



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

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Re: OCR Docket #15-16-1403

Dear xx xxxxxx:

This letter is to inform you of the disposition of the above-referenced complaint filed on xxxx xxx xxxxx, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Merritt Academy (the Academy). The complaint alleged that the Academy discriminated based on disability. Specifically, the Complainant alleged that certain of the Academy's web pages are not accessible to individuals with disabilities, including those with vision and print disabilities. The alleged inaccessible pages include the following:

1. <http://www.merritt-academy.org> – Homepage
2. <http://www.merritt-academy.org/images/contentImages/file/Merritt/Merritt-Sept-1-Public-SLD-Posting%20Learning%20Services.pdf> - Learning Supports/Process for Determining a Specific Learning Disability
3. [http://www.merritt-academy.org/images/contentImages/file/Merritt/TechnologyPlan2012-2015%20\(1\).pdf](http://www.merritt-academy.org/images/contentImages/file/Merritt/TechnologyPlan2012-2015%20(1).pdf) – Technology Plan
4. <http://www.therominegroup.com//images/contentImages/file/Corporate/CivilRights-12112014.pdf> – Civil Rights
5. <http://www.merritt-academy.org/pages/Food-Services> – Lunch Program
6. <http://www.merritt-academy.org/pages/Food-Services> – Early Learning
7. <http://www.merritt-academy.org/search.asp?q=Section+504> – Results of Section 504 search

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

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. 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, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and as a public entity, the Academy is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following issues:

- whether the Academy, 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, activities, aids, benefits, or services 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 Academy failed to take appropriate steps to ensure that its communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communications with others, in violation of the regulation implementing Title II at 28 C.F.R. § 35.160(a).

Summary of OCR's Investigation

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and conducting a preliminary assessment of the accessibility of several pages from the Academy's website.

The complaint alleged that the Academy's website is not in compliance with Section 504 and Title II because it is inaccessible to individuals with disabilities, including vision impairments. The Complainant used a website accessibility checker (PowerMapper) and reported to OCR that the homepage on the Academy's website and the other pages listed above have accessibility issues for individuals with disabilities. She then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR used a web accessibility tool to do a preliminary review of the specific web pages identified by the Complainant and found accessibility alerts that raise possible compliance concerns as to whether the pages are accessible to individuals with

disabilities. For example, the Academy’s home page, did not have form controls, non-trivial graphics did not have meaningful alternative text, and links were not meaningfully labelled or titled. In addition, the visual contrast was low.

On July 28, 2016, prior to the completion of OCR’s investigation, the Academy asked to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). Although the results of OCR’s web accessibility assessment described above do not, without more, provide sufficient evidence for OCR to determine a violation of Section 504 or Title II, they raise compliance concerns regarding the accessibility of the website. Therefore, OCR determined that it is appropriate to resolve this complaint with an agreement. Accordingly, OCR is not making a finding with regard to the Academy’s compliance with Section 504 or Title II in this letter.

Applicable Regulatory Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. In this usage, “program or activity” encompasses a broad variety of operations associated with the receipt of Federal financial assistance from the Department, including all operations of a local education agency or a college or university, as well as all of the operations of department, agency, or other instrumentality of a State or local government or the entity of such a State or local government that distributes such assistance and each such department or agency to which the assistance is extended.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b), further prohibits discrimination on the basis of disability in the provision of any aid, benefit, or service, directly or through contractual, licensing, or other arrangements. A recipient may not deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Title II, at 28 C.F.R. § 35.130, has requirements similar to those in the regulation implementing Section 504. Additionally, the regulation implementing Title II has specific requirements for communication, which, in pertinent part, require that public entities 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. 28 C.F.R. § 35.160(a)(1). Entities subject to Title II are required to provide equally effective communication, regardless of the

medium chosen for their communication. Communication includes the transfer of information and encompasses information conveyed through computer-related applications and online environments.

OCR and the U.S. Department of Justice, Civil Rights Division, issued a Dear Colleague Letter on June 29, 2010 (June 2010 DCL), on access to emerging technologies for individuals with disabilities. OCR then issued another Dear Colleague Letter on May 26, 2011 (May 2011 DCL), along with a questions and answers document (FAQ), in follow-up to the June 2010 DCL. The FAQ clarifies that students with disabilities, especially visual impairments, are to be afforded “the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.” The FAQ also clarifies that an accommodation or modification that is available only at certain times will not be considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other online content. The May 2011 DCL states that online programs are also covered and stresses the importance of planning to ensure accessibility from the outset.

While the May 2011 DCL and FAQ focused primarily on electronic book readers, the principles articulated in the documents apply to all forms of information technology. Though the DCL and FAQ discussed students as the affected population, recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of the technology for individuals with disabilities in any populations the recipient engages with its programs or activities, including students and members of the public.

Resolution and Conclusion

As noted above, prior to the completion of OCR’s investigation, the Academy expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR’s CPM, which 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 Academy, nor does it constitute a determination by OCR that the Academy has violated any of the laws that OCR enforces. On September 30, 2016, the Academy submitted the enclosed signed resolution agreement (the Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegations and the information obtained to date during the investigation and consistent with applicable regulations. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the Academy’s implementation of the Agreement. Should the Academy fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the Academy’s compliance with the Section 504 and Title II regulations.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Academy'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.

Please be advised that the Academy 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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the Academy's first monitoring report by January 11, 2017. For questions about implementation of the Agreement, please contact xxxxxx xxxxxxxx, the attorney assigned to monitor the Academy's implementation, by e-mail at xxxxxx xxxxxxxx or by telephone at xxx xxxx xxxxxx. For questions about this letter, please contact xxxxxx xxxxxx xxxxxxxxxxx xxxxxxxx, at Xxx xxxx xxxxxx.

Sincerely,

Xxxxxx xxxxxxxx
Xxxxxx xxxxxxxx

Enclosure