

Resolution Agreement

South Dakota Department of Education OCR Docket No. 07-19-5911

To resolve the above-referenced directed investigation brought under Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (Title II), the Office for Civil Rights (OCR) of the U.S. Department of Education and the South Dakota Department of Education (the Recipient) enter into the following Agreement. This Agreement is entered into voluntarily, and it does not constitute an admission of liability, non-compliance, or wrongdoing by the Recipient.

The Recipient will engage in the following activities to ensure its programs, services, and activities communicated or facilitated online are accessible to people with disabilities:

1. Adopt an Accessibility Standard. Within 30 days of signing this Agreement, the Recipient will adopt a widely-accepted accessibility standard, such as the Web Content Accessibility Guidelines (WCAG), version 2.1, level AA, or another standard that requires an equivalent level of accessibility for people with disabilities.
 - a. Reporting Provision: Within 30 days of signing this Agreement, the Recipient will submit for OCR's review and approval its chosen accessibility standard.
2. Provide Notice. Within 30 days of signing this Agreement, the Recipient will prominently post a fully-accessible Notice on the Recipient's website describing how people with disabilities can inform the Recipient of any technology-based barriers to access they have encountered and how they can request access to the underlying Recipient program, service, or activity.
 - a. Reporting Provision: Within 30 days of signing this Agreement, the Recipient will submit for OCR's review and approval the location and content of its Notice, as well as protocols and timeframes for responding to reports of barriers.
3. Conduct an Audit. Within 120 days of signing this Agreement, the Recipient shall complete an Audit to identify barriers to access to its online programs, services, and activities. The Audit shall consist of taking an inventory and engaging in manual testing to identify barriers, as follows:
 - a. Undertake an Inventory of Pages to be Tested. The inventory will consist of: (1) URLs on the Recipient's domain, including the Recipient's homepage, first-level landing pages, and all web page templates not otherwise captured; and (2) all URLs outside of the Recipient's domain, including those on all vendor-hosted or third-party-hosted sites, including social media sites and video hosting services used by the Recipient to communicate or facilitate its programs, services, and activities to members of the public.
 - b. Engage in Manual Testing to Identify Barriers. For all pages (and associated electronic documents and videos) in the inventory undertaken pursuant to the preceding paragraph, the Recipient will engage in robust manual testing to identify

- barriers to access for people with disabilities. The testing shall, at a minimum, meaningfully incorporate the protocols and address the questions set out in Appendix A. Vendor or third-party hosted pages in its inventory will be assessed alongside those over which the Recipient has full operational control.
- c. Reporting Provision: Within 120 days of signing this Agreement, the Recipient will submit for OCR's review and approval the results of its Audit, including the URLs for all inventoried pages, its testing protocols, and detailed testing results for each tested URL including associated electronic documents and videos.
4. Engage in Remediation. As barriers are identified, the Recipient will remediate those barriers; all barriers will be remediated fully within six months of the signature date of this Agreement. Barrier remediation will conform to the Recipient's chosen accessibility standard.
- a. Where barrier removal would impose an undue burden or fundamental alteration under Section 504 or Title II, the Recipient will provide alternate measures that, at a minimum, afford a person with a disability the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services, programs, and activities as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use.
- b. Where the Recipient does not have the ability to effectuate immediate, full remediation of a vendor's or third party's technology, the Recipient will request that the vendor complete its remediation of all barriers within six months of the signature date of this Agreement, and the Recipient will immediately offer appropriate interim alternate measures until the technology has been verified to be barrier-free including, but not limited to, prominently posting a way for people with disabilities to request access to the same information using an alternative method. If the vendor or third party fails to remediate timely all barriers, the Recipient will exercise all avenues for compliance, including seeking to replace the vendor or moving or duplicating the programs, services, and activities to a digital venue within the Recipient's control. The Recipient will continue to provide interim alternate measures until the barriers have been remediated.
- c. If the Recipient replaces a technology vendor, or moves from an in-house technology to a vendor-hosted technology, the Recipient will follow these steps, at a minimum, during its procurement process to achieve compliance:
- i. In any requests for proposals, the Recipient will require bidders to commit to remediate noted barriers so the technology conforms to the Recipient's adopted accessibility standard prior to delivery and throughout the life of the contract.
- ii. Before determining a winning bidder, the Recipient will select the product that most closely conforms to the Recipient's adopted accessibility standard; if

there are two or more products that equally conform to such standard, the Recipient may employ other factors to decide the winning bid. The Recipient will engage in independent testing or otherwise confirm the validity of any vendor-offered accessibility assessment of its own product.

