



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

April 15, 2016

Via Email fairheart.donald@secep.net

Donald R. Fairheart
Southeastern Cooperative Educational Program
Executive Director
6160 Kempsville Circle
Suite 300B
Norfolk, Virginia 23502

Re: OCR Complaint No. 11-16-1066
Letter of Findings

Dear Mr. Fairheart:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on November 12, 2015, against Southeastern Cooperative Educational Program in Virginia (the SECEP). The Complainant alleged that the SECEP discriminates against persons with disabilities. Specifically, the complaint alleges that the following websites are not accessible to persons with disabilities:

1. Southeastern Cooperative Educational Programs / Home (<http://www.secep.net/site/default.aspx?PageID=1>)
2. Programs / Homepage (<http://www.secep.net/domain/32>)
3. Autism Spectrum Program / ASP Home (<http://secep.schoolwires.net//site/Default.aspx?PageID=96>)
4. EBICS Program / EBICS Home Page (<http://secep.schoolwires.net/domain/69>)
5. RE-ED Program / Re-ED Home Page (<http://secep.schoolwires.net/domain/67>)
6. REACH Program / REACH Home Page (<http://secep.schoolwires.net/domain/70>)
7. TRAEP Program / TRAEP Home Page (<http://secep.schoolwires.net/domain/71>)
8. Parents / Homepage (<http://secep.schoolwires.net/domain/30>)
9. Educational Resources (<http://secep.schoolwires.net//site/Default.aspx?PageID=115>)
10. District Websites / District Websites (<http://secep.schoolwires.net/domain/83>)
11. Suspected Bullying Resource / Suspected Bullying Resource (<http://secep.schoolwires.net/domain/77>)

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the SECEP receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the SECEP, spoke with various staff from the SECEP, and looked at various websites from SECEP. After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns. The SECEP agreed to resolve the concerns through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

Background

The SECEP is a regional public school system in southeastern Virginia. They provide educational programs for students with disabilities. The SECEP offers classroom resources for cooperating school systems and operates classrooms within cooperating division schools. According to its website, SECEP operates in about 85 schools and 210 classrooms in the state.

SECEP has contracted with a private company to manage their website. The current site was launched on December 3, 2014. The information reviewed by OCR included various policies and procedures, as well as the 11 websites about which the Complainant raised concerns.

Legal Standards

Pursuant to the regulations implementing Section 504 and Title II, recipients and public entities must ensure that qualified individuals with disabilities shall not be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the entity's programs, services, and activities.¹ The general non-discrimination requirements imposed by Section 504 and Title II include an obligation to make sure that individuals with disabilities are afforded an equal opportunity to participate in a school division's online programs, services, and activities.

Section 504 pre-dated the general use of the Internet and, therefore, does not contain specific standards for web accessibility. To determine if a program, service, or activity delivered online or through a website provides equal access to individuals with disabilities, OCR considers such factors as whether individuals with disabilities have the same ease of use, completeness of information, functionality, and timeliness of response.² A school division with an inaccessible

¹ See 34 C.F.R. §§ 104.4(a) and (b)(1)(iii) & (iv) and 28 C.F.R. §§35.130(a) & (b)(1). See also 28 C.F.R. § 35.160(a)(1) specifically addressing communications.

² This approach is consistent with the standard set forth in OCR's June 29, 2010 Dear Colleague Letter (June 2010 DCL), jointly issued by OCR and the U.S. Department of Justice, advising college and university presidents that requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities—e.g., individuals with visual disabilities—is discrimination prohibited by Title II and Section 504 unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. Specifically, the June 2010 DCL explains that the educational institution must ensure that students with disabilities can access the educational opportunity and benefit with “substantially equivalent ease of use” as students without disabilities. On May 26, 2011, OCR issued a Frequently Asked Questions document

website could satisfy its obligations under Section 504 by providing the same information and services through other accessible means.

Section 508 of the Rehabilitation Act of 1973, as amended in 1998, requires that when Federal agencies develop, procure, maintain, or use electronic and information technology that individuals with disabilities have access to and use of the information and data that is comparable to individuals without disabilities unless doing so would result in an undue burden to the particular agency. Section 508 Standards and Web Content Accessibility Guidelines (WCAG 2.0) provide guidance and technical specifications and serve as the primary guidelines for web accessibility. Although, as a non-Federal agency, the SECEP is not required to strictly comply with the requirements of either Section 508 or WCAG 2.0, the requirements of both serve as resources in considering how the SECEP can satisfy its obligation to ensure that individuals with disabilities are provided an equal opportunity to participate.

Investigative Strategy

OCR consulted with the Lead Assistive Technology Engineer (AT Engineer) from the Assistive Technology Team within the Department's Office of the Chief Information Officer (OCIO) in reviewing the web pages identified by the Complainant to verify the concerns and determine the extent to which the issues raised by the Complainant impacted the accessibility of the SECEP's websites.

Early on in the investigation, the SECEP's Executive Director initiated contact with OCR to discuss resolution of the complaint. SECEP confirmed that they did not have a specific policy or procedure for ensuring its web pages will be accessible to individuals with disabilities, including those with visual impairments who use assistive technology. On February 12, 2016, SECEP's Associate Director again expressed the SECEP's willingness to develop an accessibility policy, and provided OCR a timeline to resolve the issues by October 31, 2016, and bring it into compliance with Section 504 and Title II.

