



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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November 10, 2021

**Via E-mail Only to: [kedwards@clark.edu](mailto:kedwards@clark.edu)**

Dr. Karin Edwards  
President  
Clark College  
1933 Fort Vancouver Way  
Vancouver, Washington 98663

Re: Clark College  
OCR Reference No. 10162006

Dear President Edwards:

The Office for Civil Rights (OCR) of the U.S. Department of Education has completed its investigation of the above-referenced complaint that was filed against Clark College on October 6, 2015. OCR investigated the allegations that the College is discriminating against students with disabilities, on the basis of disability, by:

1. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX;
2. implementing inaccessible electronic and information technologies (Allegation No. 2)--some of which the complainant alleged contain inaccessible documents and videos--including:
  - a. Pearson's MyMathLab;
  - b. McGraw Hill Connect;
  - c. ProctorU;
  - d. ProQuest and Ebrary research databases and tools; and
  - e. an interactive map on the College's main web page.
3. XX;
4. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*  
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5. failing to provide an accessible campus (Allegation No. 5) because:

- a. several routes through campus are inaccessible in that they have grades that are too steep and do not include handrails or edge protection;
- b. XX
- c. XX

OCR enforces Section 504 of the Rehabilitation Act of 1973, and the regulations that implement that statute at 34 C.F.R. Part 104, which prohibit discrimination based on disability in programs and activities of recipients of federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990, and the regulations that implement that statute at 28 C.F.R. Part 35, which prohibit discrimination based on disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from this Department and as a public entity, the College is required to comply with Section 504 and Title II and those statutes' implementing regulations.

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Through the investigation, OCR found concerns about the College's compliance with Section 504 and Title II with respect to Allegation No. 2, regarding the accessibility of information and communication technologies, and Allegation No. 5(a), regarding accessible routes. However, prior to OCR's completion of the investigation, the College expressed an interest in voluntarily resolving the concerns identified by OCR regarding Allegation Nos. 2 and 5(a) and entered into the enclosed Resolution Agreement to address those allegations. XX

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#### **Allegation Nos. 2 and 5(a)–Resolutions Reached During Investigation**

##### **Findings of Fact (General)**

The College is a 2-year non-residential College located in Southwest Washington State. The main campus of the College has been operating at its current location in Vancouver since 1951.

The College employs about 1000 instructors and staff.

##### **Findings of Fact--Allegation No. 2 (Information and Communication Technologies)**

The complainant alleged that the College failed to provide effective or timely reasonable accommodations to students with disabilities by implementing inaccessible instructional technologies including Pearson's MyMathLab, McGraw Hill Connect, ProctorU, content for on-line classes (videos without captions and image-based documents), and library resources provided through ProQuest and Ebrary. The complainant also alleged that an interactive campus map on the College's website was inaccessible to screen reader users, including people who are blind. The complainant asserted that the College's auxiliary aids provided to students with disabilities when they were unable to access information provided electronically, sometimes provided less than full access.

The College follows Washington State Accessibility Policy (state policy 188) and the State Minimum Accessibility Standard (state standard 188.10). As of July 1, 2017, the College adopted its accessible

technology policy (College policy 455.050) to align with the state accessibility policy and to provide a framework to assist College faculty and staff in implementing accessible technology.

The current version of state policy 188 was approved on March 10, 2020. State policy 188 contains five requirements. First, it requires all covered technology to be accessible to, and usable by, individuals with disabilities, either directly or by supporting the use of assistive technologies. It sets a minimum accessibility standard (state standard 188.10) as the minimum level for compliance: the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 2.1 Level AA. State policy 188 includes all covered technology acquired, procured, developed or substantially modified or substantially enhanced, including software available at no cost. Second, state policy 188 requires that, where a covered technology is not able to be brought into compliance, the system or content owner is responsible to provide individuals with disabilities with equivalent access. Third, state policy 188 requires agencies to identify an information technology accessibility coordinator as the key contact for the agency information technology accessibility plan and to support complaint resolution. Fourth, state policy 188 requires agencies to develop policy and processes to support and ensure compliance with the policy and the associated minimum accessibility standard. Fifth, state policy 188 requires agencies to develop, implement, and maintain an accessibility plan that identifies how the agency will ensure new covered technologies are accessible and a plan for making accessible existing covered technologies. State policy 188 expects agencies will procure, develop, maintain, and utilize information technology so that the technology is accessible to individuals with disabilities, unless the technology would create an undue burden on the agency, and that information technology—including websites, web-based applications, software systems, and electronically published documents—will provide substantially similar functionality to individuals with disabilities as is provided to others. State policy 188 states that the

policy and the associated minimum accessibility standard are intended, in part, to assist the state in meeting its obligation under federal law to provide individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, services, programs, and activities conducted by the State.

