

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



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REGION XV
MICHIGAN
OHIO

August 18, 2017

Gary S. Fealk, Esq.
The Murray Law Group, P.C.
31780 Telegraph Road, Suite 200
Bingham Farms, Michigan 48025

Re: OCR Docket #15-17-2097

Dear Mr. Fealk:

This letter is to inform you of the disposition of the above-referenced complaint filed against Lake Superior State University (the University) with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on February 21, 2017, alleging discrimination on the basis of disability. Specifically, the complaint alleges 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:

- Home Page: <https://www2.lssu.edu/>
- Admissions: <http://www.lssu.edu/admissions/>
- Academics: <https://www2.lssu.edu/academics/>
- Information for Current Students: <http://www.lssu.edu/current/>

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 a recipient of Federal financial assistance and as a public entity, the University is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, 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 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 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 provide 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 that receives Federal financial assistance. 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.

Investigation to Date

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

The complaint alleged that the University's website was not in compliance with Section 504 and Title II because it was inaccessible to individuals with vision disabilities, print disabilities, and physical impairments. The Complainant used website accessibility evaluation tools (PowerMapper, A-Checker, and WAVE) and reported to OCR that the University's website, including but not limited to the home page, Admissions page, Academics page, and Information for Current Students page, had accessibility issues for individuals with disabilities. The

Complainant then provided OCR with a list of errors copied and pasted from the website accessibility 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 was accessible to individuals with disabilities. For example, at the time of OCR's review, OCR found that, on multiple pages, keyboard controls were not visually apparent, and visual contrast errors were noted.

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). On August 16, 2017, the University submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations in the complaint.

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

If the University fails 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 University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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.

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 University's first monitoring report by January 31, 2018. For questions about implementation of the Agreement, please contact Ms. Timsi Pathak, who will be monitoring the University's implementation, by e-mail at Timsi.Pathak@ed.gov or by telephone at (216) 522-7642. For questions about this letter, please contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure