



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

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ATLANTA, GA 30303-8927

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January 19, 2018

Dr. Ed Richardson
Interim State Superintendent
Alabama State Department of Education
5114 Gordon Persons Building
50 North Ripley Street
Montgomery, Alabama 36104-2101

Re: OCR No. 04-16-1266

Dear Dr. Richardson:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Alabama State Department of Education (ALSDE) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on February 9, 2016, alleging discrimination on the basis of disability. Specifically, the complaint alleged that the following webpages are not accessible to persons with visual and hearing impairments: Homepage, Special Education, and Dispute Resolution.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations 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 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 and as a public entity, ALSDE is subject to these laws.

OCR opened an investigation of the following issues:

1. Whether ALSDE, 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.
2. Whether ALSDE failed to take appropriate steps to ensure that its communications with applicants, participants, members of the public, and companions with disabilities are as

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by fostering educational excellence and ensuring equal access.*

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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 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. 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 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 alleges that ALSDE’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 a website accessibility checker (PowerMapper) and reported to OCR that the following pages on ALSDE’s website are not accessible to individuals with disabilities: Homepage, Special Education, and Dispute Resolution.

Prior to the completion of OCR’s investigation, ALSDE asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). In light of ALSDE’s willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement is appropriate. On January 19, 2018, ALSDE submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

ALSDE has committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the recipient'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 a 6-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 ALSDE'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 ALSDE has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If ALSDE 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 ALSDE 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 ALSDE'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 also file a private suit in federal court, whether or not OCR finds a violation.

Please be advised that ALSDE 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.

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.

If you have any questions, please contact Kristen Williams, General Attorney, by e-mail at kristen.williams@ed.gov, or by telephone at (404) 974-9272, or me at (404) 974-9356.

Sincerely,

/s/ Wendy Gatlin
Wendy Gatlin
Compliance Team Leader

cc: Michael Meyer, Office of General Counsel

Enclosure