



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

August 9, 2017

Via First Class Mail and Email, dnjohnson@johnstoncc.edu

David N. Johnson, Ed.D.
President
Johnston Community College
245 College Road
Smithfield, North Carolina 27577

Re: OCR Complaint No. 11-17-2179
Resolution Letter

Dear Dr. Johnson:

This is to advise you of the resolution of the above-referenced complaint investigation of the Johnston Community College (the College) by the United States Department of Education (Department), Office for Civil Rights (OCR). The complaint, which was received on XXXX, alleged that the College is discriminating, on the basis of disability, because certain pages of the College's website are not accessible to students and adults with disabilities including, but not limited to, vision impairments.

OCR is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 United States Code (U.S.C.) § 794, *et seq.*, and its implementing regulations at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, the College is subject to OCR's jurisdiction under Section 504 and Title II.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

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. 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

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

activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden. 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. 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. 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. 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. 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:

OCR examined the pages on the College’s website identified by the complainant to determine whether they are accessible to persons with disabilities. These web pages included:

- *The Johnston Community College’s Homepage* (<http://www.johnstoncc.edu/>)
- *Admissions & Aid* (<http://www.johnstoncc.edu/admissions-aid/index.aspx>)
- *Paying for College/Financial Aid*
(<http://www.johnstoncc.edu/payingforcollege/financialaid/index.aspx>)
- *Types of Financial Aid/Federal Funding Sources*
(<http://www.johnstoncc.edu/payingforcollege/financialaid/types-of-fin-aid/federal.aspx>)
- *Programs of Study* (<http://www.johnstoncc.edu/programs/index.aspx>)
- *Johnston Community College’s Facebook* (<https://www.facebook.com/JCCNC>)
- *Johnston Community College’s Youtube*
(<https://www.youtube.com/channel/UC2TjqCj40VwjFjFtMdrleTA>)
- *Student Life Calendar* (<http://www.johnstoncc.edu/view-student-events.aspx>)
- *Library/Learning Resources* (<http://www.johnstoncc.edu/about/campus-buildings/library-lrc.aspx>)
- *Accessibility and Disability Services*
(<http://www.johnstoncc.edu/studentresources/accessibility-disability-services/index.aspx>)

OCR evaluated the above-listed pages and identified concerns as to whether the College’s website is accessible to individuals with disabilities. For example, all parts of the website pages examined are not fully accessible to the keyboard and the focus of where they are is not apparent, which means that important content of the websites could only be accessed by people who can use a computer mouse, and the content and functions are not available to those who are blind, many who have low vision, and those with disabilities affecting fine motor control; videos did not have captions; important images were missing text descriptions, called “alt tags,” that describe the images to blind users who use special software; some links were not labeled; some

forms were not labeled; and parts of the website used color combinations that made text difficult or impossible for people with low vision to see. These barriers deny persons with disabilities access to programs, services, and activities offered on the website, impede the College's communications with persons with disabilities and, therefore, violate Title II and Section 504.

Before OCR conducted additional investigation of the College's website, the College expressed an interest in voluntarily resolving this case. In light of the College's willingness to address its website comprehensively without further investigation, OCR determined entering into a voluntary resolution agreement is appropriate.

Resolution Agreement:

The College submitted a signed resolution agreement (Agreement) to OCR on August 8, 2017. When fully implemented, the Agreement will resolve the allegations in the complaint, the concerns noted above as well as resolve issues of accessibility pertaining to the rest of the College's website. The College committed to take actions including:

- selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the College's website and conducting a thorough audit of existing online content and functionality;
- making all new website content and functionality accessible to people with disabilities;
- developing a corrective action plan to prioritize the removal of online barriers over an 18-month period;
- posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible; and
- providing website accessibility training to all appropriate personnel.

OCR will monitor the College's implementation of the Agreement. When OCR concludes the College has fully and effectively implemented the terms and obligations of the Agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the College fails to implement the Agreement, OCR may initiate administrative or judicial proceedings to enforce specific terms and obligations of the Agreement. Before initiating administrative (34 CFR §§ 100.9, 100.10) or judicial proceedings to enforce the Agreement, OCR will give [the College] written notice of the alleged breach and sixty (60) calendar days to cure the breach.

This concludes OCR's investigation of the complaint. These findings 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 have the right to 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, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law

enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. 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. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance the College personnel, especially Ms. Pamela Harrell, extended to OCR in resolving this complaint. We look forward to receiving the College's first reports about its implementation of the Agreement by September 2, 2017. If you have any questions, please contact the assigned attorney, Jan D. Gray at (202) 453-6028 or Jan.Gray@ed.gov.

Sincerely,

/s/

Kristi R. Harris
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure: Resolution Agreement