

## **RESOLUTION AGREEMENT**

### **State University of New York, Downstate Medical Center Case No. 02-17-2447**

In order to resolve Case No. 02-17-2447, the State University of New York (SUNY), Downstate Medical Center (hereinafter “DMC”) 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), 42 U.S.C. Sections 12131 *et seq.*, 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. This agreement does not constitute an admission of liability, non-compliance, or wrongdoing by DMC.

Assurances of Nondiscrimination. DMC hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in DMC’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 DMC’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 Center 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 DMC’s programs, services, and activities delivered online.

### **Remedies and Reporting Requirements**

New Website. DMC plans to launch an entirely new website in late 2018.

- 1) Proposed Policies and Procedures Regarding New Online Content and Functionality. By April 15, 2018, DMC will submit to OCR for its review and approval proposed policies and procedures (“Web Accessibility Policy”) 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 Web Accessibility Policy will require DMC to provide equally effective alternative access. The Web Accessibility Policy will require DMC, 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 Web Accessibility Policy must include sufficient quality assurance procedures, backed by adequate personnel and financial resources, for full implementation. This provision also applies to DMC's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
- c) Within thirty (30) days of receiving OCR's approval of the Web Accessibility Policy, DMC will officially adopt, and fully implement the amended policies and procedures.

Reporting Requirement: Within 45 days of receiving OCR's approval of the Web Accessibility Policy, DMC will submit to OCR the approved Web Accessibility Policy, and evidence of its adoption and distribution.

- 2) Undue Burden and Fundamental Alteration. For any technology-related requirement in this Agreement for which DMC asserts an undue burden or fundamental alteration defense, such assertion may only be made by the President of DMC or designee, 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. 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 DMC as their nondisabled peers.
- 3) Audit of Existing Content and Functionality. Within 120 days of the date of this agreement, DMC will propose for OCR's review and approval the identity and *bona fides* of an Auditor (corporation or individual, who may be an employee of DMC) to audit all content and functionality on its existing website, including, but not limited to, the home page, all subordinate pages, and intranet pages and sites used to access DMC's programs, services, and activities, 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. If DMC opts to undertake a competitive procurement for such Auditor pursuant to State law, OCR will review and approve the minimum qualifications to be included in such procurement upon the request of DMC; and, DMC may request an extension for providing the identity and *bona fides* of the Auditor to OCR under this action item, based on required timelines for the competitive procurement process. Consent to such extension shall not be unreasonably withheld by OCR. The Audit will use the Benchmarks for Measuring Accessibility set out above, unless DMC receives prior permission from OCR to use a different standard as a benchmark. During the Audit, DMC will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with DMC, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

a) Reporting Requirement:

- i) Within 120 days of the date of this agreement, DMC will submit the *bona fides* of its proposed Auditor to OCR for review and approval. DMC may request an extension for providing the identity and *bona fides* of the Auditor to OCR based on required timelines for the competitive procurement process. 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.
  - ii) Within ninety (90) days of receiving OCR's approval of the proposed Auditor, and/or the retention of the Auditor if DMC opts to undertake a competitive procurement for such Auditor pursuant to State law, whichever is later, DMC 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 (per Paragraph 3(a)(ii)), DMC will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during DMC'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; (b) setting up systems of accountability and verifying claims of accessibility by vendors or open sources and that are used to access DMC's programs, services, and activities; and (c) 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, DMC will officially adopt and implement the Corrective Action Plan.

- (a) Reporting Requirement: Within 45 days of receiving OCR's approval of the proposed Corrective Action Plan, DMC will submit to OCR written confirmation that the Corrective Action Plan is being implemented according to the approved schedule. DMC will submit subsequent Reports describing action taken in compliance with the Corrective Action Plan every six months thereafter until the Corrective Action Plan has been completed.
- 6) Notice. Within 30 days of the date of this Agreement, DMC 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 DMC 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. Within 10 days of receiving OCR's approval of the proposed Notice, DMC will officially adopt and prominently post the approved Notice, or a link thereto, on its home page and throughout its website (including all subordinate pages and intranet sites).
  - a) Reporting Requirement: Within 15 days of receiving OCR's approval of DMC's proposed Notice, DMC will provide documentation to OCR regarding the location(s) and content of its published Notice.
- 7) Training. Starting no later than February 15, 2018, and at least annually thereafter, DMC 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.
  - (a) Reporting Requirement: For each training session required by this Agreement, until such time as OCR closes the monitoring of this Agreement, DMC will submit to OCR documentation that it has been delivered. 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.

DMC 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, DMC understands that during the monitoring of this Agreement, if necessary, OCR may visit DMC, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether DMC 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.

DMC 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 DMC 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 DMC's representative below.

11/17/17

\_\_\_\_\_  
Date

/s/

\_\_\_\_\_  
Heidi Aronin  
Chief Administrative Officer  
SUNY Downstate Medical Center