The College's accessible technology policy (College policy 455.050), which was approved on July 1, 2017, applies to the procurement, development, use, and implementation of all College technologies and content and provides examples of such technologies as websites, software systems, electronic documents, videos, student information systems, learning management tools, third-party software platforms, and assessment tools. College policy 455.050 states that the College is committed to providing accessible technologies in its educational and administrative programs, services, and activities. College policy 455.050 states that ensuring access to equitable and effective electronic and information technologies is the responsibility of all College administrators, faculty, and staff, and the information technology accessibility coordinator understands that he is the coordinator the College is required to have in place under state policy 188. College policy 455.050 states that the College will follow WCAG 2.0 Level AA and the most current guidelines of Section 508 of the Rehabilitation Act. College policy 455.050 states that the College will maintain an accessibility plan identifying inaccessible technologies, alternative methods of access, and actions taken to correct unresolved accessibility issues. For guidelines about purchasing accessible technology, College policy 455.050 references a College administrative procedure regarding accessible hardware and software products (College administrative procedure 440.070).

The College's accessible hardware and software products administrative procedure (College administrative procedure 440.070), which was approved on June 20, 2017, states that, to the extent feasible, all College employees shall develop, purchase, or acquire hardware and software products

that are accessible to individuals with disabilities. College administrative procedure 440.070 includes a review procedure that results in a determination about whether an application either meets or does not meet the College's accessibility standard.

The College has an information technology change advisory committee (advisory committee) for introducing new technology products and ensuring their accessibility. The information technology accessibility coordinator and the alternate format coordinator are members of the advisory committee. With respect to technologies the College provides for student use, the information technology accessibility coordinator and DSS director understand that the advisory committee's authority currently does not extend to reviewing the accessibility of instructional materials (including that the advisory committee does not have authority over electronic textbooks or any software that accompanies those textbooks or over remote proctoring applications) and that the College intends to create a separate task force or process for digital instructional materials.

The College's revised information technology change advisory committee policy 804.000, approved on September 15, 2020, provides in part that the advisory committee will prioritize and plan application development that aligns with the College's strategic plan and will guarantee from their inception that applications are deployed securely and are accessible to all members of the College community. College policy 804.000 does not specify how the College will ensure that applications reviewed by the advisory committee will be accessible to students with disabilities. College policy 804.000 states that the advisory committee will review non-operational internal global changes and external application requests that may have an impact on the College's shared network, which should enhance the user experience and ability to access certain information technology servers and systems. College policy 804.000 defines "application requests" as any computer-based program, application, or interface that allows end users to either input data that is stored centrally or requests individual level data used in business processes at the College, including both purchased products and applications developed at the College which require maintenance or access to campus data.

Since he began working for the College in December 2015, the information technology accessibility coordinator has performed independent accessibility testing of information and communication technology products when those products are submitted through the procurement procedure, though technology products in use by the College are not consistently submitted through that process, including that the College does not require that digital textbooks be submitted for accessibility testing. When conducting accessibility testing, the information technology accessibility coordinator uses a combination of automated accessibility checking tools, screen readers, and manual testing.

The information and communication technologies expressly identified in the OCR complaint were in use by the College before July 1, 2017, which was prior to when the College adopted its accessible technology policy (College policy 455.050) and before the information technology accessibility coordinator was employed by the College. The information technology accessibility coordinator did not assess the accessibility of the content and functionality of Pearson's MyMathLab, McGraw Hill Connect, ProctorU, ProQuest and Ebrary research databases and tools, or the interactive campus map on the College's website before they were deployed by the College. The coordinator has only assessed their accessibility either after their adoption or retroactively spot checked their accessibility as was needed for individual students with disabilities.

The information technology accessibility coordinator told OCR that the CTC Link PeopleSoft application (CTC link) provided to the College through the Washington State Board for Community and Technical Colleges is inaccessible to students with disabilities. CTC Link provides for on-line enrollment and other functions related to student grades and schedules.

Students with disabilities do not know in advance whether a specific technology used by the College is accessible or not. When students with disabilities encounter a technological barrier, they typically initiate a meeting with the information technology accessibility coordinator, or other DSS office personnel, and a plan is made to make the technology accessible or to provide an alternate format.

As part of accommodating individual students with disabilities, DSS office personnel work with instructors to ensure that specific course content is accessible and to provide accessible versions of digital books and articles. In addition, DSS office personnel ensure that videos for classes are accurately captioned.

Since January 2016, no complaints have been filed with the College related to the accessibility of information and communication technologies the College provides for student use.

**Findings of Fact--Allegation No. 2(a) (Pearson MyMathLab)**

Pearson is a third-party vendor of MyMathLab, which is now called MyLab Math, that provides a series of on-line math courses that accompany Pearson digital textbooks. The primary features of MyLab Math include e-text, homework and practice exercises, and tutorials that include video tutorials.

