

**Resolution Agreement
Smith College
Complaint No. 01-17-2248**

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation into allegations that Smith College (College) violated Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Specifically, the Complainant alleged that the College's website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the College's programs, services, and activities.

Prior to the completion of OCR's investigation, the College agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). This resolution does not constitute an admission that the College is out of compliance with Section 504 and/or its implementing regulation, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces. Accordingly, to ensure compliance with Section 504 and its implementing regulation and to resolve the issues of this investigation, the College agrees to take the actions set forth below.

Assurances of Nondiscrimination. The College hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the College'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. Solely for the purposes of this Agreement, the accessibility of online content and functionality will be measured according to the 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 the College'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 and that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any of the College's programs, services, and activities delivered online, as required by Section 504 and its implementing regulation.

Remedies and Reporting

- 1) Creation of a Task Force to Develop a Strategic Action Plan. Within sixty (60) days of entering into this Agreement, the College will develop a Task Force made up of qualified members of the College community to develop a detailed Strategic Action Plan to (1) review (and revise, as necessary) its policies and procedures designed to address all new online content and functionality, (2) set up a system to review and ensure the accessibility of its critical and highly utilized online content, (3) develop a process to ensure that, upon

request, inaccessible content will be made accessible in an expedient manner and consistent with the terms of this Agreement,, and (4) develop and deliver website accessibility training. The Strategic Action Plan will also include opportunities for individuals accessing the College online environment to report barriers to accessibility and usability. To the extent that students and/or individuals with disabilities are not included on the Task Force, they will be consulted by the Task Force in the creation of the Strategic Action Plan. The College will share this Strategic Action Plan with OCR no later than January 12, 2018, or 60 days after execution of this agreement, whichever is later.

- 2) Proposed Policies and Procedures Regarding New Online Content and Functionality. Within sixty (60) days of submitting the Strategic Action Plan to OCR, the College will submit to OCR for its review and approval proposed policies and procedures 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 is technically infeasible, would impose a fundamental alteration or undue burden, or would interfere with academic freedom.
 - a) When fundamental alteration or undue burden defenses apply, or where academic freedom is implicated, or where compliance with the Benchmarks for Measuring Accessibility is not technically feasible, the College will follow federal legal requirements to provide effective alternative access. In providing equally effective alternate access, the College will take any reasonable actions that do not result in a fundamental alteration or undue financial and administrative burdens to ensure that individuals with disabilities receive the same benefits or services as their nondisabled peers. To provide equally effective alternate access, alternate access is not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities 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) Within thirty (30) days of receiving OCR's approval, the College will officially adopt, and fully implement the amended policies and procedures, in keeping with the timelines specified in the Strategic Action Plan.
 - c) Reporting: Within forty-five (45) days of receiving OCR's approval, the College will submit to OCR the approved policies and procedures, evidence of their adoption and distribution, and a description of how they are being implemented.
- 3) Undue Burden and Fundamental Alteration. For any technology-related requirement in this Agreement for which the College asserts an undue burden, fundamental alteration, or technical infeasibility defense, such assertion may only be made by the Vice President for Information Technology or Cabinet-level designee 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. If such a determination is made, the College 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 the College as their nondisabled peers. These files will be maintained by the Office of Disability Services.

- 4) Assessment of Existing Content and Functionality. The Strategic Action Plan will define a detailed approach to ensure that its existing content is appropriately updated to reflect the needs of the community and other users. The College will strive to make its critical and highly utilized online content, including the pages referenced by the Complainant, fully accessible within twelve (12) months. For all other content, the College currently works extremely hard to ensure that its community understands that any accessibility concerns are remedied appropriately and expediently. The College will further publicize these efforts and will seek to provide a dedicated accessibility and usability reporting mechanism on new and existing web content via an institutional template. This accessibility and usability reporting tool, as well as related accessibility mechanisms, will be shared with the College community via email and on the College website for all to view.
- 5) Training. Starting no later than March 2018, and annually thereafter, the College will deliver website accessibility training concerning, among other things, the goals and strategies set forth in the Strategic Action Plan 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. The training will include information about how to comply with the Benchmarks for Measuring Accessibility set forth above.
- 6) Summary Reporting: Given the ongoing nature of ensuring web accessibility on the College's campus and the extensive amount of new online content that will be created and assessed each academic year, the Strategic Action Plan will incorporate specific benchmarks, including timeframes, and internal evaluation efforts that the College will implement on an ongoing basis moving forward. The College will provide to OCR a Summary Report of its efforts to effectuate this Agreement and these ongoing efforts to maintain web accessibility on campus by the beginning of the 2019-2020 academic year. The College will meet and consult with OCR following the submission of this Summary Report and agrees to provide upon request further information to satisfy any specific concerns OCR may raise at that time and until OCR closes the monitoring of this Agreement.

The College understands that OCR will not close the monitoring of this Agreement until OCR determines that the College has fulfilled the terms of this Agreement in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), which were at issue in this case. The College understands that OCR will be under no legal obligation to close its monitoring as of any specific date. However, within thirty days (or a similarly reasonable timeframe) after the College submits its Summary Report, and assuming that OCR in good faith does not raise specific compliance concerns with regard to any reporting obligations set

forth in this Agreement, there will be a rebuttable presumption that OCR will close its monitoring of the College and this Agreement at that time.

The College 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, the College understands that during the monitoring of this Agreement, if necessary, OCR may request such additional reports or data as is relevant and necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), which were at issue in this case.

The College 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, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the College's representative below.

/s/ Kathleen McCartney
Kathleen McCartney, President

October 24, 2017