

August 8, 2016

Ms. Glenda Ritz
Superintendent of Public Instruction
Indiana Department of Education
200 West Washington Street
Indianapolis, Indiana 46204

Re: OCR Docket #05164024

Dear Superintendent Ritz:

This is to advise you of the resolution of the above-referenced complaint investigation of the Indiana Department of Education (IDOE) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on February 11, 2016, alleged that IDOE is discriminating, on the basis of disability, because certain pages on its website are not accessible to persons with disabilities.

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 in programs and activities of 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 in programs, services, and activities of public entities. As a recipient of Federal financial assistance from the Department and as a public entity, IDOE is subject to these laws.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

Legal Authority

Section 504 and Title II provide that no qualified persons with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected

to discrimination by recipients of federal financial assistance or by public entities.¹ Persons with disabilities must have equal access to the programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden.² Under Section 504 and Title II, individuals with disabilities must be afforded an opportunity that is equal to the opportunity afforded others to participate in or benefit from aids, benefits, and services³ and must be provided with aids, benefits, or services that provide an equal opportunity as others to achieve the same result or the same level of achievement.⁴ 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.⁵ 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.⁶ 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.

Recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by technology and equal treatment in the use of the technology for all individuals with disabilities who access their programs or activities, including members of the public.

Investigation To Date

During the course of the investigation OCR examined a number of pages on IDOE’s webpages to determine whether they are accessible to persons with disabilities. These webpages included:

- the IDOE homepage;
- the Special Education webpage;
- the Seclusion and Restraint webpage; and,
- the English Language Learner and Migrant Education webpage.

OCR conducted a preliminary evaluation of the above-listed pages and had concerns with the accessibility of certain features to persons with disabilities, including visually impaired persons (blind and low vision), mobility impaired persons, and hearing impaired persons. These concerns include that images were missing text labels, “Skip Navigation” links were missing, some form controls lacked labels, and hundreds of items had low contrast. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede IDOE’s communications with persons with disabilities.

Prior to the conclusion of OCR’s investigation, IDOE expressed an interest in voluntarily resolving this case. In order to conclude OCR’s investigation of this complaint, OCR would

¹ 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

² 28 C.F.R. § 35.164

³ 34 C.F.R. § 104.4(b)(1)(ii); 28 C.F.R. § 35.130(b)(1)(ii)

⁴ 34 C.F.R. § 104.4(b)(2); 28 C.F.R. § 35.130(b)(1)(iii)

⁵ 34 C.F.R. § 104.4(b)(1)(iv); 28 C.F.R. § 35.130(b)(1)(iv)

⁶ 28 C.F.R. § 35.160(a)(1)

have had to conduct interviews, review documents, and examine a broader range of pages on IDOE's website. In light of IDOE's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Resolution Agreement

IDOE submitted a signed resolution agreement (Agreement) to OCR on August 8, 2016. IDOE committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on IDOE'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;
- 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.

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address IDOE's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor IDOE's implementation of the Agreement. When OCR concludes IDOE has fully implemented the terms of the Agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If IDOE fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including to enforce the specific terms of the enclosed Agreement.

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 IDOE 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 IDOE and its counsel, Ms. Kelly Bauder, extended to OCR in resolving this complaint. We look forward to receiving IDOE's first reports about its

implementation of the Agreement by August 30, 2016. If you have any questions, please contact Mark Erickson at mark.erickson@ed.gov or at 312-730-1574.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Kelly Bauder