



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

FEB 16 2017

RECEIVED  
Youngstown State University

FEB 20 2017

Office of the General Counsel

Holly A. Jacobs, Esq.  
General Counsel  
Office of the General Counsel  
Youngstown State University  
One University Plaza – Tod Hall, Room 312  
Youngstown, Ohio 44555

Re: OCR Docket #15-13-6002

Dear Ms. Jacobs:

The U.S. Department of Education's Office for Civil Rights has completed its review of the monitoring information that you provided to OCR on October 21, 2015, and February 8, 2016, regarding Youngstown State University's (the University's) implementation of Item B of the Resolution Agreement (Agreement) the University signed on November 25, 2014, to resolve the above-referenced compliance review. After reviewing the information submitted and discussing the submission with the University, OCR has determined that the University has fully implemented Item B(1) of the Agreement.

Item B(1) of the Agreement required the University to draft and submit to OCR for review and approval a policy to ensure information provided through the University's websites, online learning environment, and course management systems (collectively, electronic and information technologies (EIT)) is accessible to students, prospective students, employees, guests, and visitors with disabilities, particularly those with visual, hearing, or manual impairments or those who otherwise require use of assistive technology to access information provided through its EIT.

By letter dated September 30, 2015, OCR notified the University that particular provisions of Item B of the Agreement required additional action before OCR could conclude that the University had fully implemented the provision. Specifically, the University's draft EIT Policy stated that the University is committed to "ensuring that communication with constituents, i.e., students, prospective students, employees, guests and visitors, with hearing, visual and manual impairments, is as effective as communication with those without disabilities, including learning disabilities." OCR

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

[www.ed.gov](http://www.ed.gov)

noted that this phrasing did not include those with other disabilities who otherwise require use of assistive technology to access information provided through its EIT, as set forth in Item B(1). Further, the phrasing implied that persons with learning disabilities do not have disabilities. In addition, the University's EIT Policy states that the University will ensure that all computer software and systems for public use will permit "students" with disabilities to acquire the same information, engage in the same interactions, and enjoy the same services with substantially equivalent ease of use as "students" without disabilities, while the definition of "accessible" in Item B of the Agreement applies to all persons with disabilities, not only to students.

The University's latest monitoring submission revised the language in its draft EIT policy to state:

Youngstown State University ("YSU") is committed to ensuring that communication with university constituents **with disabilities, including** students, prospective students, employees, guests and visitors, with hearing, visual and manual impairments, **or who otherwise require the use of assistive technology to access information**, is as effective as communication with those without disabilities [emphasis added].

The university will ensure that all computer software and systems for public use will permit all **persons** with disabilities to acquire the same information, engage in the same interactions, and enjoy the same services with substantially equivalent ease of use as **those** without disabilities [emphasis added].

...All university computer labs shall provide equal access afforded by technology for all **users**, including **users** with disabilities. The university shall make assistive technology available at all student computer labs and shall provide a notice of accessibility that includes contact information for questions, inquiries, or complaints [emphasis added].

...Purchasing accessible software compatible with assistive technology... The software or systems shall permit **persons** with disabilities to acquire the same information, engage in the same interactions, and enjoy the same services with substantially equivalent ease of use as **those** without disabilities [emphasis added].

The revised language, as stated above, includes those with other disabilities who otherwise require use of assistive technology to access information provided through its EIT, as set forth in Item B(1), and does not imply that persons with learning disabilities do not have disabilities. In addition, the University's EIT Policy as now stated does not limit access to computer software and systems for public use only to "students" but rather states that the software and systems will provide appropriate access to "persons" with disabilities, as required by the definition of "accessible" in Item B of the Agreement. OCR has therefore determined that the University has fully implemented item B(1) of the Agreement.

In addition, the University has asked to adjust the timeframes required by the Agreement to reflect where the University now stands with respect to OCR review of policies and procedures and the Agreement's implementation. The following modifications are approved by OCR [specific time adjustments marked by bold font]:

Item B(2)

**Within sixty (60) days of OCR's approval of the University's EIT policy, the University will draft and submit to OCR for review and approval an implementation and remediation plan (EIT Plan) to ensure adherence with its EIT Accessibility Policy.**

Item B(2) - Reporting Requirement

**Within 60 days of OCR's approval of the University's EIT policy, the University will provide for OCR review and approval the EIT Plan drafted under Action Item B(2) of the Agreement.**

Item B(3)(a)

The University will post the EIT Accessibility Policy and EIT Plan, **within 60 days of OCR's final approval of both the Policy and the Plan**, in a logical and readily identifiable location on its website. . . .

