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# MEMORANDUM

**To:** Monica Harris, Executive Director  
Reaching Across Illinois Library System

**From:** Julie Tappendorf  
Katherine Nagy

**Subject:** Office for Civil Rights' Digital Access Discrimination Complaints

**Date:** May 1, 2024

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You forwarded to us a copy of a complaint filed against an Illinois library with the Office for Civil Rights of the U.S. Department of Education (“**OCR**”) alleging discrimination by the library based on disability. This complaint alleges that an Illinois library is failing to afford persons with disabilities an opportunity to participate and benefit from the services, programs, and activities through the library website that is equal to the opportunities afforded to others. We understand that similar complaints have been filed or will be filed against other Illinois libraries in the future, and you asked us to review the complaint and provide guidance to your membership.

This memo will explain the federal complaint and investigation process and provide guidance on compliance with the investigation process.

## **I. OCR Complaint Process**

OCR enforces Title II of the Americans with Disabilities Act of 1990 (“**ADA**”), which prohibits public entities from discriminating on the basis of disability in services, programs, and activities.<sup>1</sup> Libraries fall under the definition of a “public entity” and are subject to the regulations of the ADA.<sup>2</sup>

Individuals can file complaints with OCR if they believe they have been discriminated against by a public entity within 180 calendar days of the last act of discrimination. The complaint must identify the kind of discrimination alleged and describe the alleged discriminatory conduct.

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<sup>1</sup> 28 CFR § 35.101.

<sup>2</sup> 42 U.S. Code § 12131.

The complaint you forwarded to us alleges discrimination to persons with disabilities, including that the library has excluded persons with disabilities from participating in programs, activities, or services and has failed to ensure that the library's communications with applicants, participants, and members of the public are as effective as its communications with others. Although not expressly stated in the complaint, the resolution agreement with the library who was the subject of the complaint seems to focus on online communications, including website accessibility.

Because these complaints allege discrimination regarding library online communications, including website accessibility, it is important to note that the Department of Justice recently issued rules requiring that libraries and other government bodies comply with Web Content Accessibility Guidelines by April 26, 2027.<sup>3</sup> Library adoption of the DOJ's website accessibility guidelines should help mitigate against future allegations of discrimination for online library communications, and the OCR resolution agreements discussed in **Section III** below require the adoption of accessibility guidelines to resolve online communication-related discrimination complaints.

Once OCR receives a complaint, it has to determine whether it has the authority to investigate based on the following questions:

- Whether the complaint alleges a violation of any of the laws OCR enforces;
- Whether the complaint is timely; and
- Whether the complaint contains enough information to proceed to investigation.

If OCR needs more information regarding a complaint, it can contact the complainant, and complainant has 20 calendar days to respond to OCR's request unless the complainant requests additional time. If OCR determines it will investigate the complaint, it will issue letters (likely via e-mail) to the complainant and the library's executive director. The fact that OCR opens a complaint for investigation does not make a statement on the merits of the complaint. Instead, it simply means the complaint meets the requirements of OCR in that it was timely, alleges a violation of a law OCR enforces, and contains enough information to proceed to an investigation.

## **II. OCR Investigations**

Once the OCR has determined it has jurisdiction to investigate a complaint, OCR will conduct an investigation to determine (1) whether the library, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected qualified persons to discrimination in its programs, activities, aids, benefits of services; (2) whether the library failed to take appropriate steps to ensure that its communications with

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<sup>3</sup> 89 FR 31320

applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others.

OCR acts as a neutral fact-finder in the investigation and will collect and analyze relevant information it receives from the complainant, the library, and other relevant sources. OCR investigative methods include reviewing documentary evidence submitted by both parties, conducting interviews of the complainant and library personnel, and site visits.

An OCR investigation team member will reach out to the library with a description of the issues raised in the complaint. The investigator will also request an initial discussion with the library's executive director or designee and the library staff responsible for the specific activities that raised concerns in the complaint. For claims of discrimination regarding libraries' online accessibility, this will likely include the staff members primarily responsible for purchasing and maintaining of the library website and the staff members responsible for drafting documents in a digital format for broad public distribution.

Libraries should respond promptly to all communications with OCR and comply with all requests for discussions and documentary evidence to aid OCR in its fact-finding investigation.

It is important to note that OCR can release information it has collected if it receives a request under the Freedom of Information Act. OCR can also release information regarding the complaint to the press or general public, including the name of the library, the type of alleged discrimination in the complaint, and the result of the investigation.

