



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD STIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 29, 2017

Dr. Joyce F. Bowen
President
Fashion Institute of Technology
227 W. 27th Street
New York, New York 10001

Re: Case No. 02-17-2402
Fashion Institute of Technology

Dear President Bowen:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Fashion Institute of Technology (the Institute). By letter dated June 6, 2017, OCR notified you that it would investigate the complainant's allegation that the Institute's website is not accessible to individuals with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The Institute is a recipient of financial assistance from the Department and is a public post-secondary educational entity. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

Section 504 and the ADA prohibit individuals, 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, respectively. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. Individuals 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 the ADA 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). The ADA also requires public entities to take steps to ensure that communications with individuals 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 the ADA.

During the course of the investigation, OCR examined a number of pages on the Institute’s website to determine whether these were accessible to persons with disabilities. These web pages included:

- <http://www.fitnyc.edu>
- <http://www.fitnyc.edu/financial-aid/index.php>
- <http://www.fitnyc.edu/financial-aid/programs/index.php>
- <http://www.fitnyc.edu/about/index.php>
- <http://www.fitnyc.edu/online-learning/index.php>
- <http://www.fitnyc.edu/academics/resources.php>
- <http://www.fitnyc.edu/admissions/apply/international-students/index.php>
- <http://www.fitnyc.edu/fitable/index.php>
- <http://www.fitnyc.edu/fitable/accommodations/index.php>
- <http://www.fitnyc.edu/fitable/accommodations/housing.php>
- <http://www.fitnyc.edu/veteran-services/index.php>
- <https://myfit.fitnyc.edu/cp/home/displaylogin>

Based on its review, OCR determined that: (i) search bars and/or form fields on the website were missing properly associated text labels, which identify the purpose and function of the otherwise unlabeled search bar/form field for users of special software; and, (ii) parts of the website used color combinations that made text difficult or impossible for individuals with low vision to see, which meant that some content was not available to individuals who are blind and many others who have low vision.

On September 27, 2017, the Institute informed OCR that it had remediated the above-identified barriers and it successfully removed other potential barriers that individuals with disabilities may have encountered while navigating its website. OCR subsequently reviewed the Institute’s website and confirmed that the identified barriers no longer existed. OCR also spot-checked numerous other pages throughout the Institute’s website and did not identify any other barriers to access.

OCR will close a complaint when OCR obtains credible information indicating that the allegations raised by the complaint have been resolved, there are no further systemic allegations, and OCR determines that there are no current allegations appropriate for further resolution. Based on its recent review of the Institute's website, OCR determined that the complainant's allegation has been resolved. Accordingly, consistent with its case processing procedures, OCR has closed this complaint as of the date of 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Institute 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 individual may file a complaint alleging such treatment.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Lance Neyland, Compliance Team Attorney, at (646) 428-3824 or lance.neyland@ed.gov; Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov; or me, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

(b)(6)

For Nadja Allen Gill
Compliance Team Leader

cc: Rina Grassotti, Esq.