

Resolution Agreement
Delaware Department of Education
Case Number 03164027

The Delaware Department of Education (DDOE) voluntarily submits this Resolution Agreement to the U.S. Department of Education, Office for Civil Rights (OCR) for the purpose of resolving, in accordance with OCR's requirements, the above-referenced case, which is a complaint alleging violations of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131*et seq.* and its implementing regulation at 28 C.F.R. Part 35. Specifically, the complainant alleged that the State's website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the State's programs, services, and activities and denying them effective communication necessary for full participation in the State's programs, services, and activities.

This Resolution Agreement is submitted voluntarily and does not constitute an admission that DDOE violated Section 504 and Title II of the ADA and those statutes' implementing regulations.

Assurances of Nondiscrimination. DDOE hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the State'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 Resolution 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 DDOE'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 State programs, services, and activities delivered online, as required by Section 504 and Title II and their implementing regulations; and that they receive effective communication of the State's programs, services, and activities delivered online.

DDOE voluntarily agrees to take the actions set forth below.

Remedies and Reporting

1) Proposed Policies and Procedures Regarding New Online Content and Functionality. Within

ninety (90) working days from the signing of this Resolution Agreement, DDOE 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 DDOE to provide equally effective alternative access. The Plan for New Content will require the State, 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 State'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) working days of receiving OCR's approval of the Plan for New Content, DDOE will officially adopt, and fully implement the amended policies and procedures.
- d) Reporting: Within ninety (90) working days of receiving OCR's approval, the State 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 Resolution Agreement for which the State asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Delaware Secretary of Education 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 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 DDOE as their nondisabled peers.

- 3). Audit of Existing Content and Functionality. Within 120 working days of the execution of this Resolution Agreement, DDOE will, in accordance with the requirements of Delaware's Procurement System law, submit for OCR review and approval, either a proposed Request for Proposal (RFP) for an Auditor (corporation or individual) or the credentials of a State of Delaware approved 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. 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 DDOE receives prior permission from OCR to use a different standard as a benchmark. During the Audit, DDOE will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the State, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.
 - a) Reporting: Within thirty (30) working days of the conclusion of the procurement process, DDOE will submit the results of the process and the identity and bona fides of the successful bidder. Within ninety (90) working days of OCR's approval of the proposed bidder, and within thirty (30) working days of entering into a contract for services with the successful bidder, DDOE 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. Within ninety (90) working days of the conclusion of the Audit, DDOE will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the 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, the State will acknowledge that if all inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis, the State will be in violation of this Resolution Agreement, Section 504, and Title II and OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Resolution Agreement.

- 5) Within sixty {60} working days of receiving OCR's approval of the proposed Corrective Action Plan, DDOE will officially adopt and implement the Corrective Action Plan.
 - a) Reporting: Within ninety (90) working days of receiving OCR's approval of the proposed Corrective Action Plan, DDOE 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} working days of the date of this Resolution Agreement, DDOE 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 State 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 (20) working days of receiving OCR's approval of the proposed Notice, the State will officially adopt and prominently post the approved Notice on its home page and throughout its website (including all subordinate pages and intranet sites).
 - a) Reporting: Within thirty {30} working days of receiving OCR's approval of the State's proposed Notice, the State will provide documentation to OCR regarding the locations and content of its published Notice.

- 7) Training. Starting no later than ninety (90) working days from this date of the execution of this Resolution Agreement, and annually thereafter, DDOE will ensure that website accessibility training is provided to all appropriate DDOE 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 for or on behalf of DDOE.
 - a) Reporting: Within sixty (60) working days of the training, for each training session required by this Resolution Agreement, until such time as OCR closes the monitoring of this Resolution Agreement, DDOE will submit to OCR documentation that it has been delivered. The documentation will include a list of invitees and attendees, including titles if known; a description of the delivered training content, and date of the training; and the presenters' credentials for giving such training.

- 8) DDOE understands that OCR will not close the monitoring of this Resolution Agreement until OCR determines that DDOE has fulfilled the terms of this Resolution 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) DDOE also understands that by signing this Resolution Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements

of this Resolution Agreement. Further, DDOE understands that during the monitoring of this Resolution Agreement, if necessary, OCR may visit DDOE, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether DDOE has fulfilled the terms of this 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) DDOE understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Resolution Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Resolution Agreement, OCR shall give the State written notice of the alleged breach and sixty (60) days to cure the alleged breach.
- 11) It is further acknowledged that if at any time during the compliance and monitoring period of this Resolution Agreement DDOE is unable to meet any deadline or action item articulated in this Resolution Agreement herein, DDOE 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/
Secretary
Delaware Department of Education

10/25/16
Date