

## **RESOLUTION AGREEMENT**

### **Jersey City Public Schools Case Number 02-16-1480**

In order to resolve Case No. 02-16-1480, Jersey City Public Schools (the District) 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.

**Assurances of Nondiscrimination.** The District hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the District'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.

For the purposes of this Agreement, the accessibility of online content and functionality will be measured by reference 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. Notwithstanding the foregoing, the District's compliance with its obligations pursuant to this Agreement shall be measured by its compliance with its 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 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 District programs, services, and activities delivered online, as required by Section 504 and Title II and their implementing regulations;<sup>1</sup> and that they receive effective communication of the District's programs, services, and activities delivered online.

### **Remedies and Reporting Requirements**

- 1) **Proposed Policies and Procedures Regarding New Online Content and Functionality.** By March 15, 2017, the District 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.

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<sup>1</sup> The Parties acknowledge and agree that the District is not required to produce the identical result or level of achievement for disabled and non-disabled persons, but must afford disabled persons equal opportunity to obtain the same result or gain the same benefit in the most integrated setting appropriate to the person's needs

- a) When fundamental alteration or undue burden defenses apply, the Plan for New Content will require the District to provide equally effective alternative access. The Plan for New Content will require the District, 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 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 the District's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
- c) Within sixty (60) days of receiving OCR's approval of the Plan for New Content, the District will officially adopt, and implement the amended policies and procedures.

Reporting Requirement: Within 75 days of receiving OCR's approval, the District 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 the District asserts an undue burden or fundamental alteration defense, such assertion may only be made by the District Board of Education, the Superintendent or by an individual designated by the Board or Superintendent, 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. The written statement will be certified by the determining official. 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 the District as their nondisabled peers.
- 3) Audit of Existing Content and Functionality. By February 20, 2017, the District will propose for OCR's review and approval the identity and bona fides of an Auditor (corporation or individual) to audit all content and functionality on its website, including, but not limited to, the home page, all subordinate pages, and intranet pages and sites, to identify any online content or functionality that is inaccessible to persons with disabilities, including online content and functionality developed by, maintained by, or offered through a third party vendor or 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 the District receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the District will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the District, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

Reporting Requirement:

- (a) By February 20, 2017, the District will submit the *bona fides* 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.
  - (b) Within one hundred fifty (150) days of receiving OCR's approval of the proposed Auditor, the District 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, the District will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the District'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; and
  - (b) setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis, including online content and functionality provided by third party vendors and open sources through which the District provides its programs, services or activities, except when doing so would create an undue burden or cause a fundamental alteration.

In its Corrective Action Plan, the District may propose, as an equally effective alternative, that all online content of agendas and minutes of the District's Board of Education meetings created prior to January 1, 2012 (*available at <http://www.boarddocs.com/nj/jcps/Board.nsf/Public>*), which are not already accessible or otherwise available in a word processing format, will be provided in an accessible form upon request. Notice of this alternative would be prominently displayed on the Public Board Documents page of the website or any successor page, however titled, stating that accessible alternatives are available upon request, and the notice will provide information about how to make such a request. The notice will also state that documents will be provided within five business days of the request. The District must provide a copy of such

proposed notice to OCR in its Corrective Action Plan. All District Board of education agendas and minutes provided as online content shall be subject to full remediation and shall be addressed in the District's Corrective Action Plan beginning with content created on or after January 1, 2012.

In its Corrective Action Plan, the District will acknowledge that if all other inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis, the District will be in violation of this Agreement, and OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement.

- 5) Within 30 days of receiving OCR's approval of the proposed Corrective Action Plan, the District will begin implementing the Corrective Action Plan.

Reporting Requirement:

- (a) Within 45 days of receiving OCR's approval of the proposed Corrective Action Plan, the District 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.
  - (b) Reports will be due every sixth months thereafter until the Corrective Action Plan has been completed.
- 6) Notice. Within 30 days of the date of this Agreement, the District will submit to OCR for review and approval a proposed Notice to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the District 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 formal grievances under Section 504 and Title II of the ADA. Within 10 days of receiving OCR's approval of the proposed Notice, the District will officially adopt and prominently post the approved Notice on its home page and throughout its website (including all subordinate pages and intranet sites).

Reporting Requirement: Within 15 days of receiving OCR's approval of the District's proposed Notice, the District will provide documentation to OCR regarding the locations and content of its published Notice.

- 7) Training. Starting no later than 30 days from this date of this Agreement, and annually thereafter, the District 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:

- (a) For each training session required by this Agreement, until such time as OCR closes the monitoring of this Agreement, the District will submit to OCR documentation that it has been delivered.
  
- (b) 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.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District 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, which were at issue in this case. The District 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 District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the District 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, which were at issue in this case. The District 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 District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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/s/  
Joel Torres  
President, Jersey City Board of Education

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Date

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/s/  
Dr. Marcia V. Lyles  
Superintendent of Schools  
Jersey City Public Schools

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Date