

**Resolution Agreement**  
**Colorado Department of Education**  
**Case Number 08-16-4011**

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation into allegations that the Colorado Department of Education (“Colorado DOE”) 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 Colorado DOE’s website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in Colorado DOE’s programs, services, and activities and denying them effective communication necessary for full participation in Colorado DOE’s programs, services, and activities. OCR evaluated the specific pages listed in the complaint and found that they contained barriers to access for people with disabilities including, but not limited to, the following:

- some important content of the website could only be accessed by people who can use a computer mouse, which meant that content was not available to those who are blind, many who have low vision, and those with disabilities affecting fine motor control;
- videos did not have accurate captions;
- some links were not meaningfully labeled;
- some forms were not properly labeled; and
- parts of the website used color combinations that made text difficult or impossible for people with low vision to see.

This Agreement resolves the allegations OCR accepted for resolution in the Complaint and does not constitute an admission by the State of a violation of Section 504 or Title II of the ADA or those statutes’ implementing regulations or any other law.

Assurances of Nondiscrimination. Colorado DOE hereby reaffirms its on-going commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in Colorado DOE’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 Colorado DOE'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 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 Colorado DOE's programs, services, and activities delivered online.

Colorado DOE voluntarily agrees to maintain their current compliance efforts and to take the actions set forth below.

### **Remedies and Reporting**

- 1) Proposed Policies and Procedures Regarding New Online Content and Functionality. By October 31, 2016, Colorado DOE 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 Colorado DOE to provide equally effective alternative access. The Plan for New Content will require Colorado DOE, 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 Colorado DOE's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
  - c) Within thirty (30) days of receiving OCR's approval of the Plan for New Content, Colorado DOE will officially adopt, and fully implement the amended policies and procedures.
  - d) Reporting: Within forty-five (45) days of receiving OCR's approval, Colorado DOE 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 Colorado DOE asserts an undue burden or fundamental alteration defense,

such assertion may only be made by an individual who has budgetary authority, or an individual designated by the person with 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 Colorado DOE as their nondisabled peers.

- 3) Audit of Existing Content and Functionality. By September 30, 2016, Colorado DOE 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 Colorado DOE receives prior permission from OCR to use a different standard as a benchmark. During the Audit, Colorado DOE will also seek input from constituents and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.
  - a) Reporting: By September 30, 2016, Colorado DOE 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 ninety (90) days of receiving OCR's approval of the proposed Auditor, Colorado DOE 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, Colorado DOE will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during Colorado DOE's Audit. To the extent that Colorado DOE is concerned that removing barriers to one or more existing portion(s) of its website would impose an undue burden or create a fundamental alteration, it may provide supportive documentation as part of its Proposed Corrective Action Plan. OCR will carefully consider Colorado DOE's arguments and the supporting documentation and, if OCR agrees that a particular act of remediation would impose an undue burden or create a fundamental alteration, it will work with Colorado DOE to identify an alternate method of providing effective communication of the identified content or functionality in a way that would not impose such an undue burden or create a fundamental alteration. The proposed Corrective Action Plan will set out a detailed schedule for: (1) addressing problems, taking into account identified priorities, with all corrective actions, other than those identified with specificity as subject to fundamental alteration or undue burden defenses, to be completed within eighteen (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, Colorado DOE will acknowledge that if all inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis in a way that will ensure people with disabilities have an equal opportunity to enjoy Colorado DOE's programs, services, and activities, unless subject to a fundamental alteration or undue burden defense, that Colorado DOE will 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 30 days of receiving OCR's approval of the proposed Corrective Action Plan, Colorado DOE will officially adopt and implement the Corrective Action Plan.
  - a) Reporting: Within 45 days of receiving OCR's approval of the proposed Corrective Action Plan, Colorado DOE 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. Colorado DOE has a Notice to persons with disabilities, which appears as a link at the bottom of every page, regarding how to request the webmaster or other appropriate person to provide access to (or notify Colorado DOE regarding) online information or functionality that is currently inaccessible. The Colorado DOE will update the Notice to make sure it includes information or an accessible link to information instructing people how to file formal grievances under Section 504 and Title II.
  - a) Reporting. Within fifteen (15) business days of receiving OCR's approval of Colorado DOE's proposed Notice, Colorado DOE will provide documentation to OCR regarding the locations and content of its published Notice.
- 7) Training. Colorado DOE will continue to deliver annual 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 which occurs during the pendency of OCR's monitoring of this Agreement, Colorado DOE 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) Colorado DOE understands that OCR will not close the monitoring of this Agreement until OCR determines that Colorado DOE has fulfilled the terms of this Agreement and maintains compliance with the related 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.

- 9) Colorado DOE 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, Colorado DOE understands that during the monitoring of this Agreement, if necessary, OCR may visit Colorado DOE, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether Colorado DOE has fulfilled the terms of this Agreement and maintains compliance with the related 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. Any such visits or staff interviews should be conducted with Colorado DOE's counsel present. Similarly, any requests for additional reports or data should be directed to Colorado DOE through its counsel.
- 10) Colorado DOE 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 Colorado DOE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

\_\_\_\_\_/s/\_\_\_\_\_  
Dana Smith, Chief Communications Officer

\_\_\_\_August 5, 2016\_\_\_\_\_  
Date