Item B(3) - Reporting Requirement

**Within 120 days of the University posting the Policy, Plan, and training requirements, the University will provide documentation to OCR verifying its implementation of Action Item B(3) of the Agreement, including a copy of the notification(s) and the URL (web address[es]) for the location of its EIT Accessibility Policy and EIT Plan; the name(s) and credentials of the individual(s) who conducted the training; a list of individuals, by name and title, who attended the training; and a copy of any training materials (e.g., pamphlets, presentation materials).**

Item B(4) and Item B(5) and their associated Reporting Requirements

The University has informed OCR that, during the monitoring of this complaint, the University has developed and put into place a new website. Item B(4) of the Agreement required that, once OCR approved the University's EIT Policy and Plan, the University would conduct an initial EIT audit and then take whatever corrective actions necessary to address accessibility issues identified through that audit. The Agreement required that the University would then make its EIT accessible to individuals with disabilities and would provide OCR with certification of its EIT, along with the bases for that certification.

As the University has informed OCR that it has put in place a new website, should the University determine its new website meets the technical requirements adopted in its EIT Accessibility Policy and that its additional EIT meets the requirements as well, the University may forgo an initial audit and corrective action under Items B(4) and B(5) and provide OCR with the certification required under Item B(5) by **July 30, 2017**, along with supporting bases. It may then provide OCR with a report on **July 30, 2018**, describing its efforts for the 2017-2018 academic year to comply with its EIT Accessibility Policy and EIT Plan, per the Reporting Requirement called for under Item B(5).

Should the University so choose, it may instead perform the accessibility audit under Item B(4) **within 120 days of OCR approving its EIT Plan** and then implement Item 5 of the Agreement **within 180 days** of the completion of its audit, as well as providing documentation of that implementation to OCR. OCR and the University will then consult as to remaining reporting requirements.

OCR also notes the University's concern, as expressed in discussions with OCR and a May 19, 2016 e-mail message to OCR, about how to interpret and implement certain provisions of the Agreement. The Agreement requires the University to ensure that information provided through the University's EIT is accessible to those with disabilities and defines "accessible" to mean:

that a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. A person with a disability must be able to obtain the information as fully, equally, and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

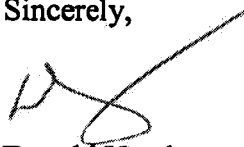
The University has informed OCR that it will make its website and distance learning courses accessible in this matter. The University notes, however, that Item B(3)(b) of the Agreement requires the College to conduct training for "all staff involved in web design and implementation, including professors and other instructors who develop content for on-line instruction and/or post material on course management pages/portal." Based on discussions with OCR, you stated that the University can conduct the staff training but discussed that the training should involve an understanding that course content conveyed through EIT in closed courses without students with disabilities enrolled (thus not part of the general University website and distance learning courses) need not be made accessible at the outset but that the University's EIT Coordinator will have a plan for expediting availability of information through EIT in the same or similar way as it is available to students without disabilities should a student with a disability enroll in a course. It is understood that closed course elements not required to be accessible at the

outset when persons with disabilities are not enrolled do not include underlying elements of the University's website or distance learning course architecture/coding that could not be made accessible in an expedited fashion. The University may include such a plan in its EIT, and, once OCR approves the plan as part of the University's overall EIT plan and provides for expedited "accessibility" as defined in the Agreement, the University may proceed to implement the training provisions of the Agreement. To the extent that the University has already provided relevant training to designated persons, please document that training for OCR.

Finally, the University has informed OCR that it has identified rare instances where, after diligent research and checking with outside resources, such as the National Federation for the Blind, it has not been able to devise a method of making certain, limited content available in an accessible, digital format. The University has a duty to research beyond its own knowledge and resources if they are not sufficient to determine how and if materials can be made accessible, by consulting with experts to determine whether any method exists to do so that would not result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens under Section 504 and Title II. In addition, as Item B(5) of the Agreement states, in such circumstances, "[s]hould the University choose to provide the information and services in some manner different from that used to provide information and services to others, the method chosen must permit students with disabilities to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner, with substantially equivalent ease of use." In such a case, the University/the certifying official should describe, in a written statement to OCR, how it will provide equally effective, alternative access.

Thank you for your continued and prompt cooperation in this matter. If you have any questions about this letter, please contact Ms. Karla K. Ussery, Senior Attorney, at (216) 522-2683 or at [Karla.Ussery@ed.gov](mailto:Karla.Ussery@ed.gov).

Sincerely,



Donald Yarab  
Supervisory Attorney / Team Leader