

Resolution Agreement
New Hampshire Department of Education
OCR Case No. 01-16-1124

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the New Hampshire Department of Education (NH DOE) violated Section 504 of the Rehabilitation Act of 1973 (Section 504) and that statute's implementing regulations at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II) and that statute's implementing regulations at 28 C.F.R. Part 35. Specifically, the complaint alleges that NH DOE's website contains barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in NH DOE's programs, services, and activities, and denying them effective communication necessary for full participation in NH DOE's programs, services, and activities.

Assurances of Nondiscrimination: NH DOE hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in NH DOE's programs, benefits, and services, including those delivered through electronic and information technology, except where doing so would impose an undue burden or create a fundamental alteration.

Benchmarks for Measuring Accessibility: For the purposes of this Agreement, the accessibility of online content and functionality will be measured according to the World Wide Web Consortium's (W3C's) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 for web content, which are incorporated by reference.

Adherence to these accessible technology standards is one way to ensure compliance with NH DOE's underlying legal obligations to ensure people with disabilities are able to acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use; that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any NH DOE programs, services, and activities delivered online, as required by Section 504 and Title II and those statutes' implementing regulations; and that they receive effective communications with NH DOE's programs, services, and activities delivered online.

NH DOE voluntarily agrees to take the actions set forth below as they relate to the New Hampshire Department of Education website and all public subordinate webpages as identified by <http://education.nh.gov>, as well as to www.my.doe.nh.gov. This agreement does not apply to webpages or sites that the Department provides links to for resource purposes.

Upon approval by OCR, the timelines referenced in this agreement may be adjusted.

REMEDIES AND REPORTING

1. Policies and Procedures for New Online Content and Functionality

By October 1, 2016, NH DOE will submit to OCR for its review and approval proposed policies and procedures (the Plan for New Content) to ensure that all new, newly-added, or modified online content and functionality will be accessible to people with disabilities as measured by conformance to the Benchmarks for Measuring Accessibility set forth above, except where doing so would impose a fundamental alteration or undue burden.

- a) When fundamental alteration or undue burden defenses apply, the Plan for New Content will require NH DOE to provide equally effective alternate access. The Plan for New Content will require NH DOE, in providing equally effective alternate access, to take any actions that do not result in a fundamental alteration or undue financial and administrative burdens, but nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the same benefits or services as their nondisabled peers. To provide equally effective alternate access, alternatives are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- b) The Plan for New Content must include sufficient quality assurance procedures, backed by adequate personnel and financial resources, for full implementation. This provision also applies to NH DOE's online content and functionality developed by, and maintained by, a third-party vendor or through the use of open sources.
- c) Within 30 calendar days of receiving OCR's approval of the Plan for New Content, NH DOE will fully implement the amended policies and procedures.

Reporting Requirement:

Within 45 calendar days of receiving OCR's approval, NH DOE will submit to OCR the approved policies and procedures, evidence of their adoption and distribution, and a description of how they are being implemented.

2. Undue Burden and Fundamental Alteration

For any technology-related requirement in this Agreement for which NH DOE asserts an undue burden or fundamental alteration defense, such assertion may only be made by NH DOE's Commissioner or by an individual designated by the Commissioner who has budgetary authority after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion, including the cost of meeting the requirement and the available funding and other resources. The written statement will be certified by the Commissioner or designee. If such a determination is made, the certifying official will describe in the written statement how it will provide equally effective alternate access, i.e., other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the same benefits or services provided by NH DOE as their nondisabled peers.

