

RESOLUTION AGREEMENT

City University of New York, Kingsborough Community College Case No. 02-17-2237

In order to resolve Case No. 02-17-2237, City University of New York, Kingsborough Community College (the College) 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

Assurances of Nondiscrimination. The College hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the College'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 College'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 College programs, services, and activities delivered online, as required by Section 504 and the ADA and their implementing regulations; and that they receive effective communication of the College'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 College 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 College to provide equally effective alternative access. The Plan for New Content will require the College, 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 College's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.

Reporting Requirement: Within 75 days of receiving OCR's approval of the Plan for New Content, the College will submit to OCR evidence that the College has adopted, distributed, and begun implementation.

- 2) Undue Burden and Fundamental Alteration. For any technology-related requirement in this Agreement for which the College asserts an undue burden or fundamental alteration defense, such assertion may only be made by the President of the College 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 College as their nondisabled peers.
- 3) Audit of Existing Content and Functionality. Unless the College determines to hire an outside company to conduct the Audit and/or create a Corrective Action Plan as provided in subsection (a) below, which requires a formal procurement process to identify a proposed Auditor(s), then within 120 days of the date of this Agreement, the College 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 the College) 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. If the College determines to hire an outside company to conduct the Audit and/or create a Corrective Action Plan, which requires a formal procurement process, then the College will commence the procurement process within 60 days of the date of this agreement and provide the identity and *bona fides* of the Auditor(s) within 30 days of the selection of the Auditor(s) under the procurement process. The audit will not include the enterprise-wide applications and systems, such as Blackboard and Peoplesoft, which is maintained solely by CUNY and is outside the College's control, because those applications and systems are being addressed under OCR Case No. 02-17-2197. 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 Proposed Corrective Action Plan may include a recommendation that the College create a new website. 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 College 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 College receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the College will also seek input from members of the public with disabilities, including students, employees, and others associated with the College, 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 College 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 Requirement:

- (a) Within 120 days of the date of this Agreement, the College will submit the *bona fides* of its proposed Auditor(s) to OCR for review and approval. Notwithstanding the foregoing, if the College determines to hire an outside company to conduct the Audit and/or create a Corrective Action Plan, which requires a formal procurement process to identify a proposed Auditor(s), then in lieu of submitting *bona fides* as provided above, the College 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(s) 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. Alternatively, if the CUNY System commences a procurement process to identify an Auditor(s) consistent with its Resolution Agreement in OCR Case No. 02-17-2197, and the College wishes to use the Auditor(s) selected under that procurement

process, it will inform OCR of that intention within 90 days of the date of this Agreement.

- (b) Within 120 days of receiving OCR’s approval of the proposed Auditor(s) under the time frames set forth in subsection (a) above, the College 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 results of the Audit to OCR if the Auditor is a CUNY or College employee, or within 90 days of the submission of the Audit if the Auditor is external to the College, the College will submit to OCR for its review and approval a proposed Corrective Action Plan, which may include a recommendation that the College create a new website, to address all inaccessible content and functionality identified during the College’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 College will officially adopt and implement the Corrective Action Plan.

Reporting Requirement:

- (a) Within 45 days of receiving OCR’s approval of the proposed Corrective Action Plan, the College 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) Following this first report, reports will be due every six months until the Corrective Action Plan has been completed. Along with any of these reports, the College 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 College will submit to OCR for review and approval a proposed notice to persons with disabilities (Notice) regarding how to request the webmaster or other appropriate person to provide access to (or notify the College 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 the ADA.

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

- 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 College 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 Requirement:

- (a) For each training session required by this Agreement, until such time as OCR closes the monitoring of this Agreement, the College 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 College 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 College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College 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 104.43, and the ADA, at 28 C.F.R. §§ 35.130 and 35.160. Upon completion of the obligations under this Agreement, OCR shall close this case.

The College 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 College 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 College's representative below.

_____/s/_____
Peter M. Cohen
Interim President
City University of New York,
Kingsborough Community College

_____12/27/2017_____
Date