- d. Reporting Provision: Each time the Recipient determines alternate measures are required in lieu of immediate barrier removal, it will immediately submit those proposed measures to OCR for review and approval. If the alternate measures are being proposed to overcome a perceived undue burden or fundamental alteration, the Recipient will clearly indicate the factors it considered in making such a determination, for OCR's review and approval. No later than six months after this Agreement was signed, the Recipient will notify OCR that it has fully remediated all barriers identified on the inventoried pages, including associated electronic documents and videos.
5. Update Testing and Remediation Protocols. Upon receipt of the notice provided in the preceding paragraph, or earlier if requested by the Recipient, OCR will assess the effectiveness of the Recipient's testing protocols and remediation steps by conducting its own testing on a representative sample of the web pages, electronic documents, and videos identified by the Recipient pursuant to paragraph 3(c), using the Recipient-adopted standard as an appropriate measure of compliance. The Recipient will then participate in all video conferences requested by OCR, and, when appropriate, request that relevant vendors participate in such conferences, so OCR can share concerns or violations regarding any remaining barriers that impede the ability of people with disabilities to have equal opportunities to enjoy the Recipient's underlying programs, services, and activities. These video conferences may also address any noted deficiencies regarding the Recipient's Notice.
 - a. Based on OCR's concerns or violations shared during the video conferences, the Recipient will:
 - i. Make appropriate changes to its testing and remediation protocols, and may require its vendor(s) to engage in appropriate barrier removal;
 - ii. Re-test or engage in additional remediation tailored to address OCR's concerns as appropriate; and
 - iii. Within 30 days of the relevant video conference, notify OCR that the Recipient is ready for OCR to re-test the original pages, along with a list of any additional URLs that the Recipient believes are representative of barrier-free web pages, electronic documents, and videos, as appropriate, from which OCR may select for additional testing.

This process shall continue until, in OCR's judgment, the Recipient's testing and remediation protocols result in equal opportunities for people with disabilities.

6. Develop a Plan to Maintain Accessible Features. The Recipient will develop a Plan regarding how it intends to maintain the accessibility of the services, programs, and activities communicated or facilitated online, including updated testing and remediation protocols; revised procurement protocols and language; ongoing training for web developers, procurement officials, and content creators; designations of responsibility; and appropriate levels and sources of funding to support ongoing efforts.
 - a. Reporting Provision: Within one year of signing this Agreement, the Recipient will submit for OCR's review and approval its Plan to Maintain Accessible Features.
7. Disclaimer. Nothing in this Agreement should be construed to mean that any content and functionality – including lower-priority content and functionality – is not subject to the requirements of Section 504 and Title II.
8. Technical Assistance. OCR will provide technical assistance to the Recipient, to the extent practicable, during the Recipient's implementation of this Agreement. The Recipient's duty to comply with this Agreement is not altered by the availability of technical assistance.

By signing the Agreement, the Recipient agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. During the monitoring of the Agreement, if necessary, OCR may visit the Recipient, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the Recipient has fulfilled the terms of the Agreement.

The Recipient understands that OCR will not close the monitoring of the Agreement until such time as OCR determines that the Recipient is in compliance with the terms of the Agreement and the statute(s) and regulation(s) at issue in the case.

The Recipient understands that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice (DOJ) for judicial proceedings in the event of breach. Before initiating such proceedings, OCR will give the Recipient notice of the alleged breach and 60 calendar days to cure the alleged breach.

This Agreement will become effective upon the signature of the representative for the Recipient, set out below.

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Mary Stadick Smith
Deputy Secretary of Education
South Dakota Department of Education

9/23/2022

Date

Appendix A

For the purposes of this Agreement, testing must address these protocols and questions, which only represent a starting point, rather than a comprehensive set, for assessing digital technology to ensure access to people with disabilities. See [OCR's video series](#) for more information.