As of February 2021, the College used MyLabMath for elementary algebra (math 090); intermediate algebra (math 095 (2)); College trigonometry (math 103); finite mathematics (math 105 (2)); math in society (math 107); calculus 2 (math 152); linear algebra (math 215); business calculus (math 148); and introduction to statistics (math 146 (8)). The College told OCR that instructors select accessible problems when they are aware that they had a student with a disability in the class who has needs related to accessibility.

The information technology accessibility coordinator provides support and training for students with disabilities in math, including whether and how platforms are going to work for them. For example, when the DSS office became aware that a student with a disability was planning on taking a class that used MyLab Math and a digital textbook, the information technology accessibility coordinator reactively conducted accessibility testing of a MyLab Math digital textbook and determined that it was not accessible. When the DSS office determines that a platform like MyLab Math is inaccessible to students with disabilities, the DSS office provides alternate access to them through an accessibility plan. Among other things, the DSS office has the MathType application to convert math content into accessible digital files. The DSS office also provides alternate formats of MyLab Math digital textbooks, such as Braille or Math ML.

Most recently, the information technology accessibility coordinator reactively conducted accessibility testing of MyLab Math in 2019. During 2019, the information technology accessibility coordinator found that MyLab Math required certain users with disabilities to use a specific screen reader (JAWS) in a particular version that was unsupported at the time while using a specific browser (Internet Explorer) that was also unsupported at the time, which the information technology accessibility coordinator and

DSS office personnel found was not acceptable. The DSS office does not require students with disabilities to use specific assistive technology tools. The information technology accessibility coordinator found that Pearson had not created accessible math software that was usable by all screen reader users, though it was possible to do so. The information technology accessibility coordinator also found that MyLab Math was not fully accessible to all screen reader users and other assistive technology users as, among other things, MyLab Math lacked consistently present or meaningful programmatic labels for links, buttons, or other interactive elements; was not fully accessible to keyboard-only users; and was inaccessible to users who are blind or otherwise visually-impaired because it lacked consistent or meaningful alternative text for graphic-based images. The information technology accessibility coordinator and other College personnel met with Pearson about the concerns, and Pearson showed them an accessibility roadmap and said that MyLab Math would be made accessible using the latest version of JAWS by July 2019. When the information technology accessibility coordinator reassessed MyLab Math during July 2019, it was still not fully accessible to users with disabilities, because there were math problems with fields that were inaccessible to keyboard-only and screen reader users.

During March 2021, OCR conducted a spot check assessment of the accessibility of MyLab Math and found that it had barriers to users with disabilities. OCR found that MyLab Math contains barriers to access for people with disabilities including, but not limited to:

- a. insufficient color contrast in areas, posing a barrier to users with low-vision;
- b. color alone was used to indicate focus on some buttons and for some links, posing a barrier to users who are blind, have low-vision, or have color blindness;
- c. titles of pages for individual courses did not meaningfully convey information about the unique course the page represented, which were barriers to assistive technology users including screen reader users;
- d. course layout or order could not be rearranged without using a mouse, which made the function inaccessible to keyboard-only users;
- e. a digital textbook sampled by OCR included interactive components (such as play video buttons) that did not have visible focus indicators and did not appear to be actionable without using a mouse (and although a bonus video section contained an accessible version of one sampled video, this was not the case for multiple other instructional videos found throughout the digital textbook);
- f. a course learning guide was an untagged document in portable document format (PDF) and contained graphs and other image-based components without meaningful alternative text, posing barriers to assistive technology users including screen reader users; and
- g. another digital textbook sampled by OCR would not reflow properly when enlarged, and it required vertical and horizontal scrolling, posing barriers to users with visual impairments using screen magnification.

**Findings of Fact--Allegation No. 2(b) (McGraw Hill Connect)**

McGraw Hill Connect is a third-party vendor that provides an on-line teaching tool that includes course management tools to deliver assignments, grading, and digital textbooks called SmartBooks. McGraw Hill's marketing material states that SmartBooks include interactive components that:

- prompt learners with questions as they study course material;
- guide students to adaptive highlighting that emphasizes key topics where they should spend the most time studying;

- present questions to help identify the content students know and do not know;
- direct students to review material they are likely to forget; and
- allow students to take notes within SmartBooks.

As of February 2021, the College used McGraw Hill Connect for classes in three subject areas: accounting, communication, and music appreciation. Though the College also used other McGraw Hill products, OCR's investigation was limited to the accessibility of McGraw Hill Connect.

As of February 2021, the College used McGraw Hill Connect for its accounting 200 series classes. Specifically, the College's three-course accounting series--accounting 201, 202, and 203--used McGraw Hill Connect for textbooks. The College told OCR that, during 2019 and 2020, the DSS office reactively conducted accessibility testing for the accounting series and found that McGraw Hill Connect was accessible to keyboard-only users. The information technology accessibility coordinator's reactive accessibility testing for an accounting class in 2019 was a spot check assessment focused on the needs of an individual student with a disability, and did not include testing for sufficiency of color contrast, did not assess whether color alone was used to convey information, did not assess whether tables were structured appropriately for accessibility, and did not assess whether keyboard traps were present for assistive technology and keyboard-only users. The information technology accessibility coordinator identified at least two barriers to access during the 2019 reactive spot check assessment for the single accounting class: that alternative text for graphic-based images in the SmartBook were not meaningful and that the SmartBook was not accessible when magnified to 200 percent.

