

## **RESOLUTION AGREEMENT**

### **Seton Hall University OCR Case Number 02-17-2178**

In order to resolve Case No. 02-17-2178, Seton Hall University (the University) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below consistent with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104. 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 that 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 that are less stringent than the web accessibility benchmarks detailed in this Agreement, the University shall be required to comply with the provisions of such regulations.

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 content and functionality will be measured according to the W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, which are incorporated by reference. This agreement does not imply that such standard is required of the University by Section 504 of the Rehabilitation Act or has been adopted as a standard applicable to the University under the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 551 et seq.

Adherence to these accessible technology standards is one way to ensure compliance with the University'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 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 its implementing regulation; and that they receive effective communication of the University's programs, services, and activities delivered online.

### **Remedies and Reporting Requirements**

- 1) Audit of Existing Content and Functionality. By November 1, 2017, 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 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.<sup>1</sup> Excluded, however, 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, including 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.

Neither the Audit nor the Corrective Action Plan referenced below will include documents (including, but not limited to, documents in PowerPoint or Word or PDFs) or webpages created and uploaded to the website prior to January 1, 2015, that have not been edited, updated, or modified in any way since that date. However, upon request by an end-user, the University will reasonably remediate all such materials within forty-eight (48) hours. If, however, it can be documented that such remediation cannot be accomplished within fifteen (15) days, or, as a result of age and/or length, would require individualized manual review requiring more than fifteen (15) days to remediate, the University will promptly enter into an interactive process with the requestor to determine an appropriate accommodation and timeframe or alternative as may mutually be agreed upon. The University will prominently post a way for end-users to request such remediation.

Should the Audit establish that any portions of the University's website (including the websites of the Law School, the Library and/or the Athletics Department) are in compliance with the Benchmarks for Measuring Accessibility set out above, such portions shall not be part of the Corrective Action Plan referenced below.

Reporting Requirements:

- a) By November 1, 2017, the University 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 and twenty (120) days of receiving OCR's approval of the proposed Auditor, the University 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.

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<sup>1</sup> Content and functionality does not include archived web content that: (i) is maintained exclusively for reference, research or record keeping; (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.

- 2) Proposed Corrective Action Plan. Within forty-five (45) days of the submission of the Audit, the University will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the University’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 eighteen (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.

Within forty-five (45) days of receiving OCR’s approval of the proposed Corrective Action Plan, the University will officially adopt and implement the Corrective Action Plan.

Reporting Requirements:

- a) Within forty-five (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.
  - b) Reports will be due every six (6) months thereafter until the Corrective Action Plan has been completed.
- 3) Proposed Policies and Procedures Regarding New Online Content and Functionality. Within ninety (90) days of the 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 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 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. This provision also applies to the University's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
- c) Within forty-five (45) 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 sixty (60) 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.

- 4) 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 University 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.
- 5) Notice. Within thirty (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. Within ten (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 its website (including all subordinate pages and intranet sites).

Reporting Requirement: Within fifteen (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.

- 6) Training. Starting no later than seventy-five (75) days from the date of this Agreement, and annually thereafter, 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, on a semiannual basis, 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 by signing this Agreement, it agrees to provide the foregoing 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 Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4 (a) and (b). Upon completion of the obligations under this Agreement, OCR shall close and dismiss 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.

This Agreement will become effective immediately upon the signature of the University's representative below.

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/s/  
Dr. Mary Meehan  
Interim President  
Seton Hall University

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September 15, 2017  
Date