



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

February 21, 2018

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

Re: Hawaii School for the Deaf and Blind
OCR Reference No. 10161255

Dear Superintendent Kishimoto:

This is to advise you of the resolution of the above-referenced complaint investigation of the Hawaii School for the Deaf and Blind (“the school”) by the Office for Civil Rights (OCR) of the United States Department of Education (“Department”). The complaint, which OCR received on June 23, 2016, alleged that the school 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, the school 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

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

www.ed.gov

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

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

- homepage at www.hsdb.k12.hi.us,
- contact us web page at www.hsdb.k12.hi.us/contact-us.html,
- calendar 2015-16 web page at www.hsdb.k12.hi.us/school-calendar.html,
- community and internet resources web page at www.hsdb.k12.hi.us/community-and-internet-resources,
- vision/mission/philosophy web page at www.hsdb.k12.hi.us/visionmissionphilosophy.html,
- welcome to the cafeteria web page at www.hsdb.k12.hi.us/cafeteria1.html, and
- Hawaii Department of Education's school library services page for the Hawaii School for the Deaf and Blind web page at <https://library.k12.hi.us/HIDOE/school.asp?SchoolType=5&sID=237>.

Through its investigation, OCR made the following findings.

1. The school provided information to, and communicated with, members of the public through its website.
2. The school did not have a formal process in place for ensuring that the programs, services, and activities delivered through its website were accessible to people with disabilities or that its communications between the school and people with disabilities through its website were effective.

3. During December 2016, OCR evaluated the accessibility of the school’s website and identified several barriers to accessing it by people with disabilities. Those barriers included:
 - a) menu functions could not be accessed by keyboard-only users;
 - b) parts of web pages lacked visual focus indicators, making them inaccessible to keyboard-only users;
 - c) videos lacked captioning or transcriptions, making them inaccessible to some deaf and hard of hearing users, and lacked audio description, making them inaccessible to blind and low-vision users;
 - d) links were given names that did not describe their content, making them inaccessible to blind users;
 - e) calendars were formatted in a way that made them inaccessible to screen reader users and had functions and content that were inaccessible to keyboard-only users;
 - f) insufficient color contrast made them inaccessible to users with low-vision;
 - g) images lacked alternative text describing their content, making them inaccessible to blind users; and
 - h) documents in portable document format were inaccessible to assistive technology users.
4. During November 2017, OCR found that the school had posted links to videos on its website that lacked captioning or transcripts for deaf and hard of hearing users and that lacked audio description of the content for blind or low-vision users.
5. There were barriers to participation by persons with disabilities in the programs, services, and activities delivered by the school through its website.
6. The school’s technology coordinator, who was responsible for the school’s website, stated to OCR that the school had no policy or procedure to ensure that the content and accessibility of its website were accessible to individuals with disabilities and had no process in place for testing for such accessibility.
7. The school did not provide equally effective alternative ways for people with disabilities to participate in the programs, services and activities delivered through its website or to receive and send communications with the school. The school did not provide accommodations or modifications to ensure that its programs, services, and activities delivered through its website so that persons with disabilities could 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 the school’s communications with persons with disabilities and, therefore, violated Title II and Section 504.

Resolution Agreement

The school submitted a signed Resolution Agreement (“agreement”) to OCR on February 21, 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 the school’s website. The school committed to take actions including:

- developing a corrective action plan to prioritize the removal of on-line barriers, which includes a new, accessible website;
- selecting an auditor who has the requisite knowledge and experience to identify any barriers to access on the school’s new 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;
- posting a notice to persons with disabilities about how to request access to any on-line information or functionality that is inaccessible; and
- providing website accessibility training to all appropriate personnel.

OCR will monitor the school’s implementation of the agreement. When OCR concludes that the school 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 the school 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 the school 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 the school’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 the school 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 the personnel of the school and of the Hawaii Department of Education extended to OCR in resolving this complaint. We look forward to receiving the school's first report about its implementation of the agreement by **May 30, 2018**. For questions about implementation of the agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring the school'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: Principal, Hawaii School for the Deaf and Blind
Director, Civil Rights Compliance Office, Via U.S. Mail and Facsimile (808) 586-3433