



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 10, 2021

By email only to: mpumarie@mdc.edu

Ms. Madeline Pumariega
President
Miami Dade College
300 NE 2nd Avenue
Miami, Florida 33132

Re: OCR Docket No. 04-21-2253
Miami Dade College, Florida

Dear President Pumariega:

This letter is to inform you of the disposition of the referenced complaint of disability discrimination filed with the U.S. Department of Education, Office for Civil Rights (OCR) against Miami Dade College. The Complainant alleged that the College is discriminating against students with disabilities by emailing them inaccessible information about student events, such as mental health workshops. Specifically, the Complainant alleged that the College's email communications are inaccessible because they convey event information through images, which lack meaningful alternative text.

Many people who are blind or have low vision access digital information, including emails and online postings, by using assistive technology such as screen readers. Screen readers are technology that will read aloud words on a screen to users who are blind, have low vision, or otherwise would not have access to those words. Screen readers cannot, however, read aloud words that are graphic images, unless those images are accompanied by alternative text in the computer code. In essence, the Complainant alleged that, because the College communicated important information about its services, programs, and activities through graphic images without providing the same important information through text, people who are blind or have low vision and who use assistive technology, like screen readers, were unable to access those College services, programs, and activities. The Complainant raised his concern as one that impacted people with disabilities generally, rather than seeking remedies for himself/herself as an individual.

OCR initiated an investigation of this allegation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit disability discrimination in any program or activity receiving Federal financial assistance from the Department. OCR also enforces Title II

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of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit disability discrimination by public entities. Because the College receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over the College pursuant to Section 504 and Title II, respectively.

As explained below, prior to completing OCR's investigation, the College requested to voluntarily resolve the allegation and signed the enclosed Voluntary Resolution Agreement (Agreement).

Under the Section 504 and Title II regulations, the College is prohibited, based on disability, from excluding qualified individuals with disabilities from participation in, denying them the benefits of, or otherwise subjecting them to discrimination under any of its services, programs, or activities. *See* 34 C.F.R. §§ 104.4(a) and 104.43(a); 28 C.F.R. § 35.130(a). Both the Section 504 and Title II regulations prohibit the College, whether directly or through contractual arrangements, based on disability, from affording qualified individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that are not equal to the opportunity afforded to others. *See* 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii). Similarly, the Section 504 and Title regulations prohibit the College, whether directly or through contractual arrangements, based on disability, from providing qualified individuals with disabilities with aids, benefits, or services that are not as effective in affording an equal opportunity to obtain the same result, to gain the same benefit, or reach the same level of achievement as that provided to others. *See* 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii). A qualified individual with a disability, or a class of qualified 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. *See* 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv).

Additionally, under the Title II regulations, the College is required 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 communication with others. *See* 28 C.F.R. § 35.160(a).

OCR's investigation to date included reviewing written policies, procedures, and guidelines regarding the College's email communication services; reviewing and examining a sample of email correspondence sent by the College and the Complainant to students during 2021, including emails sent via SharkNet (<https://sharknet.mdc.edu/>), the College's student club and organization portal; and reviewing information published on the College's website, SharkNet, and provided by the Complainant. From OCR's examination of the College's widely-distributed emails about student events and services, OCR identified some emails, including an email invitation to a College sponsored mental health workshop, that conveyed information through graphic images that lacked meaningful alternative text and were inaccessible to some people with disabilities. Based on OCR's examination and analysis of this information, OCR has identified a concern that the College may be discriminating against students with disabilities by

failing to make accessible to people with disabilities important information in emails about student events and services.

During the course of OCR's investigation, OCR also reviewed and examined a sample of event postings published on SharkNet, the College's online student club portal and, similar to the College's email correspondence, OCR identified some postings regarding events, including a College sponsored mental health awareness event, that conveyed information through graphic images that lacked meaningful alternative text and, as such, were inaccessible to some people with disabilities. Based on OCR's examination and analysis of this information, OCR has identified a concern that the College may be discriminating against students with disabilities by failing to make accessible to people with disabilities important information about student events and services on its online student club portal. OCR has not made any findings of discrimination because it had not completed its investigation at the time the College requested to resolve this matter. OCR would have conducted further interviews and investigation before making such a finding.

Section 302 of OCR's *Case Processing Manual* states that an allegation may be resolved at any time when, prior to OCR issuing a final determination, a recipient expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve the allegation with a voluntary resolution agreement. In this case, prior to the conclusion of OCR's investigation, the College expressed interest in voluntarily resolving the allegation and OCR has determined that it is appropriate to resolve the allegation with an agreement.

Subsequent discussions with the College resulted in the College signing the enclosed Agreement, which addresses the Complainant's allegation and OCR's additional concern that the College was posting information about student events and services on its online student club portal in a way that made that information inaccessible to some students with disabilities. OCR will monitor the implementation of the Agreement and will close this matter when OCR determines that the College has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the referenced case. This letter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

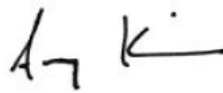
This letter sets forth OCR's determination in an individual case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the College 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 occurs, 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, OCR 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 about this letter, you may contact me at (206) 607-1621 or amy.kim@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Kim', with a horizontal line extending to the right from the 'i'.

Amy Kim
Attorney

Enclosure: Voluntary Resolution Agreement

Courtesy copies by email only to:

Dr. Joy C. Ruff
Director of Office of Equal Opportunity Programs/ADA/Title IX
jruff@mdc.edu

Javier A. Ley-Soto
General Counsel
jleysoto@mdc.edu