

Resolution Agreement
West Virginia Higher Education Policy Commission
Case Number 03-17-4045

The U.S. Department of Education, Office for Civil Rights (OCR), and the West Virginia Higher Education Policy Commission (WVHEPC) enter into this Agreement to resolve the allegation in the above-referenced complaint. This Agreement does not constitute an admission of liability, or non-compliance by WVHEPC. WVHEPC assures OCR that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 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.

Prior to the completion of OCR's investigation, WVHEPC agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual (CPM). Accordingly, WVHEPC voluntarily agrees to take the actions set forth below.

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

Remedies and Reporting

- 1) Proposed Policies and Procedures Regarding New Online Content and Functionality. By January 30, 2018, WVHEPC 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 WVHEPC to provide equally effective alternative access. The Plan for New Content will require WVHEPC, 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 WVHEPC'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, WVHEPC will officially adopt, and fully implement the amended policies and procedures.
 - d) Reporting: Within seventy-five (75) days of receiving OCR's approval, WVHEPC 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 WVHEPC asserts an undue burden or fundamental alteration defense, such assertion may only be made by the WVHEPC Chancellor or by an individual designated by the Chancellor 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 WVHEPC as their nondisabled peers.
 - 3) Audit of Existing Content and Functionality. By January 31, 2018, WVHEPC 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 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 WVHEPC receives prior permission from OCR to use a different standard as a benchmark. During the Audit, WVHEPC will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with WVHEPC, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

- a) Reporting: By January 31, 2018, WVHEPC will propose for OCR review and approval the identity and bona fides of its proposed Auditor. 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-twenty (120) days of receiving OCR's approval of the proposed Auditor, WVHEPC 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, WVHEPC will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during WVHEPC'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.
- 5) Within sixty (60) days of receiving OCR's approval of the proposed Corrective Action Plan, WVHEPC will officially adopt and implement the Corrective Action Plan.
 - a) Reporting: Within seventy-five (75) days of receiving OCR's approval of the proposed Corrective Action Plan, WVHEPC 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 six months thereafter until the Corrective Action Plan has been completed.
- 6) Notice. Within sixty (60) days of the date of this Agreement, WVHEPC 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 WVHEPC 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. Within forty (40) days of receiving OCR's approval of the proposed Notice, WVHEPC 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 forty-five (45) days of receiving OCR’s approval of WVHEPC’s proposed Notice, WVHEPC will provide documentation to OCR regarding the locations and content of its published Notice, including ensuring that the Notice is linked from every page

- 7) Training. Starting no later than ninety (90) days from this date of this Agreement, and annually thereafter, WVHEPC 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: For each training session required by this Agreement, until such time as OCR closes the monitoring of this Agreement, WVHEPC 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.

- 8) WVHEPC also understands that by signing this Agreement, it agrees to provide and the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, WVHEPC understands that during the monitoring of this Agreement, if necessary, OCR may visit WVHEPC, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether WVHEPC 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, 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.

- 9) WVHEPC 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 WVHEPC 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 Recipient’s representative below.

<u>/s/</u>	<u>10/18/2017</u>
_____	_____
Chancellor or Designee	Date
WVHEPC	
<u>/s/</u>	<u>10/20/2017</u>
_____	_____
OCR Philadelphia Director or Designee	Date