

## RESOLUTION AGREEMENT

### New York City Department of Education Case Number 02-16-1175

In order to resolve Case No. 02-16-1175, the New York City Department of Education (the NYCDOE) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (the ADA), and its implementing regulation at 28 C.F.R. Part 35.

This Agreement has been entered into voluntarily and does not constitute an admission that the NYCDOE violated Section 504 and Title II and those statutes' implementing regulations.

Assurances of Nondiscrimination. The NYCDOE hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the NYCDOE's programs, benefits, and services, including those delivered through electronic and information technology on the NYCDOE's website, except where providing such opportunity would impose an undue burden or create a fundamental alternation in the nature of a program, service or activity.

Benchmarks for Measuring Accessibility. For the purposes of this Agreement, the accessibility of online content and functionality on the NYCDOE's website 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 for NYCDOE to further comply with the NYCDOE's underlying legal obligations to ensure that people with disabilities are able to acquire the same information, engage in the same interactions, and enjoy the same benefits and services 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 NYCDOE programs, services, and activities delivered online, as required by Section 504 and Title II and their implementing regulations; and that they receive effective communication of the NYCDOE's programs, services, and activities delivered online.

**The NYCDOE voluntarily agrees to take the actions set forth below:**

#### **Remedies and Reporting Requirements**

1) Creation of New Website.

The NYCDOE asserts that it is in the process of creating a completely new website, with an anticipated partial launch during the 2017-2018 school year. Remaining sections will

be launched on a rolling basis, with an anticipated completion by the end of 2019. The NYCDOE's selected vendor for the project is American Eagle/Pru Tech. During the creation of this new website, the NYCDOE will seek input from members of the public with disabilities, including parents, students, employees, and others associated with NYCDOE, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

2) Proposed Policies and Procedures Regarding Creation of New Website, New Intranet, and Individual School Websites

By March 1, 2017, the NYCDOE will submit to OCR for its review and input proposed policies and procedures governing creation of the new NYCDOE website ("the Plan for New Content"). The Plan for New Content will ensure that all new or modified online content and functionality on NYCDOE's new website 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 in the nature of a service, program or activity, or an undue burden. NYCDOE will consider all feedback and recommendations from OCR. NYCDOE understands that if it places links on its website to non-NYCDOE websites that do not provide NYCDOE programs, services, and activities, NYCDOE is not responsible for the accessibility of that content. As part of this Plan for New Content, NYCDOE and/or its vendors will audit the content and functionality of NYCDOE's new website during its creation and development and ensure that all content and functionality on this new website, including but not limited to the home page and all subordinate pages, are accessible to persons with disabilities. This shall include online content and functionality developed by, maintained by, or offered through a third party vendor or an open source through which NYCDOE provides its programs, services or activities, except when doing so would create an undue burden or cause a fundamental alteration. This shall not include sites that are independent of the DOE and do not provide NYCDOE programs, services, or activities, including, but not limited to the sites of other governmental agencies and departments, newspapers, and retirement systems. The Plan for New Content must include sufficient quality assurance procedures, backed by adequate personnel and financial resources, for implementation.

By December 30, 2017, the NYCDOE will submit to OCR a Plan for New Content for its new intranet, similar to the final Plan for New Content created for the NYCDOE's outward-facing website. The anticipated partial launch for the new intranet is the 2018-2019 school year. During the creation of this new intranet, the NYCDOE will seek input from members of the public with disabilities, including parents, students, employees, and others associated with the NYCDOE, and other persons knowledgeable about website accessibility, regarding the accessibility of the content and functionality of its intranet.

By March 31, 2017, the NYCDOE will post a notice on its intranet regarding how employees with disabilities may request accommodations for effective alternative access to content on or functionality of the intranet that is currently inaccessible. Such access shall ensure that, to the maximum extent possible, individuals with disabilities receive the benefits of services provided by the NYCDOE.

By March 1, 2017, NYCDOE will inform all schools that have individual websites (“individual website”) separate from the school websites included in the NYCDOE’s website, that all content and functionality on their individual websites, including but not limited to the home page and all subordinate pages, must be accessible to persons with disabilities, except where making it accessible would result in a fundamental alteration in the nature of a service, program or activity, or an undue burden. The NYCDOE will develop a Plan for New Content for these individual websites, similar to the final Plan for New Content created for NYCDOE’s outward-facing website, by June 30, 2017, with a target date for compliance, by the end of 2020. In the interim, the NYCDOE will inform schools that they must post a notice regarding how individuals with disabilities may request that the webmaster or other appropriate person provide access to online information or functionality that is not currently accessible.

