA 18634

Dear President Leary:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Luzerne County Community College (the College) with the United States Department of Education (Department), Office for Civil Rights (OCR) on July 17, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the College's web pages are not accessible to students and adults with disabilities including, but not limited to, vision and print disabilities and physical impairments.

These include the College's:

- Homepage
- Financial Aid
- Types of Aid
- Campus Locations
- Library
- Academics
- Support Services
- Registrar's Office
- Continuing Education

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 by recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations 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 from the Department and as a public entity, the College is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

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

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

- whether the College, 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 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 College 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:

OCR has investigated this complaint by reviewing information provided by the Complainant and conducting a preliminary assessment of the accessibility of several pages from the University’s website.

The complaint alleges that the College’s website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, and physical impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE)

and reported to OCR that the University's webpages that are identified above have accessibility issues for individuals with disabilities. She also provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether the College's website is accessible to individuals with disabilities. For example, there are several linked images that are missing alternative text. There are links that contain no text or have document language that is missing. Some links are missing form labels. There are missing formal labels for search boxes. There are many webpages having low contrast.

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 September 22, 2017, the College 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 College 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 College'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 College 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 College 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 recipient] written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College'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 College 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.

President Thomas Leary

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Thank you for the assistance of the College's Counsel extended to OCR in resolving this complaint. For questions about implementation of the Agreement, please contact me at (215) 656-8522, or by email at vicki.piel@ed.gov..

Sincerely,

/s/

Vicki Piel
Team Leader

Enclosure: Resolution Agreement

cc: Brian Stahl, Esquire