Using WebEx technology, the AT Engineer demonstrated for the SECEP, including their webmasters and a representative from the contractor managing the website, aspects of the web pages identified by the Complainant that are inaccessible to individuals with visual impairments, including those who use assistive technology. He also identified the accessibility problems on those pages that recur throughout the website.

Concerns Identified

Using commonly available website accessibility evaluation software,³ the AT Engineer tested the webpages identified by the Complainant and reported multiple problems. As described below,

(FAQ) confirming the use of a functional definition of accessibility for students who are blind or low vision and the applicability of those principles to elementary and secondary schools under the general nondiscrimination principles of Section 504 and the ADA.

³ The AT Engineer used WCAG 2.0AA Success Criteria as a guide. See <http://www.w3.org/TR/WCAG20/>. Testing through Internet Explorer is done using the Web Accessibility Toolbar—<https://paciellogroup.com/resources/wat>. Testing through Chrome is done through WAVE Extension--<http://wave.webaim.org/extension>.

the AT Engineer identified multiple aspects of those eleven pages that pose accessibility concerns for individuals with visual impairments, including those who use assistive technology.

The specific accessibility concerns on the eleven web pages identified by the Complainant are identified below. Each entry includes the nature of the concern, the corresponding page(s) to which the concern applies, and a brief indication of the impact of the issue on individuals with disabilities.

- **Lack of textual information for non-text elements; multiple images lack alternative text.** (SECEP’s home page and Autism Spectrum Program) Text alternatives must be provided for non-text content so that it can be changed into other forms individuals with disabilities need, such as large print, braille, speech, symbols, or simpler language. Also there are images missing alternative text attributes include the picture on the home page and the text on the drop down menus. This results in a screen reader reading “menu item” instead of the drop down menus. Additionally, multiple pages used embedded images of a portable document format (PDF) as its content which are not tagged and are images, and therefore are not accessible to assistive technology because a screen reader would not recognize the content.)
- **Main dropdown menus not exposed to assistive technology.** (SECEP home page) An assistive technology user cannot open the sub-menus associated with the main navigation links. For example, under the “Employment” tab, the “About Hampton Roads” and “College Students” information, which are drop down items, do not appear to one using a screen reader.
- **Photo carousel is not controllable through the keyboard.** (SECEP’s home page) With a carousel, users need to be able to control the movement of the pictures, including pausing, changing pictures or stopping the show. This is especially important when there are links to click or text to read. Users with disabilities should be given adequate time to interact with web content whenever possible. This causes web functions are time-dependent, it may be difficult for some users to perform the required action before the time limit expires. This may render the information inaccessible to them.
- **Insufficient color contrast between text and background.** (SECEP’s home page and across multiple pages) The visual presentation of text and images of text should have a contrast ratio of at least 4.5:1. The contrast ratio of the SECEP’s home page ranges 2.51:1 to 3.09:1. The insufficient color contrast between text and background may impede readability by individuals with moderately low vision (who do not use contrast-enhancing assistive technology).⁴

Analysis

In consultation with the AT Engineer, OCR has identified a number of concerns on the eleven web pages identified by the Complainant. For example, OCR identified that five of the eleven web pages have embedded PDFs,⁵ which provide significant content that was not accessible to a

⁴ OCR will note during the January 6, 2016 call with SECEP, OCR raised concerns about the fillable form regarding bullying to SECEP. This form is no longer located on the SECEP page, thus the concerns regarding the form are not discussed here.

⁵ Autism Spectrum Program / ASP Home (<http://secep.schoolwires.net/site/Default.aspx?PageID=96>); EBICS Program / EBICS Home Page (<http://secep.schoolwires.net/domain/69>); RE-ED Program / Re-ED Home Page (<http://secep.schoolwires.net/domain/67>); REACH Program / REACH Home Page

screen reader because the PDF was an image that lacked tagging. There is significant information conveyed on these pages. The lack of accessible format included, but was not limited to, alternative text and poor contrast, which may deny persons with visual impairments equal access to the information and services available through the web pages. Lack of sufficient contrast between text and background on the SECEP's web pages could impede its readability by individuals with moderately low vision (who do not use contrast-enhancing assistive technology).

Likewise the lack of keyboard control of the main navigation bar on the SECEP's home page renders content inaccessible to assistive technology users. For example, information contained on the "Employment" tab is inaccessible unless someone first went to the "Employment" page, which has accessible links to the information. However, there is no direction explaining how to do this.

Given these concerns, OCR concludes that the SECEP's website does not afford individuals with disabilities the same ease of use, completeness of information, or functionality through its website as are provided to individuals without disabilities. While a recipient with an inaccessible website could satisfy its obligations under Section 504 by providing the same information and services through other accessible means, the SECEP does not offer a 24 hour, 7-day-a-week staffed telephone line to provide the information and services available on its website, and OCR is unaware of any other method by which the SECEP could potentially provide equal access to the information and services.

Conclusion

On April 12, 2016, the SECEP agreed to implement the enclosed Resolution Agreement (Agreement), which commits the SECEP to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the SECEP is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the SECEP deemed compliant if the SECEP enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the SECEP's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the SECEP has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into the by the SECEP on April 12, 2016, if the SECEP fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including 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, including to enforce the Agreement, OCR shall give the SECEP written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the SECEP'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 have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the SECEP must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the SECEP's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Judith Risch, the OCR attorney assigned to this complaint, at 202-453-5925 or judith.risch@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
Office for Civil Rights
District of Columbia Office

Enclosure