

## **RESOLUTION AGREEMENT**

### **City University of New York (CUNY) System Case Number 02-17-2197**

In order to resolve Case No. 02-17-2197, the City University of New York (CUNY) System (the CUNY System) assures the U.S. Department of Education, Office for Civil Rights (OCR) that it will take the following actions to comply 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, 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 CUNY System hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the CUNY System'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 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 CUNY System'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 CUNY System programs, services, and activities delivered online, as required by Section 504 and Title II of the ADA and their implementing regulations; and that they receive effective communication of the CUNY System's programs, services, and activities delivered online.

### **Remedies and Reporting Requirements**

- 1) Proposed Policies and Procedures Regarding New Online Content and Functionality. Within 90 days after the effective date of this Agreement, the CUNY System 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 CUNY System to provide equally effective alternative access. The Plan for New Content will require the CUNY System, 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 CUNY System's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.

Reporting Requirement: Within seventy-five (75) days of receiving OCR's approval of the Plan for New Content, the CUNY System will submit to OCR evidence that the CUNY System has adopted, distributed, and begun implementation.

- 2) Undue Burden and Fundamental Alteration. For any technology-related requirement in this Agreement for which the CUNY System asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Chancellor or by an individual designated by the Chancellor who has budgetary authority (such as the Chief Information Officer or the Chief Financial Officer) 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 CUNY System as their nondisabled peers.
- 3) Audit of Existing Content and Functionality. Within 120 days of the date of this Agreement, the CUNY System will propose for OCR's review and approval the identity and *bona fides* of one or more Auditors (company, organization or individual, who may be associated with or be an employee of CUNY or one of its colleges), to audit all content and functionality on its website, which includes the home page, all subordinate pages of its public-facing website, and those non-public facing pages and sites that provide programs, activities, benefits and/or services to students and employees, 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(s) 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 and Corrective Action Plan referenced below will include applicable enterprise-wide applications and services that are managed by the Central Office of CUNY and used throughout the CUNY colleges and units. Should the Auditor(s) be entities or persons whose contract requires approval by the Office of the State Comptroller (“OSC”), the Audit and Corrective Action Plan will not begin until the CUNY System receives the necessary contract approval from OSC. The Audit and Corrective Action Plan will use the Benchmarks for Measuring Accessibility set out above, unless the CUNY System receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the CUNY System will also seek input from members of the public with disabilities, including students, employees, and others associated with the CUNY System, 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 individual course material on CUNY’s Learning Management System that is restricted to particular students enrolled in a particular course. For such courses, the University will provide equally effective alternative access upon request, through CUNY’s Procedures for Implementing Reasonable Accommodations and Academic Adjustments, and shall timely process such requests consistent with CUNY’s policies and procedures governing disability-related accommodations, academic adjustments and auxiliary aids.

Reporting Requirements:

- a) Within 120 days of the date of this Agreement, the CUNY System will submit the *bona fides* of its proposed Auditor(s) to OCR for review and approval. If the CUNY System determines to hire an outside company to conduct the Audit and/or Corrective Action Plan, which requires a formal procurement process, the CUNY System will commence the procurement process to identify a proposed Auditor(s) within 60 days of the date of this Agreement, and it will inform OCR of the identity and *bona fides* of the proposed Auditor(s) within 30 days of the selection of an Auditor under the procurement process. OCR will evaluate whether the proposed Auditor(s) have the requisite experience and knowledge to carry out an appropriate Audit and to develop a Proposed Corrective Action Plan.
  - b) Within 120 days of receiving OCR’s approval of the proposed Auditor(s), or, if the Auditor(s) were selected under a procurement process, the date of OSC’s approval of the Auditor(s), the CUNY System will submit to OCR documentation of the steps taken by the Auditor(s) during the Audit, a description of the outreach it undertook and the input they received, and a detailed accounting of the results of the Audit.
- 4) Proposed Corrective Action Plan. Simultaneously with the submission of the results of the Audit to OCR if the Auditor is a CUNY employee, or within 90 days of the submission of the Audit if the Auditor is external to CUNY, the CUNY System will submit to OCR for

its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the CUNY System’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 24 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.
- 5) Within 30 days of receiving OCR’s approval of the proposed Corrective Action Plan, the CUNY System will adopt and begin implementing the Corrective Action Plan.

Reporting Requirements:

- a) Within 45 days of receiving OCR’s approval of the proposed Corrective Action Plan, the CUNY System will submit to OCR documentation establishing that the approved Corrective Action Plan is being implemented according to the approved schedule.
  - b) Following this first report, reports will be due every six months thereafter until the Corrective Action Plan has been completed. Along with any of these reports, the CUNY System may submit to OCR for its review and approval a request for an extension of time to address problems identified during the implementation of the Corrective Action Plan that require additional time to resolve; such a request shall be accompanied by a written statement identifying the problem and explaining why it cannot be resolved within the proposed timeframe.
- 6) Notice. Within 30 days of the date of this Agreement, the CUNY System will submit to OCR for review and approval a proposed Notice to individuals with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the CUNY System 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.

Reporting Requirement: Within 15 days of receiving OCR’s approval of the CUNY System’s proposed Notice, the CUNY System will provide documentation to OCR that the CUNY System has prominently posted the approved Notice, or a link thereto, on its home page and throughout its website.

- 7) Training. Starting no later than 120 days from this date of this Agreement, and annually thereafter until such time as OCR closes the monitoring of this Agreement, the CUNY System will deliver website accessibility training, which may be in online format, to all appropriate personnel, including, but not limited to: key content developers responsible for content within the scope of the Audit and Corrective Action Plan, 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 CUNY System 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 CUNY System 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 CUNY System understands that during the monitoring of this Agreement, if necessary, OCR may visit the CUNY System, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the CUNY System 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) and Title II of the ADA, at 28 C.F.R. §§ 35.130 and 35.160. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The CUNY System 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 CUNY System 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 CUNY System's representative below.

December 5, 2017

/s/

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Date

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James B. Milliken, Chancellor (or designee)  
City University of New York