



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 19, 2017

Mr. Brian Darcy
Administrator
Idaho Educational Services for the Deaf and Blind
1450 Main Street
Gooding, Idaho 83330-1839

Re: Idaho Educational Services for the Deaf and Blind
OCR Reference No. 10164039

Dear Mr. Darcy:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Idaho Educational Services for the Deaf and Blind (the IESDB) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), which OCR received on August 17, 2016, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the IESDB's web pages are not accessible to students and adults with disabilities, including vision impairments. These include, but are not limited to:

- Homepage at www.iesdb.org/index.php,
- Preschool centers web page at www.iesdb.org/index.php/program-services/educational-services/59-preschool-centers,
- Early childhood web page at www.iesdb.org/index.php/program-services/educational-services/58-early-childhood,
- Educational support web page at www.iesdb.org/index.php/program-services/educational-support,
- Audiology clinic web page at www.iesdb.org/index.php/program-services/educational-support/56-audiology-clinic,
- Educational interpreting and supports web page at www.iesdb.org/index.php/program-services/educational-support/55-educational-interpreting-training, and
- Agency and school district oversight web page at <http://www.iesdb.org/index.php/about-the-iesdb/bod-oversight>.

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

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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 IESDB 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 IESDB, 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 IESDB 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 IESDB's website.

The complaint alleges that the IESDB's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with persons with vision and print disabilities, individuals who are deaf and hard of hearing, and individuals with fine motor impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the IESDB's homepage, preschool centers, early childhood, educational support, audiology clinic, educational interpreting and supports, and agency and school district oversight web pages have accessibility issues for individuals with disabilities. The complainant then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether the IESDB's website is accessible to individuals with disabilities. For example, OCR found concerns on the IESDB's homepage such as submenus that are inaccessible to screen reader users, insufficient color contrast, and a link to an inaccessible school calendar. On the IESDB's preschool centers web page, OCR found photographs without "alt tags" describing the content. OCR found on the IESDB's agency and school district oversight web page documents in portable document format (PDF) that are scanned images and inaccessible to screen reader users.

Prior to the completion of OCR's investigation, the IESDB asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On January 11, 2017, the IESDB 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 IESDB 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 IESDB'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 IESDB 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 IESDB 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 IESDB 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 IESDB'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 IESDB 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.

OCR looks forward to receiving the IESDB's first monitoring report by February 10, 2017. For questions about implementation of the Agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring the IESDB's implementation, by telephone at (206) 607-1632 or by e-mail at noel.nightingale@ed.gov. For questions about this letter, you may also 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: Anderson, Julian, and Hull LLP