For web pages: Check the following across different browsers using different types of hardware (for documentation, please specify the browsers by version and different desktop/laptop configurations):

- Keyboard access: Can users access all functions and content, and complete all tasks, independently by using only the keyboard (<tab>, <enter>, <spacebar>, <esc>, and arrow keys)? Verify in particular:
 - There are no keyboard traps that would prevent a user from advancing through the entire page, such as an automatically-refreshing social media embedded feed (*tip: try to tab very, very slowly through any such feed to observe whether a user can close it, or move past it, at a reasonable point; if the feed keeps refreshing by automatically adding additional entries to be shown, it causes a trap for those who are unable to use quick keyboard strokes – or a mouse - to navigate*); and
 - Expandable elements can not only be expanded, but can also be collapsed automatically or with a keyboard command, so they do not block other content.
- Logical reading order: Does keyboard navigation follow a logical, predictable order?
- Skip links: Can keyboard-only users bypass long navigation menus, embedded social media feeds, etc., without having to use excessive tabbing?
- Visual focus indicator: Can users visually track where they are located on the page while navigating with a keyboard?
- Alternative (Alt) text: Are all important images and graphics labelled with meaningful text, associated captions, or adjoining descriptions so, for example, people who are blind and use assistive technology will have access to the relevant information contained in the image or graphic? For linked images, does the alternative text tell users where the link will take them, rather than describe the image?
- Links: Are links well-named and unambiguous so users who are blind– without having to read nearby content – will understand the purpose and destination of each link? Common examples of ambiguous link names include “click here,” “read more,” “see all,” “http://...”-type, or “event notice,” and other ambiguous phrases.
- Color alone: Are there any instances where color alone distinguishes an object or state? If so, add another way to distinguish the object or state. For example, make sure color is not the only way to distinguish link text from the surrounding paragraph text, and ensure

color-coding is not the exclusive way used to convey important calendar dates (e.g., “no school” dates are marked in purple).

- Color contrast: Using an eyedropper tool or other manual method (automated testing is generally insufficient unless manually verified), is there at least a 4.5:1 contrast ratio for normal size text and a 3:1 contrast ratio for large scale text, comparing foreground and background colors of all text elements and text inside graphics? Text inside logos can be ignored for these purposes.
- Tables: Does the page avoid using layout tables? If data tables are present, are they necessary to convey information, or could a more accessible means of presentation be considered instead? If a data table is used, is it simple, so no cells span multiple columns or rows? Are column and row headers programmatically labelled?
- Buttons, form controls, and other operable elements: Are they labelled appropriately, both programmatically and visually? Do the visual labels continue to be properly associated with the elements when the screen is enlarged? If the elements have different states (such as form fields that are required for successful submission), are those conveyed by something other than color alone?
- Heading structure: Are headings programmatically labelled with a meaningful hierarchy, so people who are blind and using a screen reader can navigate a page according to its headings, listen to a list of headings, and skip to where they want to begin reading?
- Embedded videos and slide carousels: Where there are embedded videos or carousels, if they launch or rotate automatically, is that behavior necessary? If so, can a user pause or stop the video or carousel, and later replay the video or carousel, with keyboard commands? The ability to stop the video or carousel rotation can be important, not just while users are on the video or carousel, but while they are in other parts of the page.
- Magnification: Have you re-tested everything when content is magnified to the “point of reflow,” or in “responsive mode,” when the formatting changes to be more mobile-friendly (typically around 200% on standard laptop screens)? Are all contents and all functionality preserved and useful?
 - Paying particular attention to any “hamburger menus,” or expandable menus, can they be opened, navigated (including any sub-level items), and closed automatically or easily with the keyboard?
 - Is logical reading order on the page preserved, without the need to scroll right to left? If vertical scrolling is required inside windows or objects, can it be done with the keyboard?
 - Do elements meant to be together (such as form labels and text entry boxes) stay together upon magnification?

For electronic documents: In addition to addressing the questions above, have you conducted an accessibility review of your documents using the software's accessibility checker (e.g., "Check Accessibility" feature in Microsoft Word, "Accessibility Check" feature in Adobe Acrobat Pro DC, etc.)?

For videos:

- Is captioning present or is a transcript available? Transcripts should only be used when the audio can be fully understood separately from viewing the video and does not reference video content.
- Does the captioning or transcript meaningfully convey the contents of the audio track (not just phonetically)?
- Does the captioning or transcript indicate the names or appropriate descriptions of the speakers, if more than one person is speaking?
- Does the captioning or transcript use capitalization and punctuation appropriately, if that is important to understanding the contents?
- Is important on-screen information also conveyed audibly, so people who are blind or have low vision have access to the contents?

For social media posts:

- If graphic images are used, are they accompanied by text that conveys the same information?
- If videos are used, are they accessible as described above?