

RESOLUTION AGREEMENT
Montclair State University
Case Number 02-16-2267

In order to resolve Case No. 02-16-2267, Montclair State University (the University) 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 and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35. Although there is currently no legal obligation to do so, the University is voluntarily agreeing to the Benchmarks for Measuring Accessibility in furtherance of this commitment. In the event regulations are adopted by the U.S. Department of Justice and/or U.S. Department of Education after execution of this Resolution Agreement that contain standards for web accessibility inconsistent with this Agreement, the University shall comply the provisions of the regulations without the need to amend this Agreement.

Assurances of Nondiscrimination. The University hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the University'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 University programs, services and activity will be measured according to the W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA for web content, which are incorporated by reference.

Adherence to these accessible technology standards is one way to ensure compliance with the University's underlying legal obligations to ensure people with disabilities who wish to access its online programs, services or activities 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 University 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 University's programs, services, and activities delivered online.

Content and functionality does not include archived web content that: (i) is maintained exclusively for reference, research or recordkeeping; (ii) is not altered or updated after the date of archiving; and (iii) is organized and stored in a dedicated area or areas clearly identified as archived.

For conventional electronic documents (e.g. PowerPoint, Word, PDF, etc.) published prior to January 1, 2012, such documents need not be included in the Audit nor remediated as part of the Corrective Action Plan, below. However, upon request by an end user, the University will remediate such documents within 48 hours, or, if not possible, some other reasonable time period. The University will prominently post a way for end users to request such remediation.

Remedies and Reporting Requirements

1) Proposed Policies and Procedures Regarding New Online Content and Functionality. Within 90 days after approval of the auditor by OCR, the University 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 functionally modified existing University online content and functionality of online programs, services and activities 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 the University to provide equally effective alternative access. The Plan for New Content will require the University, 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.
- c) Within sixty (60) days of receiving OCR’s approval of the Plan for New Content, the University will officially adopt, and fully implement the amended policies and procedures.

Reporting Requirement: Within 45 days of receiving OCR’s approval, the University 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 University asserts an undue burden or fundamental alteration defense, such assertion may only be made by the University President or by an individual designated by the President 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 University as their nondisabled peers.

- 3) Audit of Existing Content and Functionality. Within 150 days after execution of this Resolution Agreement by all parties, the University 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 of University online services, programs and activities, including, but not limited to, the University's home page, all University subordinate pages, and University intranet pages and links to third party sites, to identify online content or functionality that is inaccessible to persons with disabilities. Excluded from the audit are online content and functionality developed by, maintained by, or offered through a third party vendor or an open source that does not deliver University services, programs or activities. 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 University receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the University will also seek input from members of the public with disabilities, and request input from parents, students, employees, and others associated with the University, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

Reporting Requirements:

- a) Within 150 days after execution of this Resolution Agreement by all parties, the University will submit the name, address and credentials 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 ninety (90) days of receiving OCR's approval of the proposed Auditor, the University will submit to OCR documentation of the steps taken and sampling performed by the Auditor in conducting 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. Within 30 days after submitting to OCR the Auditor’s report, the University will submit to OCR for its review and approval a proposed Corrective Action Plan to address that content and functionality for access to the University’s online programs, services and activities that is identified by the University’s Auditor as inaccessible by persons with disabilities. 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 24 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 University online content and functionality on an ongoing basis.

In its Corrective Action Plan, the University will acknowledge that if content or functionality for access to the University’s online programs, services and activities identified during the Audit as inaccessible is not removed or made accessible on a timely basis, the University 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 the Agreement.

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

Reporting Requirements:

- a) Within 45 days of receiving OCR’s approval of the proposed Corrective Action Plan, the University 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 sixth months thereafter until the Corrective Action Plan has been completed.
- 6) Notice. Within 30 days of the date of this Agreement, the University 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 University 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. Within 10 days of receiving OCR’s approval of the proposed Notice, the University will officially adopt and prominently post the approved Notice on its home page and throughout all pages of its website (including all subordinate pages and intranet sites).

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

- 7) Training. Starting no later than 30 days from the approval of the Auditor by OCR and annually thereafter during the term of this Resolution Agreement, the University 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 Requirements:

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

| _____
/s/
For the University

12/16/2016
Date