As of February 2021, the College used McGraw Hill Connect for some communication classes. Specifically, some sections of the communication studies 210 class used McGraw Hill Connect for the textbook and guided quizzes. To accommodate individual students with disabilities, the DSS office provided alternate formats of the textbook and guided quizzes in Microsoft Word format with headings and image descriptions, and instructors posted accessible quizzes in the College's learning management system.

As of February 2021, the College used McGraw Hill Connect for a music appreciation class. Specifically, the music 135 class used McGraw Hill Connect as an option for students to access the textbook. To accommodate individual students with disabilities, the DSS office provided hard copies of the textbook and made alternate formats available. For example, during the Fall 2020 quarter, the DSS office provided an alternate format of the textbook in Braille to a student who was blind.

During 2017, the College used McGraw Hill Connect for its business 101 and psychology classes. However, the College terminated its use of McGraw Hill Connect for those classes due to accessibility concerns.

The DSS office reactively conducts accessibility testing for McGraw Hill Connect when the DSS office learns that McGraw Hill Connect is being used for a specific class, when a student with a disability will be using an interactive McGraw Hill product during an upcoming quarter, or when a student raises accessibility or usability concerns after a quarter starts. The information technology accessibility coordinator has not conducted a thorough accessibility assessment of McGraw Hill Connect or its SmartBooks. Instead, the DSS office provides alternate formats of McGraw Hill Connect SmartBooks as individual students with disabilities need access to them. The DSS office provides the textbook portion of the SmartBooks in alternate formats, but the alternate formats do not include videos, pop-up quizzes,

components that adapt as students answer questions, or other aspects of SmartBooks that are interactive. The DSS director and information technology accessibility coordinator acknowledged to OCR that the DSS office could not make McGraw Hill Connect SmartBooks fully accessible due to their interactive components and said that the DSS office would instead provide students with a sighted aide, if needed, to make interactive components accessible to them.

During March 2021, OCR conducted a spot check assessment of the accessibility of McGraw Hill Connect and found that it had barriers to users with disabilities. Although OCR's numerous assessment results are not enumerated in this finding in full, OCR met with McGraw Hill and the College during April 2021 and described the findings from the accessibility assessment. Among other things, OCR found that the terms of use and privacy alert modal could not be easily dismissed by assistive technology users because there was a lack of focus on the continue button, the button had no programmatic label, and focus landed on page content behind the modal. On the "my courses" landing page, OCR found that color contrast was insufficient in areas, which were barriers to users with visual impairments; and multiple interactive items did not receive focus and were not operable without using a mouse, which were barriers to keyboard-only users. In the "instructor view" mode of an individual course, OCR found multiple significant accessibility barriers to instructors with disabilities and, to provide technical assistance about potential barriers to those instructors (which was not an allegation asserted in the complaint to OCR), OCR notified the College and McGraw Hill about the concerns. In the "student view" mode of the individual course sampled, OCR found improved accessibility but nonetheless found barriers to screen reader users as buttons lacked meaningful programmatic labels, tables lacked appropriate structure, and substantive interactive graphic-based images lacked meaningful alternative text. In addition, an "access your skills" section of the course had interactive components that required using a mouse to access them and were inaccessible to keyboard-only users. In the "student view" mode for a SmartBook for another course sampled, OCR found that color contrast was insufficient in areas, which created barriers to users with visual impairments; buttons lacked programmatic labels, posing a barrier to assistive technology users including screen reader users; and graphic-based images lacked meaningful alternative text, posing a barrier to screen reader users.

**Findings of Fact--Allegation No. 2(c) (ProctorU)**

ProctorU is a third-party vendor that provides an on-line exam proctoring service offering either automated proctoring or a combination of a live proctor and use of artificial intelligence. ProctorU also records the exam for later review.

The College no longer uses ProctorU.

**Findings of Fact--Allegation No. 2(d) (ProQuest and Ebrary Research Databases and Tools)**

ProQuest is a third-party vendor that provides platforms allowing users to search, manage, use, and share research. ProQuest provides access to content, including dissertations, theses, electronic books, newspapers, periodicals, historical collections, governmental archives, cultural archives, and other aggregated databases. Ebrary, which is now called Ebook Central, is a service of ProQuest that is a software application for taking notes and reading, downloading, and saving digital books and other content available from ProQuest, depending on the service or subscription purchased.



As of February 2021, the College provided ProQuest databases and Ebook Central for students to use. The College receives ProQuest databases through the Statewide Database Licensing Project coordinated through the Washington State Library and receives an e-book database subscription service for Ebook Central through the Orbis Cascade Alliance, which is a consortium of 37 Colleges and universities in the states of Idaho, Oregon, and Washington. College personnel told OCR that the College provides accessibility assistance for library databases linked to on the library help menu available via chat 24-hours a day, 7-days a week.

