



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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December 27, 2017

Dr. Thom Reilly  
Chancellor  
Nevada System of Higher Education  
4300 S. Maryland Parkway  
Las Vegas, Nevada 89119

Re: Nevada System of Higher Education  
OCR Reference No. 10172253

Dear Dr. Reilly:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Nevada System of Higher Education (NSHE) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on June 30, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of NSHE'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, <http://system.nevada.edu/Nsh>,<sup>1</sup>
- Academics & Student Affairs, <http://system.nevada.edu/Nshe/index.cfm/administration/academics-student-affairs>,<sup>2</sup>
- NSHE Institutions, <http://system.nevada.edu/Nshe/index.cfm/nshe-institutions>,<sup>3</sup>
- College of Southern Nevada, <https://www.csn.edu>,
- Great Basin College, <http://www.gbcnv.edu>,
- Truckee Meadows Community College, <http://www.tmcc.edu>,
- Desert Research Institute, <http://www.dri.edu>,
- Initiatives, <http://system.nevada.edu/Nshe/index.cfm/initiatives>,<sup>4</sup> and
- Newsroom, <http://system.nevada.edu/Nshe/index.cfm/newsroom>.<sup>5</sup>

<sup>1</sup> NSHE's homepage was changed to <https://nshe.nevada.edu/> on November 6, 2017.

<sup>2</sup> The Academic and Student Affairs webpage was changed to <https://nshe.nevada.edu/administration/academics-student-affairs/> on November 6, 2017.

<sup>3</sup> The NSHE Institutions webpage was changed to <https://nshe.nevada.edu/nshe-institutions/> on November 6, 2017.

<sup>4</sup> The Initiatives webpage was changed to <https://nshe.nevada.edu/initiatives/> on November 6, 2017.

<sup>5</sup> The Newsroom webpage was changed to <https://nshe.nevada.edu/newsroom/> on November 6, 2017.

*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](http://www.ed.gov)

On December 1, 2017, OCR closed the allegations relating to the websites for College of Southern Nevada, Great Basin College, Truckee Meadows Community College, and Desert Research Institute because the websites are not operated by NSHE. OCR will address these four allegations in four separate complaint investigations.

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, NSHE 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 NSHE, 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 NSHE 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 NSHE’s website.

The complaint alleged that NSHE’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 NSHE’s website homepage, Academics and Student Affairs page, NSHE Institutions page, Initiatives page, and Newsroom 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 that were used. As noted above, OCR closed the allegations relating to the four institutions and will address these allegations in separate complaint investigations.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether NSHE’s online programs, services, and activities were accessible to individuals with disabilities. For example, on NSHE’s homepage, there were no visual focus indicators on the top left of the page (Facebook, Twitter, YouTube, Subscribe, and Contact Us), and on the main navigation bar, “Leadership and Policy” was not keyboard accessible and there was no visual focus indicator.

Prior to the completion of OCR’s investigation, NSHE asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). On December 27, 2017, NSHE 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 NSHE 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 NSHE’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 NSHE has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised.

If NSHE 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 NSHE 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 NSHE'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.

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 NSHE's first monitoring report by January 26, 2018.

For questions about implementation of the Agreement, please contact Jennifer Kuenzli, equal opportunity specialist, who will be monitoring NSHE's implementation of the Agreement, by telephone at (206) 607-1675 or by e-mail at [jennifer.kuenzli@ed.gov](mailto:jennifer.kuenzli@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](mailto:kelli.medak@ed.gov).

Sincerely,

Kelli Medak  
Supervisory Attorney

Enclosure: Resolution Agreement