



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

915 2ND AVE., SUITE 3310
SEATTLE, WA 98174-1099

REGION X
ALASKA
AMERICAN SAMOA
GUAM
HAWAII
IDAHO
MONTANA
NEVADA
NORTHERN MARIANA
ISLANDS
OREGON
WASHINGTON

November 3, 2017

Dr. Samuel Gingerich
Interim Chancellor
University of Alaska Anchorage
3211 Providence Drive
Anchorage, Alaska 99508

Re: University of Alaska Anchorage, Kenai Peninsula College and Kodiak College¹
OCR Reference Nos. 10172140, 10172270 & 10172271

Dear Chancellor Gingerich:

This letter is to inform you of the disposition of the above-referenced complaints filed against the University of Alaska-Anchorage (university), Kenai Peninsula College (Kenai) and Kodiak College (Kodiak) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), which OCR received on April 10, July 17 and July 18, 2017, respectively, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the university's and certain of the colleges' web pages are not accessible to persons with disabilities. These include, but are not limited to the following:

University:

- Homepage at <https://www.uaa.alaska.edu>,
- Admissions at <https://www.uaa.alaska.edu/admissions>,
- How to Apply at <https://www.uaa.alaska.edu/admissions/how-to-apply>,
- Admission FAQs- at <https://www.uaa.alaska.edu/admissions/faq.cshtml>,
- A-Z Directory – at <https://www.uaa.alaska.edu/a-to-z>,
- Student Financial Assistance- at <https://www.uaa.alaska.edu/students/financial-aid/>,
- What Types of Financial Aid Exist at <https://www.uaa.alaska.edu/students/financial-aid/typesofaid-landing-page>,
- Types of Aid at <https://www.uaa.alaska.edu/students/financial-aid/aid-types>,
- Grants- <https://www.uaa.alaska.edu/students/financial-aid/aid-types>,
- About UAA- <https://catalog.uaa.alaska.edu/aboutuniversity/>, and
- Graduate Programs at <https://catalog.uaa.alaska.edu/graduateprograms>.

¹ Because both Kodiak and Kenai are colleges of the university and because both Kodiak and Kenai fall under the governance and oversight of the university, OCR is issuing a joint letter of resolution.

Kenai:

- Homepage web page at <http://www.kpc.alaska.edu>,
- Admissions and Aid web page at http://www.kpc.alaska.edu/admissions_aid/,
- Financial Aid/Grants web page at http://www.kpc.alaska.edu/admissions_aid/financial_aid/grants/,
- Financial Aid web page at http://www.kpc.alaska.edu/admissions_aid/financial_aid/,
- New Student Checklist web page at http://www.kpc.alaska.edu/admissions_aid/new_student_checklist/,
- Library web page at <http://www.kpc.alaska.edu/academics/library/>,
- Academic Support Services web page at http://www.kpc.alaska.edu/academics/academic_resources/,
- Special Programs web page at http://www.kpc.alaska.edu/academics/special_programs/, and
- Student Life web page at http://www.kpc.alaska.edu/student_life/.

Kodiak:

- Homepage- <http://www.koc.alaska.edu>,
- Financial Aid-<http://www.koc.alaska.edu/students/student-services/financial-aid>,
- Academic Advising-<http://www.koc.alaska.edu/students/student-services/advising>,
- Academic Departments-<http://www.koc.alaska.edu/students/academics/departments>,
- Campus Resources and Hours-<http://www.koc.alaska.edu/students/campus-resources>,
- Learning Center-<http://www.koc.alaska.edu/learning-center>,
- Introduction to eLearning-<http://www.koc.alaska.edu/elearning/introduction-to-elearning>, and
- Library-<http://www.koc.alaska.edu/students/library>.

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 recipients of federal financial assistance from this Department and as public entities, the university and the colleges are 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 university, Kenai and Kodiak, 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, Kenai and Kodiak 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 university's, Kenai's and Kodiak's websites.

The complaint alleges that the university's, Kenai's and Kodiak's websites are not in compliance with Section 504 and Title II because they are inaccessible to individuals with vision and print disabilities and physical impairments. The Complainant used website accessibility checkers and reported to OCR that the university's, Kenai's and Kodiak's homepage and other 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 checkers.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether the university's, Kenai's and Kodiak's on-line programs, services, and activities were accessible to individuals with disabilities. For example, on the university's homepage, OCR found that keyboard controls do not access all content and functions and that some main page menus were inaccessible to keyboard-only users; not all content related to pictures was displayed and was not accessible to keyboard-only users; and not all navigation menus on page were accessible to keyboard-only users. OCR found the same or similar accessibility barriers on the homepage for Kenai and Kodiak as well as other accessibility issues.

Likewise, on both Kenai's and Kodiak's homepages, OCR also found that keyboard controls did not provide access to all content and functions, that main page menus were inaccessible to keyboard only users and that not all content related to pictures was displayed and was not accessible to KB-O users.

Prior to the completion of OCR's investigation, the university and both colleges asked to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On November 2, 2017, the university submitted the enclosed signed resolution agreement (the Agreement) to OCR. The agreement applies to the university and to both colleges. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the commitments the university, Kenai and Kodiak have 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 university, Kenai and Kodiak have fulfilled the terms of the Agreement and are in compliance with Section 504 and Title II with regard to the issues raised.

If the university or either 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 university and the colleges 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 university's or 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 university, Kenai and Kodiak 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 first report required by the agreement by December 4, 2017. For questions about this letter or the implementation of the Agreement, please contact Timothy L. Sell, Senior Attorney, by telephone at (206) 607-1639, or by e-mail at timothy.sell@ed.gov.

Sincerely:

Sarah Dunne
Chief Attorney

Enclosure: Resolution Agreement

cc: Andrew Harrington, Associate General Counsel