The information technology accessibility coordinator has not conducted an accessibility assessment of ProQuest or Ebook Central.

During March 2021, OCR conducted a spot check assessment of the accessibility of ProQuest and Ebook Central and found that they had barriers to users with disabilities including, but not limited to:

- a. the ProQuest search terms field and other search controls lacked visible labels, posing barriers to assistive technology users and other users with disabilities;
- b. some buttons did not receive keyboard focus and could not be accessed without using a mouse, posing a barrier to assistive technology users including screen reader users and keyboard-only users;
- c. some check boxes lacked programmatic labels, which were barriers to assistive technology users including screen reader users;
- d. a CAPTCHA required vision to activate, which was a barrier to users with visual impairments;
- e. some ProQuest content had insufficient color contrast, which posed barriers to users with visual impairments;
- f. in responsive mode, keyboard-only users were required to backwards navigate to close the open menu that obscured content on the ProQuest page, which were barriers to users with visual impairments;
- g. Ebook Central had a skip navigation link and an accessibility panel that were not visible, which were barriers to sighted assistive technology users;
- h. some image-based books sampled by OCR did not have accessible text-based versions, which were barriers to assistive technology users including screen reader users;
- i. when not using the “accessibility mode,” image-based books had options, such as for highlighting images of text, that could not be accessed using a keyboard, which were barriers to sighted keyboard-only users;
- j. the “accessibility mode” lacked the options for zooming, highlighting, or adding notes or bookmarks that were available when not using the accessibility mode, which were barriers for accessibility mode users; and
- k. the responsive mode button did not receive visible focus, which was a barrier to users with visual impairments.

**Findings of Fact--Allegation No. 2(e) (Interactive Campus Map)**

The College’s interactive campus map at <https://www.clark.edu/about/visitors-guide/getting-to-clark/maps/campus-map.php> was provided through a third-party vendor Campus Bird, which is now called Concept3D. Concept3D provides customizable maps using custom mapping software of buildings, campuses, venues, and other types of spaces that allow the use of layers with information and digital

content. Concept3D marketing information indicates that maps can also be made as text-only with ARIA tagging for screen reader users and custom options to enhance accessibility.

The College's interactive map does not appear to allow users to select a text-only map option.

During January 2016, after the interactive campus map was already deployed on the College's website, the information technology accessibility coordinator retroactively conducted an accessibility assessment of the interactive campus map. The information technology accessibility coordinator found that the map was not accessible to keyboard-only users or screen reader users and was not accessible when a screen was magnified to 200 percent.

During February 2021, the College acknowledged to OCR that no accessible maps were available on the College's website.

The College told OCR that, during 2018, the DSS office created embossed Braille campus map booklets of the campus, including pathways to buildings and floor plans, that the College said provided equally effective alternate access to the content of the campus map. OCR found that the web page containing the inaccessible campus map did not notify users about the availability of the Braille booklets.

During May 2021, the interactive campus map web page included a link to a Google map containing links to campus buildings with their geolocations called plus codes. The Google Maps link at <https://www.google.com/maps/place/Clark+College/@45.6354578,-122.6531501,17z/data=!4m5!3m4!1s0x5495af48d0171471:0x9abd0099a24c5171!8m2!3d45.6346231!4d-122.6507225> was on the College's maps and directions web page and provided students with disabilities who could not use the inaccessible interactive campus map an alternate method for locating some buildings and spaces on campus. However, as of June 2021, some users with disabilities did not have a way to digitally obtain information about the locations of all campus buildings and other spaces, such as parking lots, equivalent to the information provided through the interactive campus map. OCR suggested to the College that the maps and directions web page where the inaccessible interactive campus map was found be updated to include a link to an alternate list of individual buildings and other spaces with individual links to the corresponding Google map web pages that contained the information about building and space locations, including the geolocation (plus code) information. OCR suggested to the College that each individual link be programmatically labelled with the name of the building or space. OCR also informed the College that it appeared that Baird Hall and several other buildings and spaces were lacking geolocation (plus code) information on the Google maps web page, and OCR suggested that the College verify that geolocation (plus code) information was included for each building and space on the interactive campus map.

During March and May 2021, OCR conducted spot check assessments of the accessibility of the interactive campus map on the College's website and found that it had barriers to users with disabilities including, but not limited to:

- a. overall, the interactive campus map was inaccessible to screen reader users, which posed barriers to users with visual impairments;
- b. the "I am" submenu of the main navigation menu obscured part of the map when keyboard-only users tabbed past the menu, and the menu could only be closed using a mouse, which posed barriers to keyboard-only users;

- c. generally, the responsive mode main menu was not accessible to keyboard-only and screen reader users, which posed barriers to assistive technology users (including screen reader users and keyboard-only users;
- d. in responsive mode, visible focus was lost at the beginning of the web page because all the main menu items received focus off the screen, which posed barriers to users with visual impairments;
- e. keyboard-only users were forced to tab through all the menu items before visible focus returned to the web page;
- f. the mechanism to open the main menu was presented after the list of menu items in the order of the document, requiring keyboard-only users to backwards navigate, which was not logical; and
- g. the web page content was obscured when the main menu remained open and focus landed on content behind the open menu.

