



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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February 20, 2018

Mr. David Lassner  
President  
University of Hawaii System  
2444 Dole Street  
Honolulu, Hawaii 96822

Re: University of Hawaii System  
OCR Reference No. 10172117

Dear President Lassner:

This letter is to inform you of the disposition of the above-referenced complaint filed against the University of Hawaii System (the university system) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on February 20, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the university system's web pages are not accessible to students and adults with disabilities, including vision and physical impairments. These include, but are not limited to:

- Homepage webpage at <http://www.hawaii.edu>;
- Financial Aid webpage at <http://www.hawaii.edu/tuition/financial-aid/>;
- Facebook webpage at <https://www.facebook.com/universityofhawaii>;
- YouTube webpage at <https://m.youtube.com/user/uomagazine>;
- Distance Learning webpage at <http://www.hawaii.edu/campuses/learning-centers/#distance-learning>;<sup>1</sup>
- Office A-Z webpage at <http://www.hawaii.edu/offices/>;
- Student Affairs webpage at <http://www.hawaii.edu/offices/studentaffairs/>;
- Leeward Community College/Students with Disabilities webpage at <http://www.leeward.hawaii.edu/policies-students-disabilities>;
- Kapi'olani Community College/Students with Disabilities webpage at <https://www.kapiolani.hawaii.edu/campus-life/student-services/disability-support-services-office-dsso/>;
- Admissions webpage at <http://www.hawaii.edu/admissions/>;
- Degrees and Programs webpage at <http://www.hawaii.edu/degrees-and-program/>; and
- Title IX webpage at <http://www.hawaii.edu/titleix>.

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<sup>1</sup> The title on this web page is "Learning Centers"

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 (Section 504), which prohibit discrimination on the basis of disability by 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 (Title II), which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public entity, the university system 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 university system, 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 university system 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. See 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. See 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. See 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. See 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. See 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. See 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 web pages on the university system's website.

The complaint alleged that the university system's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision disabilities, print disabilities, and physical impairments. The Complainant used website accessibility checkers and reported to OCR that the university system's website homepage and web pages entitled Financial Aid, Facebook, YouTube, Learning Centers, Office A-Z, Student Affairs, Leeward Community College/Student with Disabilities, Kapi'olani Community College/Students with Disabilities, Admissions, Degrees and Programs and Title IX have accessibility issues for individuals with disabilities. The Complainant then provided OCR with a list of errors copied and pasted from the website accessibility checkers that were used.

OCR conducted a preliminary examination of the web pages identified by the Complainant, and others, and found possible compliance concerns as to whether the university system's on-line programs, services, and activities were accessible to individuals with disabilities. For example, OCR determined that the links to the university system's EEO/Affirmative Action and website usage policies were not readable via keyboard controls, and that on the university system's web page for Leeward Community College relating to information for students with disabilities, there were no visual focus indicators, when one is using the keyboard to navigate, for the links at the bottom of the web page concerning resources and information for different types of students, for the links at the bottom of the web page to information for current students, and for the "quick links" at the bottom of the web page.

Prior to the completion of OCR's investigation, the university system asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On February 9, 2018, the university system submitted the enclosed signed Resolution Agreement (Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the university system 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 university system'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 university system 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 university system 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 university system written notice of the alleged breach and 60 calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and should not be interpreted to address the university system'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 and should not be interpreted to address the district'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. 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 federal court whether or not OCR finds a violation.

Please be advised that the district 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 another 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 looks forward to receiving the university system's first monitoring report by **March 12, 2018**. For questions about implementation of the Agreement, please contact David Kauffman, Attorney, who will be monitoring the university system's implementation of the Agreement, by telephone at (206) 607-1603 or by e-mail at david.kauffman@ed.gov. For questions about this letter, please contact me by telephone at (206) 607-1672 or by e-mail at kelli.medak@ed.gov.

Sincerely,

Kelli Medak  
Supervisory Attorney

Enclosure: Resolution Agreement