

Resolution Agreement
Burlington Community School District
Case Number 05-17-1206

The U.S. Department of Education, Office for Civil Rights (OCR) and the Burlington Community School District (District) enter into this agreement to resolve the allegation in the above-referenced complaint. This agreement has been entered into voluntarily, and does not constitute an admission of liability, non-compliance, or wrongdoing by the District. The District 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. § 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. § 12132, and its implementing regulation, at 28 C.F.R. Part 35 (collectively referred to as the “Federal Anti-Disability Discrimination Laws”). The complaint specifically alleges the District’s website contains barriers to access for people with disabilities, thereby denying them effective communication and an equal opportunity to participate in the District’s programs, services, and activities.

I. Nondiscrimination

- 1) Assurances of Nondiscrimination. The District hereby reaffirms its commitment to comply with the Federal Anti-Disability Discrimination Laws as applicable to the District, including ensuring that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the District’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, as such terms are defined under such Laws.
- 2) Benchmarks for Measuring Accessibility. For the purposes of this Agreement, the accessibility of online content and functionality will be measured according to the World Wide Web Consortium’s (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 techniques for web content, which are incorporated by reference (the “Benchmarks”).

The parties agree adherence to these Benchmarks is one way to ensure compliance with the District’s underlying legal obligations to ensure people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the District’s programs, benefits, and services, including those delivered through electronic and information technology, as required by the Federal Anti-Disability Discrimination Laws and their implementing regulations; and that they receive effective communication of the District’s programs, services, and activities delivered online, except where doing so would impose a fundamental alteration or undue burden as defined by such laws and described below.¹

¹ This Agreement does not imply that conformity with the Benchmarks and/or other electronic information technology standards are required to comply with the requirements of either Section 504 or Title II of the ADA.

II. Remedies and Reporting

In order to resolve OCR complaint #05-17-1206. The District voluntarily agrees to take the actions set forth below:

- 1) Policies and Procedures Regarding New Online Content and Functionality. By September 30, 2017, the District will submit to OCR for its review and approval proposed policies and procedures (“the Plan for New Content”) to ensure that all new or newly-added online content and functionality will be accessible to people with disabilities as measured by the Benchmarks set forth above, except where doing so would impose a fundamental alteration or undue burden, as those terms are defined under the Federal Anti-Disability Discrimination Laws.
 - a. Contents: Specifically, the Plan for New Content must:
 - i. Explain what procedures the District will take when online content is added to the District’s webpage and how such procedures will ensure accessibility to people with disabilities consistent with this Agreement, including the District’s online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources;
 - ii. Contain a statement that, if conformance with any Benchmark constitutes a fundamental alteration or undue burden, the District shall provide equally effective alternative access. Providing “equally effective alternative access” means the District will take any actions that do not result in a fundamental alteration or undue financial and administrative burdens, but nevertheless ensures that, to the maximum extent possible, individuals with disabilities receive the same benefits or services as their nondisabled peers. 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; and
 - iii. Contain a statement that the Plan for New Content is backed by adequate personnel and financial resources for implementation. This provision also applies to the District’s online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
 - b. Approval: Within thirty (30) days of receiving OCR’s approval of the Plan for New Content, the District will officially adopt and fully implement the Plan for New Content.
 - c. Reporting: Within forty-five (45) calendar days of receiving OCR’s approval, the District 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 the District asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Superintendent or by an individual designated by the Superintendent 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, as defined in Section II(1)(a)(ii).
 - a. Reporting: Within 30 calendar days of making the determination that any technical requirement imposed by this Agreement constitutes a fundamental alteration or undue burden as such terms are defined by applicable law and herein, the District will submit the written statement and appropriate supporting documentation to OCR for review and approval.

- 3) Development and Maintenance of Accessible Website Content
 - a. Audit of Existing Content and Functionality. By December 1, 2017, the District will propose for OCR’s review and approval the identity and credentials 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 sites, to identify any online content or functionality that is not in compliance with the Benchmarks, 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 the District receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the District will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the District, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality, as appropriate.
 - b. Reporting: By December 1, 2017, the District will submit the credentials 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 ninety (90) calendar days of receiving OCR’s approval of the proposed Auditor, the District 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 (the “Audit Report”).

- 4) Proposed Corrective Action Plan. By April 30, 2018, the District will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the District’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; (3) setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis; and (4) updating the website and online content for the District in conformance with the Benchmarks set forth in this Agreement (the “Updated Website”). If the Website Technician encounters a technical requirement imposed by this Agreement which constitutes a fundamental alteration or undue burden as such terms are defined by applicable law and herein during this development process, the District shall follow the process in Section II(2) to report or submit a written statement and appropriate supporting documentation to OCR for review and approval.
 - a. Reporting: Within 45 calendar days of receiving OCR’s approval of the proposed Corrective Action Plan, the District 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.
- 5) Notice. Upon execution of this Agreement, the District shall post the Notice attached hereto as Exhibit A on its home page and throughout its website (including all links on subordinate pages and intranet sites).
- 6) Training. By January 31, 2018, and annually thereafter, the District will deliver website accessibility training to all appropriate District personnel, including, but not limited to: communications staff, webmasters, and all others responsible for developing, loading, maintaining, or auditing web content and functionality. The District will submit to OCR documentation that this training has been delivered, 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 District also 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 District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the District 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 104.21, and Title II, at 28 C.F.R. §§ 35.130, 35.149, and 35.160. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The District 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 District 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 University's representative below.

On Behalf of the District

Date

EXHIBIT A

The Burlington Community School District complies with the Americans with Disabilities Act (ADA), Iowa Civil Rights Act (ICRA), and Section 504 of the Rehabilitation Act in ensuring people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the district's programs, benefits, and services, including those delivered through electronic and information technology. For requests or inquiries regarding access to the district's webpage or another electronic resource, please contact Brian Johnson, Supervisor of Technology Services, at (319)758-0060 Ext. 1431 or brian.johnson@bcsds.org. Information on how to reach the District's Section 504/Equity Coordinator and applicable grievance procedures are available here: <http://www.bcsds.org/equal-educational-oppertunities>.