**Analysis and Conclusion of Law--Allegation No. 2 (Information and Communication Technologies)**

OCR investigated whether the College was discriminating against students with disabilities, based on disability, by implementing inaccessible electronic and information technologies (also known as information and communication technologies). OCR investigated whether, through the College's information and communication technologies, the College was excluding students with disabilities from participating in, denying them the benefits of, or otherwise subjecting them to discrimination in the College's programs, activities, aids, benefits, or services, on the basis of disability, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.4 and 104.43 and the Title II implementing regulation at 28 C.F.R. § 35.130. OCR also investigated whether, through its information and communication technologies, the College was failing to take appropriate steps to ensure that its communications with participants and members of the public with disabilities were as effective as its communications with others, in violation of the Title II implementing regulation at 28 C.F.R. § 35.160. Section 504 and Title II prohibit recipients of federal financial assistance and public entities, respectively, from excluding students with disabilities from participating in, denying them the benefits of, or otherwise subjecting them to discrimination, on the basis of disability. 34 C.F.R. §§ 104.4 and 104.43(a) and 28 C.F.R. § 35.130. Students with disabilities must have equal access to recipients' and public entities' programs, services, and activities, unless doing so would fundamentally alter the nature of those programs, services, or activities, or would impose an undue burden on the recipient or public entity. When the undue burden or fundamental alteration defenses are invoked, the recipient or public entity must nevertheless ensure that, to the maximum extent possible, qualified students with disabilities receive the aids, benefits, and services provided by the covered entity. 28 C.F.R. §§ 35.130(b)(7)(I) and 35.164. Both Section 504 and Title II prohibit affording students with disabilities an opportunity to participate in, or benefit from, aids, benefits, or services that is unequal to the opportunity afforded to others. 34 C.F.R. § 104.4(b)(1)(ii) and 28 C.F.R. § 35.130(b)(1)(ii). Similarly, students with disabilities must be provided with aids, benefits, and services that provide an equal opportunity to achieve the same result or the same level of achievement as is provided to others. 34 C.F.R. §§ 104.4(b)(1)(iii) and 104.4(b)(2) and 28 C.F.R. § 35.130(b)(1)(iii). Recipients and public entities may provide a student with a disability, or a class of students with disabilities, with different or separate aids, benefits, or services only if doing so is necessary to ensure that the aids, benefits, or services are as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(iv) and 28 C.F.R. § 35.130(b)(1)(iv). Title II also requires public entities to take steps to ensure that communications with individuals with disabilities are as effective as communications with others (subject to the undue burden and fundamental alteration defenses). 28 C.F.R. § 35.160(a)(1). In summary, recipients of federal financial assistance and public entities must operate programs, services,

and activities--whether in a brick and mortar, on-line, or other virtual context--in ways that comply with Section 504 and Title II and those statutes' implementing regulations.

OCR's investigation was limited to the specific applications identified by the complainant as being inaccessible to students with disabilities: Pearson's MyMathLab, McGraw Hill Connect, ProctorU, ProQuest and Ebrary research databases and tools, and an interactive campus map.<sup>1</sup> While the College indicated that it provides alternate formats of digital textbooks, homework, and quizzes to individual students on an ad hoc basis through the DSS office, OCR did not investigate whether the College accommodated individual students or whether the alternate formats provided to individual students were equally effective in providing access to programs, services, or activities delivered on-line. OCR instead investigated whether the technology applications in use by the College identified by the complainant had barriers that made them inaccessible to students with disabilities generally.

The College's accessibility policy states that the College will comply with WCAG 2.0 Level AA and also that the College complies with the state accessibility policy, state policy 188, which requires adherence to WCAG 2.1 Level AA. However, OCR does not enforce state law, nor state or College policies, and the Section 504 and Title II implementing regulations do not require recipients of federal financial assistance or public entities to comply with a particular accessibility standard. Therefore, OCR did not investigate whether the College is in compliance with WCAG 2.0 or 2.1, Level AA, and rather investigated whether there were barriers to students with disabilities' access to the specific applications identified by the complainant that violate the regulations enforced by OCR.

