

**Resolution Agreement**  
**Pennsylvania Department of Education**  
**Case Number 03164023**

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation into allegations that the Pennsylvania Department of Education (“PDE”) violated 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. Specifically, the complainant alleged that PDE’s website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in PDE’s programs, services, and activities and denying them effective communication necessary for full participation in PDE’s programs, services, and activities.

Assurances of Nondiscrimination. PDE hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in PDE’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 PDE’s underlying legal obligations to ensure 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 PDE program, service, and activity delivered online, as required by Section 504 and Title II and their implementing regulations; and that they receive effective communication of PDE’s programs, services, and activities delivered online.

PDE voluntarily agrees to take the actions set forth below but asserts that its agreement does not constitute either an implicit or explicit admission that PDE violated 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.

**Remedies and Reporting**

- 1) Proposed Policies and Procedures for New Online Content and Functionality. By January 15, 2017, PDE 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. It is acknowledged that upon notification by OCR of the underlying investigation, PDE developed and implemented a practice to ensure that all new content posted on PDE’s website does not contain barriers to access. This practice will form the basis of PDE’s Plan for New Content.

- a) When fundamental alteration or undue burden defenses apply, the Plan for New Content will require PDE to provide equally effective alternative access. The Plan for New Content will require PDE, 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 PDE's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
  - c) Within sixty (60) days of receiving OCR's approval of the Plan for New Content, PDE will officially adopt and fully implement the amended policies and procedures.
  - d) Reporting: Within sixty (60) days of receiving OCR's approval, PDE 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 PDE asserts an undue burden or fundamental alteration defense, such assertion may only be made by PDE Secretary or by an individual designated by the Secretary 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 signed by the determining official. If such a determination is made, the 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 PDE as their nondisabled peers.
  - 3) Audit of Existing Content and Functionality. By January 16, 2017, PDE 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 public facing internet website, including, but not limited to, the home page, all subordinate 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. 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 PDE receives prior permission from OCR to use a different standard as a benchmark. During the Audit, PDE may also seek input from members of the public with disabilities, including parents, students, employees, and others associated with PDE, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

- a) Reporting: By February 17, 2017, PDE 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. Within one-hundred and eighty (180) days of receiving OCR's approval of the proposed Auditor, PDE 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, PDE will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during PDE's Audit. The proposed Corrective Action Plan will set out a detailed schedule for: (1) 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; (2) setting up systems of accountability and verifying claims of accessibility by vendors or open sources; and setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis. In its Corrective Action Plan, PDE will note that if all inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis, PDE could 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 sixty (60) days of receiving OCR's approval of the proposed Corrective Action Plan, PDE will officially adopt and implement the Corrective Action Plan.
  - a) Reporting: Within ninety (90) days of receiving OCR's approval of the proposed Corrective Action Plan, PDE 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 sixty (60) days of the date of this Agreement, PDE 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 PDE 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 twenty-one (21) days of receiving OCR's approval of the proposed Notice, PDE will officially adopt and prominently post the approved Notice on its home page and throughout its website (including all subordinate pages) to the extent such action has not already been taken. It is acknowledged that upon notification by OCR of the underlying investigation, PDE added a Notice throughout its website, which will form the basis of PDE's proposed Notice required by this paragraph.
  - a) Reporting. Within twenty-one (21) days of receiving OCR's approval of PDE's proposed Notice, PDE will provide documentation to OCR regarding the locations and content of its published Notice.
- 7) Training. Beginning in March of 2017, PDE will deliver annual website accessibility training to all appropriate personnel, which can include, but is not limited to: content developers, webmasters,

procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality. It is acknowledged that upon notification by OCR of the underlying investigation, PDE, through Pennsylvania Interactive (PAI), developed and presented a training module entitled, "The Key to Making the Web Accessible in SharePoint," to PDE employees responsible for creating material to be posted on PDE's website.

- a) Reporting: Within sixty (60) days of the annual training required by this paragraph, PDE will provide to OCR, for each training session required by this Agreement and until such time as OCR closes the monitoring of this Agreement, 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, the date of training; and the presenters' credentials for giving such training.
- 8) PDE understands that OCR will not close the monitoring of this Agreement until OCR determines that PDE 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.
- 9) PDE 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, PDE understands that during the monitoring of this Agreement, if necessary, OCR with prior notice and confirmation by PDE's legal counsel, may visit PDE, interview staff covered by this Agreement, and request such additional reports or data, as permitted by law including , as necessary for OCR to determine whether PDE 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.
- 10) PDE 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 PDE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.
- 11) It is further acknowledged that if at any time during the compliance and monitoring period of this agreement, PDE is unable to meet any deadline or action item articulated in this agreement herein, PDE will notify OCR on or prior to the deadline date of the reason for the delay and the expected date of completion. OCR will grant an extension for good cause shown.

/s/

9/6/16

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Secretary (or designee)  
Pennsylvania Department of Education

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Date