



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

June 27, 2014

Larry Y. Chan, Esq.
Associate General Counsel
Bowling Green State University
308 McFall Center
Bowling Green, Ohio 43403

Re: OCR Docket #15-14-2016

Dear Mr. Chan:

This letter is to notify you of the disposition of the complaint filed against the Bowling Green State University (the University) with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on December 4, 2013, alleging discrimination against persons with hearing disabilities by not providing accommodations for University theater programs and, therefore, not operating its theater programs in a manner that is readily accessible to persons with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act, 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 recipients of Federal financial assistance from the Department and by public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public school entity, the University is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR initiated an investigation into the following legal issues:

- Whether the University failed to provide persons who are hearing impaired with appropriate auxiliary aids and services for theater-department programs as necessary to provide them with communications that are as effective as those afforded to persons without hearing impairments, in violation of the Title II implementing regulation at 28 C.F.R. § 35.160(b)(2).

- Whether the University failed to provide sufficient notice to ensure that interested persons, including persons with hearing impairments, have information about the existence of accessible services, in violation of the Section 504's implementing regulation at 34 C.F.R. § 104.22(f).

OCR began its investigation of this complaint by reviewing the information and data the Complainant provided. OCR also interviewed the Complainant and the University's director of disability services. Prior to the completion of OCR's investigation, however, the University asked to resolve the complaint allegations pursuant to Section 302 of OCR's Case Processing Manual (the Manual). The University therefore signed the enclosed agreement, which once implemented will fully address the complaint allegations in accordance with Section 504 and Title II. A summary of OCR's investigation to date, the applicable legal standards, and the terms of the agreement are presented below.

Summary of OCR's Investigation to Date

The Complainant told OCR that he does not attend the University, but had noted that a University theater-department flyer did not contain information about how an individual could request hearing accommodations for upcoming programs. Believing this to be in violation of Federal law, the Complainant filed a complaint with OCR, attaching a copy of the flyer to his complaint.

OCR visited the webpage of the University's theater department (the Theater Department) and noted that it also did not contain a notice of assistive technology and supports (a Notice).

The University's Director of Disability Services (the Director), whose duties include assuring that students and others receive access to programs and services at the University confirmed that the Theater Department's webpage did not include a Notice and also recognized that Theater Department publications from the past several years had not included a Notice. She said that, since becoming aware of the OCR complaint, she has been monitoring the situation and is working to assure that a Notice is included both on publications and the webpage. During the interview, the Director also stated that her office has worked with hearing-impaired University students, without issue, in the provision of accommodations for Theater Department programs. The Director also said that she was not aware of any requests being made to the University for hearing-related accommodations for any Theater Department program. The Director stated that she was not aware of any training being provided to Theater Department staff regarding addressing this issue.

Applicable Legal and Policy Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a), states that no qualified person with a disability is to be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in a University's programs or activities. Moreover, Section 504 prohibits a recipient of Federal funding from not offering a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to or as effective to that afforded others. 34 C.F.R. § 104.4 (b)(1)(ii) and (iii). Additionally, Section

504 at 34 C.F.R. § 104.21, provides that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity operated by the recipient. Section 504 also requires a recipient to adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

The Title II regulation requires that public entities such as the University make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7). The Title II implementing regulation at 28 C.F.R. § 35.160(a) also requires that public entities take appropriate steps to ensure that communications with those with disabilities are as effective as communications with others.

Additionally, the Title II regulation, at 28 C.F.R. § 35.160(b), requires that a public entity furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The Title II regulation requires that the type of auxiliary aid or service necessary to ensure effective communication vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place; and that, in order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. The regulation further states that, in determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 28 C.F.R. § 35.160(b)(2).

Voluntary Resolution

As noted above, before OCR completed its investigation into the complaint allegations, the University asked to resolve the complaint pursuant to Section 302 of OCR's Manual. The Manual provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the University, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The University has signed the enclosed resolution agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The resolution agreement requires the University to develop and adopt policies and procedures that ensure that persons with hearing impairments have equal opportunities to benefit from performances and presentation overseen by the Theater Department by ensuring that interested persons, including persons with impaired hearing, can obtain information as the existence and

location of accessible services, activities, and facilities. The policies and procedures, at minimum, will contain: a statement of the University's duty to comply with Section 504 and Title II; the language and contact information that the Theater Department will use in its notice of assistive technology and supports (the Notice), which is to be included on Theater Department publications, websites, and announcements regarding upcoming events for use by individuals who wish to inquire about or request the use of an appropriate auxiliary aid or service for a Department events; a statement of the University's duty to include the Notice in future Theater Department publications, websites, and announcements regarding upcoming events; and a statement of the University's duty to train all Theater Department staff who interact with others regarding upcoming events on its policies and procedures for providing assistive technology and supports.

In light of the signed agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the University's implementation of the agreement. Should the University fail to fully implement the agreement, OCR will reopen the case and resume its investigation of the complaint allegations.

Please be advised that the University 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, Complainant may file another complaint alleging such treatment.

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.

We appreciate the cooperation of University staff during the preliminary investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, please contact me, at (216) 522-2678 or Lisa.M.Lane@ed.gov. For questions about implementation of the Agreement, please contact Ms. Brenda Redmond at Brenda.Redmond@ed.gov or at 216-522-2667, who will be monitoring the University's implementation. We look forward to receiving the University's first monitoring report by September 3, 2014. Should you choose to submit your monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure

File Sign-Off

<u>Docket #</u>		
<u>Document Type</u> (Check all that apply)		<input type="checkbox"/> Letter of Acknowledgement <input type="checkbox"/> Letter of Notification <input type="checkbox"/> Dismissal/Admin Closure <input type="checkbox"/> Resolution Letter/Letter of Finding <input type="checkbox"/> Monitoring <input type="checkbox"/> Other: _____
<u>Position</u>	<u>Name</u>	<u>Date</u>