Through its investigation, OCR found that the College currently provides information to, and communicates with, students through most of the applications identified by the complainant. As described in OCR's findings of fact, OCR evaluated the accessibility of the applications and identified barriers for some students with disabilities to access aspects of those applications. OCR identified significant barriers to students with disabilities' access to most of the information and communication technologies OCR assessed and those barriers implicate the accessibility of the College's underlying educational and way-finding programs. If OCR were to complete its investigation, OCR would interview witnesses and examine documentation to determine whether, in light of the identified technological barriers, the College is providing equally effective alternatives that afford an equal opportunity for students with disabilities to engage in the same interactions or enjoy the same benefits of the programs, services, or activities as that enjoyed by non-disabled students, in all respects. The programmatic barriers identified by OCR during the investigation caused concerns that OCR would continue to investigate before drawing conclusions about the College's compliance with Section 504 and Title II with respect to the programs, services, and activities supported by the information and communication technologies.

#### **Analysis and Conclusion of Law--Allegation No. 2(a) (Pearson MyMathLab)**

OCR found that several College classes continue to use MyLab Math for instruction despite the College being aware that it is not fully accessible to students with disabilities. OCR found that MyLab Math has barriers to students with disabilities when they use assistive technologies, cannot use a mouse, or when they have visual impairments, including the following types of barriers:

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<sup>1</sup> OCR did not assess the information and communication technologies that were not specifically identified by the complainant. Other information and communication technologies intended by the College for student use, such as CTC Link, may or may not be accessible to students with disabilities.

- ambiguously labeled titles of pages;
- insufficient color contrast;
- color alone used to convey information;
- lack of visual focus indicators;
- functions that could not be accessed using a keyboard;
- graphic-based images conveying substantive information that lacked meaningful alternative text;
- documents in PDF that were inaccessible due to lack of appropriate structure; and
- all content and functions could not be accessed in responsive mode.

These technological barriers sufficiently implicate the overall accessibility of the College's underlying educational program so as to require further investigation as to whether students with disabilities have an equal opportunity to enjoy the benefits of the programs.

**Analysis and Conclusion of Law--Allegation No. 2(b) (McGraw Hill Connect)**

OCR found that several College classes continue to use McGraw Hill Connect for instruction despite the College being aware that it is not fully accessible to students with disabilities. OCR found that McGraw Hill Connect has barriers to students with disabilities when they use assistive technologies, cannot use a mouse, or when they have visual impairments, including the following types of barriers:

- insufficient color contrast;
- lack of visual focus indicators;
- functions that could not be accessed using a keyboard;
- buttons that lacked programmatic labels;
- tables that lacked appropriate structure;
- graphic-based images conveying substantive information that lacked meaningful alternative text; and
- documents in PDF that were inaccessible due to lack of appropriate structure.

These technological barriers sufficiently implicate the overall accessibility of the College's underlying educational program so as to require further investigation as to whether students with disabilities have an equal opportunity to enjoy the benefits of the programs.

**Analysis and Conclusion of Law--Allegation No. 2(c) (ProctorU)**

OCR found that the College no longer uses ProctorU.

**Analysis and Conclusion of Law--Allegation No. 2(d) (ProQuest and Ebrary Research Databases and Tools)**

OCR found that the College continues to use ProQuest and Ebook Central research databases and tools. OCR found that ProQuest and Ebook Central have barriers to students with disabilities when they use assistive technologies, cannot use a mouse, or when they have visual impairments, including the following types of barriers:

- insufficient color contrast;
- lack of visual focus indicators;
- functions that could not be accessed using a keyboard;
- buttons and check boxes that lacked programmatic labels;
- fields and controls that lacked visible labels;
- a skip navigation link and accessibility panel that were not visible;
- an accessibility mode that lacked all functions available to non-accessibility mode users;
- graphic-based images conveying substantive information that lacked meaningful alternative text;
- a CAPTCHA that required vision to operate; and
- all content and functions could not be accessed in responsive mode.

These technological barriers sufficiently implicate the overall accessibility of the College's underlying educational program so as to require further investigation as to whether students with disabilities have an equal opportunity to enjoy the benefits of the programs.

**Analysis and Conclusion of Law--Allegation No. 2(e) (Interactive Campus Map)**

OCR found that the College continues to use the interactive campus map on its website despite the College being aware that it is not fully accessible to students with disabilities. OCR found that the interactive campus map has barriers to students with disabilities when they use assistive technologies, cannot use a mouse, or when they have visual impairments, including the following types of barriers:

- functions that could not be accessed using a keyboard or a screen reader, and
- all content and functions could not be accessed in responsive mode.

OCR found that the College offers information in tactile or Braille alternate form about the main campus but that the availability of the alternate format was not described on the interactive campus map web page. OCR also found that the College's website contained Google maps with geolocation information about some buildings and spaces on the main campus but that not all buildings and spaces were included in the links to Google maps, or that, even when displayed in the Google maps links, some buildings and spaces did not contain geolocation information. Therefore, some users with disabilities did not have digital access to the locations of all campus buildings and other spaces equivalent to the information provided to others through the interactive campus map.

