



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

January 12, 2018

Dr. Richard Nelson  
President  
Nicolet Area Technical College  
5364 College Dr.  
P.O. Box 518  
Rhineland, WI 54501-0518

Re: OCR Docket #05-17-2334

Dear Dr. Nelson:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Nicolet Area Technical College (College) with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on July 20, 2017, alleging discrimination based on disability.

Specifically, the complaint alleged that certain College web pages were not accessible to students and adults with disabilities. These included: the College's Homepage; About; Calendar; Online Learning; Academic Programs; Transfer Students; Financial Aid; Grants; Student Services; and, Library.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, 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 (Title II), 42 U.S.C. § 12131-12134, 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, the College 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.<sup>1</sup> 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.<sup>2</sup> 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 services<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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 the College’s webpages to determine whether they are accessible to persons with disabilities, including the College’s Homepage; About; Calendar; Online Learning; Academic Programs; Transfer Students; Financial Aid; Grants; Student Services; and, Library.

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 linked images were missing “alt tabs,” descriptions or text labels for persons who use a screen reader, certain items may have low contrast, which may render the item unreadable for persons with low vision, and the ability of persons with mobility impairments to use keyboard navigation. These barriers may deny persons with disabilities access to programs, services, and activities offered on the website and may impede the College’s communications with persons with disabilities.

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<sup>1</sup> 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130

<sup>2</sup> 28 C.F.R. § 35.164

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

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

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

<sup>6</sup> 28 C.F.R. § 35.160(a)(1)

Prior to the conclusion of OCR's investigation, the College expressed an interest in voluntarily resolving this case. In light of the College's willingness to address its website comprehensively without further investigation and given that the College has begun to address many of the accessibility barrier concerns, OCR determined entering into a voluntary resolution agreement would be appropriate.

### **Resolution Agreement**

The College submitted a signed resolution agreement (Agreement) to OCR on January 12, 2018. Under the terms of the Agreement, the College will have 90 days from the date of the Agreement to demonstrate that no barriers to access for people with disabilities using or attempting to use the College's online programs, services and activities exist on its new website. If, after 90 days, OCR confirms that no such barriers exist, the Agreement will be terminated, no further reporting will be required, and this matter will be closed. If OCR continues to identify barriers to access after this 90-day period, the College agrees to fulfill all the remaining terms of this Agreement, including:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the College'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 the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the College's implementation of the Agreement. When OCR concludes the College 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 the College fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including the enforcement of the 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.

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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.

Thank you for the assistance the College extended to OCR in resolving this complaint. In particular, we wish to thank Mr. Matthew R. Schur, Director of Risk, Compliance and Security. Under the Agreement, the College will provide information to OCR on April 12, 2018, demonstrating it has complied with the Agreement. If you have any questions, please contact Janet Bonem, Equal Opportunity Specialist, at (312) 730-1567 or by email at [Janet.Bonem@ed.gov](mailto:Janet.Bonem@ed.gov).

Sincerely,

Dawn R. Matthias  
Team Leader

cc: Matthew R. Schur, Director of Risk, Compliance & Security

Enclosure