At the conclusion of OCR's investigation, OCR will determine whether:

- There is insufficient evidence to support a conclusion the library failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the library failed to comply with the law.

OCR will send its determination in a letter of findings to the complainant and library. Regardless of OCR's findings, a complainant could still have a right to file suit in federal court. However, OCR would not represent the complainant in any court proceedings.

### **III. Resolution of Complaints**

Complaints can be resolved in a number of ways, including: (1) settling with OCR and voluntarily agreeing to a "resolution agreement" prior to the conclusion of an investigation; (2) voluntarily agreeing to participate in an alternative resolution process (mediation); or (3) through an OCR determination that the library failed to comply with the law; or (4) that there is insufficient evidence to support the allegations that the library failed to comply.

### **A. Settlement with OCR via a Voluntary Resolution of a Complaint Under Investigation (Resolution Agreement)**

A complaint can be resolved prior to the conclusion of OCR's investigation if the library expresses an interest in resolving the complaint and OCR determines a resolution agreement is appropriate to address the concerns identified in OCR's investigation. In that case, OCR will share a draft resolution agreement with the library and the library will have a period of up to 30 calendar days to reach a final agreement with OCR. If a final agreement is not reached within this time period, OCR will resume its investigation.

The resolution agreement will include specific actions the library agrees to take to resolve the compliance concerns, which might include:

- Adoption of an accessibility standard, such as the Web Content Accessibility Guidelines (WCAG);
- An audit to identify barriers to online accessibility;
- Remediation of accessibility barriers identified by OCR;
- Development of a plan to maintain accessible online features;
- Timeframes for implementing the specific actions; and
- Reporting mandates to OCR to ensure compliance with the resolution agreement.

These agreements are completely voluntary, and do not constitute any admission of liability or wrongdoing on behalf of the library. OCR will monitor the agreement to ensure the Library is complying with the terms of such agreement. If a library allegedly breaches the agreement, OCR will give the library 60 calendar days' notice to cure the alleged breach. OCR may initiate administrative enforcement proceedings or refer the matter to the Department of Justice for judicial proceedings in the event of an uncured breach.

A copy of a recent resolution agreement with an Illinois public library is included with this memorandum.

### **B. Voluntary Alternative Resolution Processes (Mediation)**

OCR offers early mediation if the complainant expresses interest at the time of filing the complaint. OCR also offers mediation during the investigation if it determines mediation is appropriate for the complaint and both the complainant and recipient library express interest in mediation.

OCR serves as the impartial mediator between the parties but has no oversight over the mediation agreement reached between the parties. These mediation processes are confidential, and the parties are required to sign a confidentiality agreement.

If mediation is successful, OCR will obtain a copy of the signed agreement, or a statement signed by the complainant that the allegations were resolved. OCR does not monitor or enforce the agreement, but if a material breach occurs, the complainant has the right to file a new complaint.

### **C. Resolution of Complaint Upon a Determination of Noncompliance**

If OCR determines that a library failed to comply with OCR-enforced laws after it concludes its investigation, it will contact the library to attempt to secure a voluntary resolution agreement as provided in Subsection A above of this memorandum. OCR will share a proposed resolution agreement with the library and the library will have a period of up to 90 calendar days to reach a final agreement with OCR. If a final agreement is not reached within this time period, OCR will issue an impasse letter that informs the library it will issue a letter of impending enforcement action in 10 calendar days if a resolution agreement is not signed within that time period. An enforcement action might include (1) initiation of administrative enforcement proceedings or (2) referral of the matter to the Department of Justice for judicial proceedings.

### **IV. Conclusion**

Based on the potential for litigation against a library or even a Department of Justice proceeding, a library who is notified by OCR that a complaint of discrimination has been filed should take the matter seriously and cooperate with and assist OCR in its fact-finding investigation. In the event that the investigation discloses ADA concerns, libraries might want to consider an early resolution of the complaint through a “resolution agreement” which will provide the library with time to come into compliance and avoid the matter being referred to the Department of Justice.

Upon receipt of a discrimination complaint, libraries should reach out to their library attorney for guidance. A library may also want to forward a copy of the complaint to their insurer or claims representative to put them on notice of the complaint – while defense of this type of complaint may or may not be covered by insurance (that depends on the policy coverage), because the allegations in the complaint could lead to further litigation if not resolved, the insurer should be put on notice.

Finally, libraries should begin to work towards the 2027 deadline established by the DOJ to adopt web content accessibility guidelines.