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LEGAL UPDATE

March 1, 2017

To: Superintendents, Member School Districts (K-12)

From: Ellie R. Austin *ERA*
Schools Legal Counsel

Subject: **OCR Settles with 11 Education Organizations Over Website Accessibility Concerns for People with Disabilities**
Memo No. 06-2017

On June 29, 2016, the U.S. Department of Education’s Office for Civil Rights (“OCR”) announced that it had reached settlements with 11 education organizations¹ to ensure that their websites are fully accessible to individuals with disabilities.²

OCR noted common issues with the education organizations’ websites, including:

- Important content on the website was only available via use of a computer mouse, which limited accessibility to individuals with vision impairments or disabilities impacting fine motor control;
- The website used color combinations that made reading content virtually impossible for individuals with vision impairments;
- Video content was improperly captioned such that videos were inaccessible to deaf individuals; and/or
- Website images lacked ‘alt tags,’ which describe images to low-vision and blind individuals.³

The problematic content on each of the 11 websites, which is specified in OCR’s Letters, “den[ie]d persons with disabilities access to programs, services, and

¹ Juneau School District; Guam Department of Education; Montana School for the Deaf and Blind; Santa Fe Public Schools; Washoe County School District; The Davidson Academy of Nevada; Nevada Department of Education; Oregon Department of Education; Granite School District; Bellingham School District; and Washington Office of Superintendent of Public Instruction.

² See OCR’s June 29, 2016 Press Release at <https://www.ed.gov/news/press-releases/settlements-reached-seven-states-one-territory-ensure-website-accessibility-people-disabilities>.

³ ‘ALT tags’ provide a clear text alternative of the image for screen reader users, including vision impaired users.

activities offered on the website and may impede the [education organization's] communications with persons with disabilities.”⁴

OCR had received complaints about all 11 websites, prompting an investigation; however, each organization voluntarily agreed to resolve the complaints before OCR completed its review of their website. In its Letters to the education organizations, OCR provided that each organization would take one or more of the following corrective actions:

- Select an auditor who has the requisite knowledge and experience to identify barriers to access on the organization's website and conducting a thorough audit of existing online content and functionality;
- Make all new website content and functionality accessible to people with disabilities;
- Develop a corrective action plan to prioritize the removal of online barriers over an 18-24 month period;
- Post a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible; and
- Provide website accessibility training to all appropriate personnel.

Moreover, the Resolution Agreements provided that the education organizations would:

- Affirm their commitment to ensuring that individuals with disabilities have opportunities equal to nondisabled individuals with respect to enjoying the recipients' programs, services, and activities, including those online; and
- Adopt policies and procedures to ensure that all new, newly added, or modified online content and functionality will be accessible to individuals with disabilities.

OCR has also found a number of other districts' websites to be out of compliance with Section 504 and/or Title II of the ADA. Examples of content and functionality to watch out for include:

- The lack of keyboard control on a video player and various pages of the district's website, which renders content inaccessible to individuals utilizing assistive technology.⁵
- The lack of sufficient contrast between text and background on the district's web page.⁶
- Fixed fonts and text sizes.⁷
- Linked images missing alternative text.⁸
- Not identifying the language of the website.⁹
- Not labeling buttons on a video player.¹⁰

⁴ OCR's Letters as well as the Resolution Agreements are available at <https://www.ed.gov/news/press-releases/settlements-reached-seven-states-one-territory-ensure-website-accessibility-people-disabilities>.

⁵ *Virginia Beach (VA) Cty. Pub. Schs.*, OCR (Feb. 24, 2016).

⁶ *Id.*

⁷ *Silsbee (TX) Indep. Sch. Dist.*, OCR (Mar. 10, 2015).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Michigan Dept. of Educ.*, OCR (Jun. 22, 2015).



- Not making documents that include embedded text accessible via assistive technology by converting the embedded text from an electronic source or applying optical character recognition.¹¹
- The lack of tags on a PDF document that identify the visual layout of the document, including the type of content and the correct reading order of the content on the page.¹²

OCR guidance provides that adherence to either the Web Content Accessibility Guidelines 2.0 Level AA standards¹³ or the Section 508 Standards¹⁴ is one way to ensure compliance with a district's legal obligations with regard to website accessibility for individuals with disabilities.¹⁵ However, a district must choose one set of standards with which to comply – it cannot use one set of standards for some aspects of its website, and another set of standards for other aspects.¹⁶

Legal Authority

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”) both prohibit discrimination on the basis of disability. As educational programs or activities that receive federal financial assistance, public school districts and county offices of education are subject to Section 504. (34 C.F.R. § 104.31.) As public entities, they are also subject to the ADA. (28 C.F.R. § 35.101.)

Although both Section 504 and the ADA predate the Internet, their nondiscrimination obligations still apply to website content and functionality. Section 504 mandates that individuals with disabilities have access to recipients’ programs, services, or activities unless doing so would fundamentally alter the nature of those programs, services, or activities or would constitute an undue burden. (28 C.F.R. § 35.164.) Likewise, Title II of the ADA requires public entities to take steps to ensure that communications with people with disabilities are as effective as communications with non-disabled individuals. (28 C.F.R. § 35.160(a)(1).) Accordingly, the programs, services, and activities of school districts and county offices of education – whether delivered in-person or online – must comply with Section 504 and the ADA.

OCR has opined that districts can provide online content through other accessible means, such as a 24/7 staffed telephone line to provide the information and services available on the website, to individuals with disabilities for whom the online content is not accessible in its current form.¹⁷

Recommendation

Districts should review their website content and functionality with a web development specialist to ensure accessibility to people with disabilities. As an initial step, districts can self-review¹⁸

¹¹ *Michigan Dept. of Educ.*, OCR (Jun. 22, 2015).

¹² *Id.*

¹³ Available at <https://www.w3.org/TR/WCAG20/>.

¹⁴ Available at 36 C.F.R. part 1136.

¹⁵ *Higley (AZ) Unified Sch. Dist.*, OCR (Jan. 14, 2015).

¹⁶ *Id.*

¹⁷ *Virginia Beach (VA) Cty. Pub. Schs.*, OCR (Feb. 24, 2016).

¹⁸ Using tools such as 16 Web Standards and 12 Software Standards of Section 508, webaim.org, and achecker.ca.



their websites to identify any accessibility issues that have not yet been reported using an automated website accessibility checker.¹⁹

To the extent a district identifies accessibility barriers, they should be corrected in a timely manner unless doing so would fundamentally alter the nature of the content or would impose an undue burden. In updating their websites, districts are recommended to develop a two-part strategy that first, ensures that all new, newly added, or modified online content or functionality is accessible to individuals with disabilities, and second, institutes a corrective action plan for fixing inaccessible content currently online.²⁰

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹⁹ *Macomb (MI) Intermediate Sch. Dist.*, OCR (Jun. 7, 2016).

²⁰ *Riverside (AZ) Elem. Sch. Dist. #2*, OCR (Oct. 2, 2015).