



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Miles J. Postema, Esq.
Vice President and General Counsel
Ferris State University
Governmental Relations and General Counsel
120 E. Cedar Street – MCK
Big Rapids, Michigan 49307-2202

Re: OCR Docket ## 15-17-2003 and 15-17-2088

Dear Mr. Postema:

This letter is to inform you of the disposition of the above-referenced complaints filed against Kendall College of Art and Design (the College) and Ferris State University (the University) with the U.S. Department of Education's Office for Civil Rights (OCR) on October 11, 2016, and February 8, 2017, respectively, alleging discrimination on the basis of disability.

Specifically, the complaint against the College alleged that certain of the College's web pages are not accessible to individuals with vision- and print-related disabilities and those with fine motor-related impairments. These pages include, but are not limited to:

1. Homepage- <https://www.kcad.edu>
2. Programs and Faculty- <https://www.kcad.edu/programs/>
3. Undergraduate Programs- <https://www.kcad.edu/programs/undergraduate/>

The specific complaint against the University 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 pages include, but are not limited to:

1. Ferris Online – <http://www.ferris.edu/HTMLS/online/index.htm>
2. Library – <http://www.ferris.edu/library/>

3. Financial Aid/Scholarships –
<http://www.ferris.edu/admissions/financialaid/index.html>

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. 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 at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As recipients of Federal financial assistance and public entities, the College and the University are subject to these laws. Accordingly, OCR had jurisdiction to investigate these complaints.

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

- whether the College and 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 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 College and 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).

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 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.

Summary of Investigations To Date:

To date, OCR has investigated these complaints by reviewing information provided by the Complainant and by conducting preliminary assessments of the accessibility of several pages from the College’s and University’s websites.

- Kendall College of Art and Design, #15-17-2003

The complaint alleged that the College’s website is not in compliance with Section 504 and Title II, because it is inaccessible to individuals with vision- and print-related disabilities and those with fine motor impairments. The Complainant used website accessibility evaluation tools and reported to OCR that the College’s Homepage, Programs and Faculty webpage, and Undergraduate Programs webpage, among others, have accessibility issues for individuals with disabilities. The Complainant provided OCR with a list of errors copied and pasted from the website accessibility evaluation tools that she used.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether the College’s website is accessible to individuals with disabilities. For example, certain images and links lacked meaningful, identifying alternative text, and certain links lacked contrast with the page background.

- Ferris State University, #15-17-2088

The complaint alleged that the University’s website is not in compliance with Section 504 and Title II, because it is inaccessible to individuals with disabilities, including those with vision-related disabilities. The Complainant used website accessibility evaluation tools and reported to OCR that the University’s Ferris Online webpage, Library webpage, and Financial Aid/Scholarships webpage, among others, have accessibility issues for individuals with disabilities. The Complainant provided OCR with a list of errors copied and pasted from the website accessibility evaluation tools that she used.

OCR conducted a preliminary examination of the web pages identified by the Complainant and found possible compliance concerns as to whether the University’s website is accessible to individuals with disabilities. For example, certain images and links lacked meaningful alternative text and labels identifying form boxes, and there was a lack of contrast between text/print and certain background images.

Resolution and Conclusion

Prior to the completion of OCR's investigations, the College and the University (the Recipients) asked to resolve these complaints pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On August 10, 2017, the Recipients submitted the enclosed, signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in both complaints.

In light of the commitments the Recipients have made in the Agreement, OCR finds that the complaints are resolved, and OCR is closing its investigations as of the date of this letter. OCR will monitor the Recipients' implementation of the Agreement to ensure that the commitments made are timely and effectively implemented. OCR may request additional information as necessary to determine whether the Recipients have fulfilled the terms of the Agreement and are in compliance with Section 504 and Title II with regard to the issues raised.

If the Recipients fail to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings 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 to enforce the Agreement, OCR shall give the Recipients written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigations of the complaints and should not be interpreted to address the Recipients' compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determinations in individual OCR cases. 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 Recipients 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.

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

OCR looks forward to receiving the Recipients' first monitoring report by October 2, 2017. For questions about implementation of the Agreement, please contact Julie Gran, who will be monitoring the District's implementation, by telephone at (216) 522-2684 or by e-mail at Julianne.Gran@ed.gov. For questions about this letter, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure