



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 22, 2017

Dr. Bert L. Glandon
President
College of Western Idaho
P.O. Box 3010
Nampa, Idaho 83653

Re: College of Western Idaho
OCR Reference No. 10172232

Dear President Glandon:

This letter is to inform you of the disposition of the above-referenced complaint filed against the College of Western Idaho (college) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), which OCR received on May 12, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the college's web pages are not accessible to persons with disabilities. These include, but are not limited to the:

- homepage at www.cwidaho.cc; and
- all programs and classes web page at www.cwidaho.cc/program.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 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 from this Department and as a public entity, the college is subject to these laws. Accordingly, OCR had jurisdiction to investigate the complaint.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the college, 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

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- whether the college 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 the complaint by reviewing information provided by the Complainant and conducting a preliminary assessment of the accessibility of several pages from the college's website.

The complaint alleges that the college's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with vision and print disabilities and physical impairments. The Complainant used website accessibility checkers and reported to OCR that the college's homepage and all programs and classes web page 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.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether the college's on-line programs, services, and activities were accessible to individuals with disabilities. For example, on the college's homepage, OCR found that submenus associated with the main menu were inaccessible to keyboard-only and screen reader users and the course catalog linked to on the page had insufficient color contrast in some areas that made it inaccessible to individuals with low vision. On the all programs and classes web page, OCR found the same accessibility barriers that were on the homepage and a search function that was inaccessible to keyboard-only users.

Prior to the completion of OCR's investigation, the college asked to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On September 21, 2017, the college 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 college 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 college'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 college 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 college 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 college 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 college'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 file a private suit in federal court, whether or not OCR finds a violation.

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 harmed individual may file a complaint alleging such treatment.

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 college's first report required by the agreement by October 21, 2017. For questions about implementation of the Agreement, please contact Noel Nightingale, Lead Attorney, who will be monitoring the college'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: Honorable Sherri Ybarra
Superintendent of Public Instruction
Idaho State Department of Education

XXXXXXXXXX
Naylor and Hales, P.C.
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Boise, Idaho 83702