



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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February 16, 2017

Joel Coleman, Superintendent
Utah Schools for the Deaf and the Blind
742 Harrison Blvd.
Ogden, UT 84404

Re: OCR No. 08-16-1319
Utah Schools for the Deaf and the Blind

Dear Superintendent Coleman:

This is to advise you of the resolution of the above-referenced complaint investigation of the Utah Schools for the Deaf and the Blind (USDB) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on May 9, 2016, alleged that USDB is discriminating, on the basis of disability, because its website is 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, USDB is subject to OCR's jurisdiction under Section 504 and Title II.

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 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,

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08-16-1319, Superintendent Coleman

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 examined the pages on USDB’s website identified by the complainant to determine whether they are accessible to persons with disabilities. These web pages included:

- Homepage- <http://www.usdb.org>
- Utah Schools for the Deaf and Blind- http://www.usdb.org/deaf_blind Accessibility
- Blind- Visually Impaired- http://www.usdb.org/blind_visually_impaired Accessibility
- Deaf and Hard of Hearing- http://www.usdb.org/deaf_hard_of_hearing
- Parent-Infant Program - http://www.usdb.org/parent_infant_programs
- Sights and Sounds April newsletter- http://www.usdb.org/sights_and_sounds_newsletter
- The Loss of a Dream- Grief Issues for Families- <http://classic.usdb.org/deafblind/db/CIT%20Web%20Lessons/lossofadreamGP/index.html>

OCR evaluated the above-listed pages and determined that important content contained in the submenus to the main navigation bar of the website could only be accessed by people who can use a computer mouse, which meant that much of the website’s content was not available to those who are blind, many who have low vision, and those with disabilities affecting fine motor control; the search box was missing a form label, which made it difficult to use for people who are blind and who use screen readers; some videos did not have captions; some forms were not labeled; some important graphics had no associated text to convey important information to those who are blind who use screen readers; and parts of the website used color combinations that made text difficult or impossible for people with low vision to see. These barriers deny persons with disabilities access to programs, services, and activities offered on the website, impede USDB’s communications with persons with disabilities and, therefore, violate Title II and Section 504.

Before OCR conducted additional investigation of USDB’s website, USDB expressed an interest in voluntarily resolving this case. In light of USDB’s willingness to address its website comprehensively

08-16-1319, Superintendent Coleman

without further investigation, OCR determined entering into a voluntary resolution agreement is appropriate.

Resolution Agreement:

USDB submitted a signed resolution agreement (Agreement) to OCR on February 16, 2017. When fully implemented, the Agreement will address the findings of noncompliance noted above as well as resolve issues of accessibility pertaining to the rest of USDB's website. Under the terms of the Agreement, USDB will have 90 days from the date of the Agreement to identify and remediate all barriers to access to people with disabilities using or attempting to use USDB's online programs, services, and activities. If, after 90 days, OCR confirms that all such barriers have been removed, 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, USDB 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 USDB'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 an 18-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 USDB's implementation of the Agreement. When OCR concludes USDB has fully and effectively implemented the terms and obligations 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 USDB 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 USDB written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the complaint. These findings should not be interpreted to address USDB'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 USDB 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.

08-16-1319, Superintendent Coleman

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.

OCR looks forward to receiving the USDB's first monitoring report within 90 days of the date of signature. For questions about implementation of the Agreement, please contact me at Mary.Lou.Mobley@ed.gov or 303-844-4480.

Sincerely,

A handwritten signature in blue ink that reads "Mary Lou Mobley". The signature is written in a cursive, flowing style.

Mary Lou Mobley, Esq.
National Disability Expert

Enclosure

Courtesy copy by email to USDB's counsel:

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