3. Audit of Existing Content and Functionality

By September 15, 2016, NH DOE will propose for OCR's review and approval the identity and qualifications of an Auditor (corporation or individual) to audit all content and functionality on its website, including, but not limited to, the home page, all public subordinate pages, to identify any online content or functionality that is inaccessible to persons with disabilities, including online content and functionality developed by or maintained by a third party vendor, or offered through an open source. The Auditor will have sufficient knowledge and experience in website accessibility for people with disabilities to carry out all related tasks, including developing a proposed Corrective Action Plan. The Audit will use the Benchmarks for Measuring Accessibility set out above, unless NH DOE receives prior permission from OCR to use a different standard as a benchmark. During the Audit, NH DOE will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with NH DOE, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

Reporting Requirement:

By September 15, 2016, NH DOE will submit the qualifications of its proposed Auditor to OCR for review and approval. OCR will evaluate whether the proposed Auditor has the requisite experience and knowledge to carry out an appropriate Audit and to develop a proposed Corrective Action Plan. If OCR approves of the proposed Auditor, NH DOE will seek Governor and Council approval of the Auditor, if necessary. Within 90 calendar days of receiving Governor and Council approval, if necessary, or OCR's approval of the proposed Auditor, NH DOE will submit to OCR documentation of the steps taken by the Auditor during the Audit, a description of the outreach it undertook and the input it received, and a detailed accounting of the results of the Audit.

4. Proposed Corrective Action Plan

Simultaneously with the submission of the Audit, NH DOE will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during NH DOE's Audit. The proposed Corrective Action Plan will set out a detailed schedule for:

- a) addressing problems, taking into account identified priorities, with all corrective actions to be completed within 18 months of the date OCR approved the Corrective Action Plan;
- b) setting up systems of accountability and verifying claims of accessibility by vendors or open sources; and
- c) setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis.

In its Corrective Action Plan, NH DOE will acknowledge that if all inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis,

NH DOE will be in violation of this Agreement, Section 504, and Title II and OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement.

5. Corrective Action Plan

Within 30 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, NH DOE will officially implement the Corrective Action Plan.

Reporting Requirement:

Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, NH DOE will submit to OCR the approved Corrective Action Plan, and documentation establishing that the approved Corrective Action Plan is being implemented according to the approved schedule. Reports will be due every six months thereafter until the Corrective Action Plan has been completed.

6. Notice

Within 30 calendar days of the date of this Agreement, NH DOE will submit to OCR for review and approval a proposed Notice on its website to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify NH DOE regarding) online information or functionality that is currently inaccessible. The proposed Notice will also include information or an accessible link to information instructing people how to file more formal grievances under Section 504 and Title II. Within 10 calendar days of receiving OCR's approval of the proposed Notice, NH DOE will officially adopt and publish the approved Notice by prominently posting the approved Notice on its home page and throughout its website (including all subordinate pages and intranet pages and sites).

Reporting Requirement:

Within 15 calendar days of receiving OCR's approval of NH DOE's proposed Notice, NH DOE will provide documentation to OCR regarding the locations and content of its published Notice.

7. Training

Starting no later than 30 calendar days from the date of OCR's approval of NH DOE's proposed policies and procedures for new content, and annually thereafter, NH DOE will deliver website accessibility training to all appropriate personnel, including, but not limited to: content developers, webmasters, procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality.

Reporting Requirement:

For each training session required by this Agreement, until such time as OCR closes its monitoring of this Agreement, NH DOE will submit to OCR documentation that the training has been delivered. The documentation will include a list of invitees and attendees and their position titles, a description of the delivered training content, and the presenters' credentials for providing such training.

NH DOE understands that OCR will not close the monitoring of this Agreement until OCR determines that NH DOE has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. 104.4 and the regulations implementing Title II at 28 C.F.R. 35.130 and 35.160(a), which were at issue in this case.

NH DOE also understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, NH DOE understands that during the monitoring of this Agreement, if necessary, OCR may visit NH DOE, interview staff members, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether NH DOE has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. 104.4 and the regulations implementing Title II at 28 C.F.R. 35.130 and 35.160(a), which are at issue in this case.

NH DOE understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. 100.9 and 100.10), or judicial proceedings to enforce this Agreement, OCR shall give NH DOE written notice of the alleged breach and 60 calendar days to cure the alleged breach.

/S/

Commissioner for NH DOE

9/8/16

Date