



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

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REGION XV
MICHIGAN
OHIO

October 19, 2016

Melvin J. Muskovitz, Esq.
Dykema
2723 South State Street, Suite 400
Ann Arbor, Michigan 48104

Re: OCR Docket #15-16-2146

Dear Mr. Muskovitz:

This letter is to inform you of the disposition of the above-referenced complaint filed against Michigan Virtual University (the University) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on May 2, 2016, alleging discrimination on the basis of disability. Specifically, the complaint alleged that certain of the University's web pages are not accessible to students and adults with disabilities including, but not limited to, vision impairments. These include:

- Michigan Online Courses Homepage- <https://micourses.org>;
- Help Resources - <https://micourses.org/resources/help.html>;
- Michigan Virtual University Contact Page- <http://www.mivu.org/support>;
- About the 21f Tool Kit- https://micourses.org/resources/21f_Tool_Kit.html;
- About Consumer Awareness - <https://media.mivu.org/institute/consumerawareness/>.

OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 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. The University is subject to Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

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

- Whether the University, 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 Title II at 28 C.F.R. § 35.130.

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

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- Whether the University 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).

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 University’s website.

The complaint alleged that the University’s website is not in compliance with Title II because it is inaccessible to adults and students with disabilities including, but not limited to, vision impairments. The Complainant used website accessibility checkers (PowerMapper, A-checker and the Wave Accessibility tool) and reported to OCR that the University website homepage, help resources page, contact page, About the 21f Tool Kit page, and the consumer awareness page have accessibility issues for individuals with vision and print disabilities and physical impairments. She then provided OCR with a list of errors copied and pasted from the website accessibility checkers that she used.

OCR used a web accessibility tool to do a preliminary review of the five specific web pages (University website homepage, help resources page, contact page, About the 21f Tool Kit page, and the consumer awareness page) 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, at the time of OCR’s review, a “skip navigation” or “skip to content” was not provided on the pages. On various pages, keyboard controls were not all visually apparent; non-trivial graphics did not have meaningful alt text; links were not consistently meaningfully labelled or titled and did not allow access to all content and functions; and, visual contrast was found to be very low.

On September 6, 2016, prior to the completion of OCR’s investigation, the University 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 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 University’s compliance with Title II in this letter.

Applicable Regulatory Standards

The regulation implementing Title II, at 28 C.F.R. § 35.130, provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The regulation 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 public entity 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.

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 University 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 University, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. On October 14, 2016, the University 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 are 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 University's implementation of the Agreement. Should the University fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the University's compliance with Title II and its implementing regulation.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University'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 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, 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 University's first monitoring report by December 31, 2016. For questions about the University's implementation of the Agreement, please contact Kimberly Kilby, who will be monitoring the University's implementation, by e-mail at Kimberly.Kilby@ed.gov or by telephone at (216) 522-2574. For questions about this letter, please contact Donald Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure