



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 UNITED NATIONS PLAZA
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SAN FRANCISCO, CA 94102

REGION IX
CALIFORNIA

May 9, 2017

Dr. Nancy Kotowski
Superintendent
Office of the Superintendent
Monterey County Office of Education
901 Blanco Circle, Salinas, CA 93901

Re: OCR No. 09-17-1188
Monterey County Office of Education

Dear Dr. Kotowski,

This letter is to inform you of the disposition of the above-referenced complaint filed against Monterey County Office of Education (the Recipient) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on January 5, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the Recipient's web pages are not accessible to students and adults with disabilities, including vision impairments. These include, but are not limited to:

- Homepage, <http://www.monterey.k12.ca.us/programs-services/selpa/index>
- About MCOE page, <http://www.monterey.k12.ca.us/about/index>
- Facebook page, <https://www.facebook.com/MontereyCountyOfficeofEd/>
- YouTube page, <https://m.youtube.com/user/ThisJustInFromMCOE>
- Online Colleges page, <http://www.affordablecollegesonline.org/online-colleges/california/>
- Resources page, <http://www.monterey.k12.ca.us/resources/index>
- Programs and Services page, <http://www.monterey.k12.ca.us/programs-services/index>
- Foster Youth Services page, <http://www.monterey.k12.ca.us/programs-services/foster-youth-services/index>
- Special Education page, <http://www.monterey.k12.ca.us/programs-services/special-education/index>
- Special Education Parent Resources page, <http://www.monterey.k12.ca.us/programs-services/special-education/parent-resources/index>
- Deaf and Hard of Hearing Itinerant Services page, <http://www.monterey.k12.ca.us/programs-services/special-education/parent-resources/deaf-hoh-itinerant/index>
- Impaired Itinerant Services page, <http://www.monterey.k12.ca.us/programs-services/special-education/parent-resources/blind-vi-itinerant/index>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and as a public entity, the Recipient is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the Recipient, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination in its programs and activities based on disability, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and
- whether the Recipient failed to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others, in violation of 28 C.F.R. § 35.160(a).

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:

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and conducting a preliminary assessment of the accessibility of several pages from the Recipient’s website.

The complaint alleges that the Recipient’s website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the Recipient’s homepage, About MCOE page, Facebook page, YouTube page, Online Colleges page, Resources page, Programs and Services page, Foster Youth Services page, Special Education Parent Resources page, Deaf and Hard of Hearing Itinerant Services page, Impaired Itinerant Services page have accessibility issues for individuals with disabilities. She then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR sent the Recipient a request for data, and its data response, the Recipient explained that the webpages listed in the complaint are undergoing a domain name change from the monterey.k12.ca.us address to a montereycoe.org address. Both the monterey.k12.ca.us and montereycoe.org websites currently exist, and the former feeds into the latter so that the websites mirror each other. The Recipient told OCR that over time, the monterey.k12.ca.us domain name will cease to exist and only the montereycoe.org address will exist.

In its data response, the Recipient also stated that it did not manage the Online Colleges page at <http://www.affordablecollegesonline.org/online-colleges/california/>. OCR is dismissing the Online Colleges page from the complaint. According to Section 105 of the *Case Processing Manual*, when a complaint is filed against an institution OCR does not cover, OCR will not proceed further and will dismiss in accordance with Section 108. *Case Processing Manual* Section 108(a) states that OCR will dismiss an allegation if it, on its face or as clarified in the evaluation process, fails to state a violation of one of the laws OCR enforces. In this case, the allegation with regards to the Online Colleges page, as clarified in the evaluation process, fails to state a violation of one of the laws OCR enforces because OCR does not have jurisdiction over the operator of the Online Colleges page.

OCR conducted a preliminary examination of the remaining monterey.k12.ca.us web pages identified by the Complainant (mirrored in the Recipient’s montereycoe.org web pages) and found possible compliance concerns as to whether the Recipient’s website is accessible to

individuals with disabilities. For example: keyboard controls are not visually apparent; videos do not begin with meaningful alternative text that describe the purpose of the video and the speaker; the “MCOE Educational Services Introduction” video lacks any alternative text; PDFs have selectable text errors; photographs are missing meaningful alternative text or alternative text altogether; parts of the website used color combinations that made text difficult or impossible for people with low vision to see; and there is a skipped heading level, and because headings provide document structure and facilitation keyboard navigation by users of assistive technology, users may be confused or experience difficulty navigating when heading levels are skipped. These barriers deny persons with disabilities access to programs, services, and activities offered on the website and may impede the Recipient’s communications with persons with disabilities.

Prior to the completion of OCR’s investigation, the Recipient asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual*. On May 9, 2017, the Recipient submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the Recipient has made in the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will monitor the Recipient’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may request additional information as necessary to determine whether the Recipient has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If the Recipient fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the Recipient written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR’s investigation of the complaint and should not be interpreted to address the Recipient’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.

Please be advised that the Recipient 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 happens, the harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

Thank you for the assistance that Recipient personnel, especially Jessica Hull, extended to OCR in resolving this complaint. OCR looks forward to receiving the Recipient's first monitoring report by June 8, 2017. For questions about implementation of the Agreement, please contact Annie Lee, who will be monitoring the Recipient's implementation, by e-mail at Annie.Lee@ed.gov or by telephone at 415-486-5594.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure