



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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December 14, 2017

Dr. Michael Johnson
Commissioner
Alaska Department of Education & Early Development
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Re: Alaska Department of Education & Early Development
OCR Reference No. 10161093

Dear Commissioner Johnson:

This is to advise you of the resolution of the above-referenced complaint investigation of the Alaska Department of Education & Early Development (“Alaska DEED”) by the Office for Civil Rights (OCR) of the U.S. Department of Education (Department). The complaint, which OCR received on February 8, 2016, alleged that Alaska DEED is discriminating, on the basis of disability, because its programs, services, and activities delivered on-line 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 this Department and as a public entity, Alaska DEED 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

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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:

OCR evaluated the web pages on the Alaska DEED website identified by the complainant to determine whether they are accessible to persons with disabilities. These web pages included the:

- parent and community web page at <https://education.alaska.gov/akparentscommunity>; and
- special education web page at <https://education.alaska.gov/tls/sped>.

In evaluating Alaska DEED’s web site, OCR identified other web pages that may discriminate against persons with disabilities, such as the conference, training, and event calendar web page at <https://education.alaska.gov/Calendar/#main>.

Through its investigation, OCR made the following findings.

Alaska DEED provides information to, and communicates with, members of the public through its website.

During three different time periods in calendar year 2016, OCR evaluated the accessibility of the Alaska DEED website and identified the following types of barriers for some people with disabilities to access certain web pages on the site when they use assistive technologies or cannot use a mouse or have low-vision:

- a. lack of a visual focus indicator;
- b. insufficient color contrast;
- c. information conveyed through color that was also not conveyed through other means, such as text;
- d. submenus or drop-down menus that were inaccessible;
- e. pop-ups that were inaccessible;
- f. graphics or photographs conveying substantive information that lacked alternative text;
- g. data tables in inaccessible format;
- h. fields requiring input of text that were not labelled; and
- i. inaccessible documents in portable document format (PDF).

During June 2017, OCR found that Alaska DEED had videos on its website that lacked captioning, causing barriers for persons who are deaf or hard of hearing to access the information conveyed in those videos.

During September 2017, OCR conducted an evaluation of a representative sampling of the accessibility of the Alaska DEED website. Among other things, OCR found the following types of barriers for some people with disabilities to access certain web pages on the site when they use assistive technologies or cannot use a mouse or have low-vision:

- a. form controls that were not associated with their visible labels,
- b. form field instructions that were not associated with the field inputs or buttons,
- c. insufficient color contrast, and
- d. documents in PDF that were inaccessible.

Alaska DEED does not have a formal process for ensuring that the programs, services, and activities delivered through its website are accessible to people with disabilities or that its communications between Alaska DEED and people with disabilities through its website are effective.

Alaska DEED does not provide equally effective alternative methods for people with disabilities to participate in the programs, services and activities delivered through its website or to receive and send communications with Alaska DEED, so that persons with disabilities can acquire the same information, engage in the same interactions, and enjoy the same services as non-disabled persons with substantially equivalent ease of use.

These barriers deny persons with disabilities access to programs, services, and activities offered on the website, impede Alaska DEED's communications with persons with disabilities, and therefore, violate Title II and Section 504. Alaska DEED and OCR entered into an agreement to resolve the complaint.

Resolution Agreement:

Alaska DEED submitted a signed Resolution Agreement (“agreement”) to OCR on December 13, 2017. When fully implemented, the agreement will address the findings of non-compliance noted above, as well as resolve issues of accessibility pertaining to the rest of the Alaska DEED website. Alaska DEED committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the Alaska DEED website and conducting a thorough audit of existing on-line 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 on-line barriers,
- posting a notice to persons with disabilities about how to request access to on-line information or functionality that is currently inaccessible, and
- providing website accessibility training to all appropriate personnel.

OCR will monitor Alaska DEED's implementation of the agreement. When OCR concludes that Alaska DEED 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 Alaska DEED 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 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce the agreement, OCR will give Alaska DEED 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 Alaska DEED'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 court whether or not OCR finds a violation.

Please be advised that Alaska DEED 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.

We look forward to receiving Alaska DEED's first report about its implementation of the agreement by **January 10, 2018**. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring Alaska DEED's implementation of the agreement, by telephone at (206) 607-1632, or by e-mail at noel.nightingale@ed.gov. For questions about this letter, please contact me by telephone at (206) 607-1612, or by e-mail at paul.goodwin@ed.gov.

Sincerely,

Paul Goodwin
Team Leader

Enclosure: Resolution Agreement

cc: Assistant Attorney General