



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Patrick R. Sturdy, Esq.
Cummings, McClorey, Davis & Acho, P.L.C.
17436 College Parkway
Livonia, Michigan 48152

Re: OCR Docket #15-18-2001

Dear Mr. Sturdy:

This letter is to inform you of the disposition of the above-referenced complaint filed against Gogebic Community College (the College) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on October 2, 2017, alleging that the College discriminates on the basis of disability. Specifically, the complaint alleged that certain of the College's web pages are not accessible to students and adults with disabilities including, but not limited to, vision impairments. These include:

1. <http://www.gogebic.edu/>
2. <http://www.gogebic.edu/programs/viewallprograms.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 a recipient of Federal financial assistance and as a public entity, the College 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 College, 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.

- Whether the College 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 certain pages on the College’s website.

The complaint alleged that the College’s website is not in compliance with Section 504 and Title II because it is inaccessible to adults and students with visual impairments and other disabilities. The Complainant used a website accessibility checker (PowerMapper) and reported to OCR that certain pages on the College website have accessibility issues for individuals with vision disabilities, based on her assessment of the website. 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 and manual checking 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 page is accessible to individuals with disabilities. For example, at the time of OCR’s review, alternative text for images was not always meaningful and College webpages had low visual contrast.

On October 26, 2017, prior to the completion of OCR’s investigation, the College 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 College’s compliance with Section 504 or Title II in this letter.

Applicable Regulatory Standards

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,” online, or other “virtual” context—must be operated in ways that comply with Section 504 and Title II.

Resolution and Conclusion

As noted above, prior to the completion of OCR’s investigation, the College 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 College, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces.

On December 7, 2017, the College 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 College’s implementation of the Agreement. Should the College fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the College’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 College’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 College 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 College's first monitoring report by July 1, 2018. For questions about implementation of the Agreement, please contact XXXXXX, who will be monitoring the College's implementation, by e-mail at XXXXXX or by telephone XXXXXX. For questions about this letter, please contact Ms. Sacara Martin, Supervisory Attorney/Team Leader, at (216) 522-7640.

Sincerely,

/s/

Sacara M. Martin
Supervisory Attorney / Team Leader

Enclosure