No later than thirty (30) days after receiving OCR’s input on the Plan for New Content for the new website, the NYCDOE will officially adopt and begin implementation of the Plan for New Content, and submit to OCR the final Plan for New Content and evidence of its adoption and distribution.

By July 31, 2017, and every six months thereafter until completion, the NYCDOE will provide to OCR documentation demonstrating the steps the NYCDOE and/or the vendor have taken, pursuant to the Plan for New Content for the new website, for the intranet, and for school-specific websites to ensure that all content and functionality on the new website, the intranet and school-specific websites, including but not limited to the home page and all subordinate pages are accessible to persons with disabilities. This, includes online content and functionality developed by, maintained by, or offered through a third party vendor or an open source through which NYCDOE provides its programs, services or activities, except when doing so would create an undue burden or cause a fundamental alteration. This shall not include sites that are independent of the DOE and to not provide NYCDOE programs, services, or activities, including, but not limited to the sites of other governmental agencies and departments, newspapers, and retirement systems. The July 31, 2017 report will include a description of the steps taken to seek input from members of the public with disabilities, including employees and others associated with the NYCDOE, and other persons knowledgeable about website accessibility, including the content and functionality of its website, intranet, and school specific websites, and a summary of input received and how it was incorporated into the development of the new website, intranet, and school-specific websites.

3) Interim Action Plan.

By February 1, 2017, NYCDOE’s vendor will conduct an audit of the following pages of the District’s existing website, to identify any online content or functionality that is inaccessible to individuals with disabilities: the homepage, and the academics and special education page. The NYCDOE will consult with experts from OCR to determine the feasibility of remediating any inaccessible content or functionality within one month. If it is feasible to remediate such content or functionality within one month, NYCDOE will do so.

Otherwise, such content or functionality will be made accessible on the NYCDOE’s new website as part of the Plan for New Content. Pending completion of the new website, NYCDOE will provide notice to persons with disabilities regarding how to request equally effective alternative access for online content on or functionality of the NYCDOE website that is inaccessible to individuals with disabilities.

4) Notice.

Within 60 days of the date of this Agreement, the NYCDOE will submit to OCR for review and input a proposed Notice to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the NYCDOE regarding) online information or functionality that is currently inaccessible on the NYCDOE website. No later than 60 days after receiving OCR’s input on the proposed Notice, the NYCDOE will consider all feedback and recommendations from OCR and prominently post the Notice on its website; and, provide documentation to OCR regarding the location and content of its published Notice.

5) Training.

The NYCDOE began delivering training on website accessibility to relevant personnel in September 2016. The NYCDOE will continue to provide website accessibility training to all appropriate personnel, including, but not limited to: content developers responsible for creating and uploading content, webmasters, procurement officials, and others responsible for developing, loading, maintaining, or auditing web content and functionality.

By April 30, 2017, the NYCDOE will provide documentation to OCR regarding the training the NYCDOE has provided through that date that conforms with Action Item (5) above. The NYCDOE will submit to OCR, on the same date on an annual basis and continuing until such time as OCR closes monitoring of this Agreement, documentation that the training has been delivered. The documentation will include a list of invitees and attendees, including titles; a description of the delivered training content; and the presenters’ credentials for giving such training.

6) Undue Burden and Fundamental Alteration.

When fundamental alteration or undue burden defenses apply, the Plan for New Content will require the NYCDOE to provide equally effective alternate access. The Plan for New Content will require the NYCDOE, 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, alternates are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities, to the maximum extent possible, the 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.

For any technology-related requirement in this Agreement for which the NYCDOE asserts an undue burden or fundamental alteration defense, such assertion may only be made by the NYCDOE Chancellor or by an individual designated by the Chancellor, and 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. 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, when accessing the NYCDOE website, to the maximum extent possible, individuals with disabilities receive the same benefits or services provided by the NYCDOE as their nondisabled peers.

The NYCDOE understands that OCR will not close the monitoring of this Agreement until OCR determines that the NYCDOE 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), 104.8, and 104.21, and Title II of the ADA, at 28 C.F.R. §§ 35.130, 35.149, and 35.160 (a), which were at issue in this case. The NYCDOE 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 NYCDOE understands that during the monitoring of this Agreement, if necessary, OCR may visit the NYCDOE, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the NYCDOE 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), 104.8, and 104.21, and Title II of the ADA, at 28 C.F.R. §§ 35.130, 35.149, and 35.160 (a), which were at issue in this case. The NYCDOE 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 NYCDOE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

\_\_\_\_\_  
/s/  
New York City Department of Education  
By:

\_\_\_\_\_  
12/23/2016  
Date