These technological barriers sufficiently implicate the overall accessibility of the College's underlying way-finding program so as to require further investigation as to whether students with disabilities have an equal opportunity to enjoy the benefits of the way-finding programs.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the College requested to resolve the concerns OCR identified during its investigation of Allegation No. 2, regarding students with disabilities' opportunity to access the programs underlying the specific applications identified by the complainant. Section 302 provides that an allegation under investigation may be resolved at any time when, prior to the point when OCR issues a draft letter of findings, a recipient of federal financial assistance or public entity expresses an interest in resolving the allegation and OCR determines that it would be appropriate to resolve the allegation. Because OCR's investigation identified concerns that can be addressed through a Resolution Agreement and because the College was willing to comprehensively address the concerns identified by OCR without further investigation, OCR determined that entering into a Resolution

Agreement was appropriate. Therefore, OCR and the College resolved Allegation No. 2 in accordance with Section 302 of OCR's *Case Processing Manual*.

**Findings of Fact--Allegation No. 5(a) (Accessible Routes)**

The complainant alleged that several areas of sidewalks throughout the College main campus had relatively steep grades with running slopes steeper than ratios of 1 to 12 feet while lacking handrails and edge protection.

The College provided OCR with information indicating that it had taken some steps to improve accessible routes since this complaint was filed. The College also provided OCR with a spreadsheet and photos of some of the routes on campus. The spreadsheet and photos contained information indicating that some sloped walkways, or ramps, may not have handrails or edge protections.

**Analysis and Conclusion of Law--Allegation No. 5(a) (Accessible Routes)**

OCR investigated whether the College is discriminating against persons with disabilities, based on disability, because the accessible routes on the main campus are inaccessible to, or unusable by, persons with disabilities, in violation of the Section 504 implementing regulations, at 34 C.F.R. §§ 104.21-.23, and the Title II implementing regulations, at 28 C.F.R. §§ 35.149-.151 and 35.163.

Section 206 and Chapter 4 of the 2010 ADA Standards for Accessible Design (2010 Standards) contain the current scoping and technical requirements for accessible routes. In summary, Section 206.2 of the 2010 Standards requires that public entities provide at least one accessible route within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve. Section 206.3 requires that accessible routes coincide with, or be located in, the same area as general circulation paths, and that where circulation paths are interior, accessible routes must also be interior. Section 402.2 requires that accessible routes consist of one or more of the following components: walking surfaces with a running slope not steeper than a ratio of 1-to-20 feet, doorways, ramps, curb ramps (excluding the flared sides), elevators, and platform lifts. Section 405.2 requires ramp runs to have a running slope not steeper than a ratio of 1-to-12 feet and provides exceptions for existing facilities. Section 405.8 requires that ramp runs with a rise greater than six inches have handrails, and Section 405.9 requires edge protection. These requirements are a synopsis of some of the current accessibility standards with which the College is required to adhere for newly constructed or altered facilities and does not address all requirements relevant to accessible routes.

During the investigation, OCR identified some evidence that some of the ramps on campus may not fully comply with current accessibility standards.

The College requested to resolve the concerns OCR identified during its investigation of Allegation No. 5(a), regarding accessible routes on the main campus, prior to OCR issuing a final determination. Because OCR's investigation identified concerns that can be addressed through a Resolution Agreement and because the College is willing to comprehensively address the concerns identified by OCR without further investigation, OCR has determined that entering into a Resolution Agreement (agreement) is appropriate. Therefore, OCR and the College resolved Allegation No. 5(a) in accordance with Section 302 of OCR's *Case Processing Manual*.

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This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the College's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. This letter serves as OCR's final agency determination regarding Allegation Nos. 1, 3, 4, and 5(c), and there is no right to appeal. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in court whether or not OCR finds a violation.

The complainant has a right to appeal OCR's determination regarding Allegation No 5(b) within 60 calendar days of the date of this letter. In any appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any errors would change the outcome of the case; failure to do so may result in dismissal of any appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the College. The College would have the option to submit to OCR a response to the appeal. The College must submit any response within 14-calendar days of the date that OCR forwarded a copy of the appeal to the College.

Please be advised that the College 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 individual may file a complaint alleging such treatment.

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, we 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.

OCR will monitor the implementation of the agreement and will close OCR's monitoring of the College's implementation of the agreement when OCR determines that the terms of the agreement have been satisfied. The College's first report required by the agreement is due to OCR by **December 15, 2021**.

Thank you for the College's assistance during OCR's investigation of the complaint, particularly for the assistance of the DSS director. If you have any questions, please contact me by telephone at (206) 607-1632, or by e-mail at [noel.nightingale@ed.gov](mailto:noel.nightingale@ed.gov).

Sincerely,

Noel Nightingale  
General Attorney (Civil Rights)

Enclosure: Resolution Agreement

Courtesy copy by e-mail only to:



Mr. Yaju Dharmarajah  
Employee and Labor Relations Manager and ADA Coordinator  
Clark College  
**Via E-mail Only to: [ydharmarajah@clark.edu](mailto:ydharmarajah@clark.edu)**