



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 23, 2018

Dr. Christina Kishimoto
Superintendent
Hawaii Department of Education
P.O. Box 2360
Honolulu, Hawaii 96804

Re: Hawaii Department of Education
OCR Reference No. 10161099

Dear Superintendent Kishimoto:

This is to advise you of the resolution of the above-referenced complaint investigation of the Hawaii Department of Education (“Hawaii DOE”) by the Office for Civil Rights (OCR) of the United States Department of Education (“Department”). The complaint, which OCR received on February 11, 2016, alleged that Hawaii DOE was discriminating, on the basis of disability, because its website was 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, Hawaii DOE 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 examined pages on Hawaii DOE’s website identified by the complainant to determine whether they were accessible to persons with disabilities. These web pages included the:

- homepage at www.hawaiipublicschools.org/Pages/Home.aspx,
- support for parents web page at www.hawaiipublicschools.org/ParentsAndStudents/SupportForParents/Pages/Home.asp, and
- special education web page at www.hawaiipublicschools.org/TeachingAndLearning/SpecializedPrograms/SpecialEducation.

In reviewing Hawaii DOE’s web site, OCR also identified other web pages that may have discriminated against persons with disabilities, such as the calendar web page at www.hawaiipublicschools.org/Pages/Calendar.aspx.

Through its investigation, OCR made the following findings.

1. Hawaii DOE provides information to, and communicates with, members of the public through its website.
2. Hawaii DOE does not have a formal process in place for ensuring that the programs, services, and activities delivered through its website are accessible to people with disabilities or that its communications between Hawaii DOE and people with disabilities through its website are effective.
3. During April 2016, OCR conducted a manual evaluation of the accessibility of a sampling of web pages on the Hawaii DOE website. Among other things, OCR found that on some web pages:
 - a. functions and content could not be accessed by keyboard-only users,
 - b. data tables were not identified programmatically and inaccessible to assistive technology users,

- c. videos without captioning were inaccessible to deaf and hard of hearing users,
 - d. insufficient color contrast prevented access by users with low-vision,
 - e. images without equivalent text descriptions were inaccessible to blind users, and
 - f. many documents in portable document format (PDF) were untagged and inaccessible to assistive technology users.
4. During December 2016, OCR evaluated a sample of web pages on the Hawaii DOE website and identified the following barriers to access by people with disabilities:
- g. functions and content could not be accessed by keyboard-only users,
 - h. videos without captioning were inaccessible to deaf and hard of hearing users and had controls were not accessible to keyboard-only users,
 - i. insufficient color contrast prevented access by users with low-vision, and
 - j. many documents in PDF were scanned images and were untagged and inaccessible to assistive technology users.
5. During October 2017, OCR found that Hawaii DOE had posted links to videos on its website that lacked captioning for persons who are deaf or hard of hearing. OCR also found documents in PDF on the Hawaii DOE website that were inaccessible to people with disabilities who use assistive technology.
6. The Hawaii DOE acting enterprise systems branch director (“acting director”) told OCR that Hawaii DOE had found inaccessible content and functionality on the four web pages identified in OCR’s letter notifying Hawaii DOE about the complaint, dated April 26, 2017, the homepage, support for parents, special education, and calendar web pages, which it had not remediated.
7. There are barriers to participation by persons with disabilities in the programs, services, and activities delivered by Hawaii DOE through its website.
8. Hawaii DOE does not provide equally effective alternative ways for people with disabilities to participate in the programs, services and activities delivered through its website or receive and send communications with Hawaii DOE. Hawaii DOE does not provide accommodations or modifications to ensure that its programs, services, and activities delivered through its website 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 denied persons with disabilities access to programs, services, and activities offered on the website, impeded Hawaii DOE’s communications with persons with disabilities and, therefore, violated Title II and Section 504.

Resolution Agreement

Hawaii DOE submitted a signed Resolution Agreement (“agreement”) to OCR on January 19, 2018. 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 Hawaii DOE’s website. Hawaii DOE committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the Hawaii DOE 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 Hawaii DOE’s implementation of the agreement. When OCR concludes that Hawaii DOE 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 Hawaii DOE 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 Hawaii DOE 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 Hawaii DOE’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 Hawaii DOE 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 harmed 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 Hawaii DOE’s personnel extended to OCR in resolving this complaint. We look forward to receiving Hawaii DOE’s first report about its implementation of the agreement

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by **February 16, 2018**. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring Hawaii DOE'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: Director, Civil Rights Compliance Office
Hawaii Department of Education