



UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights

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DENVER, COLORADO 80204-3582

REGION VIII

ARIZONA
COLORADO
NEW
MEXICO
UTAH

August 3, 2016

Diane Douglas
Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Re: OCR No. 08-16-4012
Arizona Department of Education

Dear Superintendent Douglas:

This is to advise you of the resolution of the above-referenced complaint investigation of the Arizona Department of Education (the State) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on February 8, 2016, alleged that the State 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, the State is subject to OCR's jurisdiction under Section 504 and Title II.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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, 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:

During the course of the investigation OCR examined a number of pages on the State's website to determine whether they are accessible to persons with disabilities. These web pages included:

- Homepage <http://www.azed.gov/>
- Special Education webpage <http://www.azed.gov/special-education/>
- Special Education Dispute Resolution - <http://www.azed.gov/special-education/dispute/>

OCR evaluated the above-listed pages and determined that some important content of the website could only be accessed by people who can use a computer mouse, which meant

that content was not available to those who are blind, many who have low vision, and those with disabilities affecting fine motor control; videos did not have accurate captions; and some forms were not properly labeled. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede the State’s communications with persons with disabilities.

Prior to the conclusion of OCR’s investigation, the State expressed an interest in voluntarily resolving this case. In order to conclude OCR’s investigation of this complaint, OCR would have had to conduct interviews, review documents, and examine a broader range of pages on the State’s website; OCR would have sought to learn, for example, whether the State had received previous complaints of inaccessible website content or functionality, and how those complaints were resolved; and whether its information technology staff members and people responsible for uploading content or maintaining web pages had received training in website accessibility. In light of the State’s willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement would be appropriate.

Resolution Agreement:

The State submitted a signed resolution agreement (Agreement) to OCR on August 3, 2016. The State committed to take actions such as:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the State’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;¹

¹ We note that during negotiations, ADE petitioned OCR to exempt ADE from meeting WCAG 2.0 Success Criterion 1.2.4, which requires captioning on live audio content, “unless technology improves and providing captions [on live content] becomes easier and less cost intensive during the term of this Agreement.” It is true that there are some particular live streaming contexts which pose particular challenges for captioning. For instance, “live” broadcasts are typically on a multi-second delay so auto-generated captions can be generated and synced with the audio track. It can be impossible to auto-generate captions for a truly interactive live event – with, for instance, the Secretary of Education asking and answering questions of parents state-wide, who are calling in from remote locations. The multi-second delay interferes with the interactivity of the presentation, as the viewers at home will not be able to ask questions or answer questions in a way that is synced with the “live” online video feed of the Secretary of Education. Where it is impossible to do something from a technological basis, it is not required by Section 504 or Title II, as it becomes a significant difficulty and can also fundamentally alter the nature of the activity as by, in this example, destroying the interactive nature of the session. However, Computer-Assisted Real-Time Transcription services (“CART”) provided at the point where the Secretary is speaking could be captured in the same video feed, in a way that would not interfere with the interactivity or require a 30-second delay. So while traditional “captioning” contemplated by Success Criterion 1.2.4 (e.g., a crawl at the bottom of the video screen, often displayed in high contrast mode) might impose an undue burden or render a fundamental alteration and, thus, not be

- Developing a corrective action plan to prioritize the removal of online barriers on all public-facing pages over a 24-month period;
- Posting a notice throughout the website, including subordinate pages and intranet sites, 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 State's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. OCR will monitor the State's implementation of the Agreement. When OCR concludes the State 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 State 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 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 the State 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.

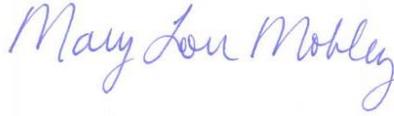
Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance Assistant Attorney General Jordan Ellel and Education Unit Chief Counsel Leslie Cooper extended to OCR in resolving this complaint. We look

required under the ADA and 504, video capture of a CART display could provide a viable equally effective alternative that does not impose an undue burden or render a fundamental alteration.

forward to receiving the State's first reports about its implementation of the Agreement by September 1, 2016. If you have any questions, please contact me at Mary.Lou.Mobley@ed.gov or 303-844-4480.

Sincerely,



Mary Lou Mobley, Esq.
National Disability Expert

Enclosure: Resolution Agreement

cc (by email only): AAG Jordan Ellel
Education Unit Chief Counsel Leslie Cooper