



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

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

October 20, 2017

IN RESPONSE, PLEASE REFER TO: 03-17-4045

Dr. Paul L. Hill, Chancellor
Office of the Chancellor
West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East
Boulevard Tower, 10th floor
Charleston, WV 25301

Dear Dr. Hill:

This letter is to inform you of the disposition of the above-referenced complaint filed against the West Virginia Higher Education Policy Commission (WVHEPC) with the United States Department of Education (Department), Office for Civil Rights (OCR) on July 1, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the WVHEPC'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:

- a) Homepage
<http://www.wvhepc.edu>
- b) Inside the Commission
<http://www.wvhepc.edu/inside-the-commission/>
- c) Institutions
<http://www.wvhepc.edu/institutions/>
- d) Financial Aid/Scholarships
https://secure.cfww.com/Financial_Aid_Planning/Scholarships/
- e) News
<http://www.wvhepc.edu/news/>
- f) Master Plan/Leading the Way
<http://www.wvhepc.edu/master-plan-leading-the-way/>
- g) Suicide Prevention/Jaime's Law
<http://www.wvhepc.edu/resources/suicide-prevention-jamies-law/>

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

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

of disability by recipients of federal financial assistance. We also enforce Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the WVHEPC is subject to Section 504, Title II and their implementing regulations.

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

- Issue 1: whether the WVHEPC, 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, activities, aids, benefits, or services 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.
- Issue 2: whether the WVHEPC failed to take appropriate steps to ensure that its communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communications with others, in violation of the regulation implementing Title II at 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 WVHEPC's website.

The complaint alleges that the WVHEPC's website is not in compliance with Section 504 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 WVHEPC's webpages that are identified above have accessibility issues for individuals with disabilities. The Complainant 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 WVHEPC's website is accessible to individuals with disabilities. For example, on many of the webpages, there are several linked images that are missing alternative text. Many webpages also have markup errors, causing screen readers to miss content. Some webpages have low contrast, while others contain links to a .pdf (Acrobat) file, but do not provide a link to download Acrobat Reader.

Prior to the completion of OCR's investigation, the WVHEPC asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On October 4, 2017, the WVHEPC 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 WVHEPC 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 WVHEPC'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 WVHEPC 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 WVHEPC 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 WVHEPC 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 WVHEPC'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 WVHEPC 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.

Thank you for the assistance of the WVHEPC's Executive Vice Chancellor for Administration, Matt Turner, extended to OCR in resolving this complaint. For questions about implementation of the Agreement, please contact Equal Opportunity Specialist Michael Wesley at (215) 656-6908 or by email at michael.wesley@ed.gov or me at (215) 656-8526 or melissa.corbin@ed.gov.

Sincerely,

/s/

Melissa M. Corbin
Team Leader

Enclosure: Resolution Agreement

cc: Matt Turner - Executive Vice Chancellor for Administration, WVHEPC