

Resolution Agreement
Arizona Department of Education
Case Number 08-16-4012

The U.S. Department of Education, Office for Civil Rights (“OCR”), initiated an investigation into allegations that the Arizona Department of Education (“ADE”) 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 ADE’s website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in ADE’s programs, services, and activities and denying them effective communication necessary for full participation in ADE’s programs, services, and activities.

Assurances of Nondiscrimination. ADE hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in ADE’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. ADE’s participation in this Resolution Agreement (the “Agreement”) in no way constitutes an admission of violation of Section 504 of Federal law, or of willful actions taken by ADE to deny access to ADE services to people with disabilities. ADE agrees to this Agreement because it is consistent with actions already being undertaken by ADE to ensure that its website is accessible to all individuals.

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. Meeting these benchmarks is, as explained more fully below, subject to the defenses of fundamental alteration and undue burden.

Adherence to these accessible technology standards is one way to ensure compliance with ADE’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 ADE 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 ADE’s programs, services, and activities delivered online.

ADE voluntarily agrees to take the actions set forth below.

Remedies and Reporting

- 1) Proposed Policies and Procedures Regarding New Online Content and Functionality. By October 1, 2016, ADE 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 to its website, including all subordinate pages and intranet sites¹ 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

¹ The phrase “subordinate pages and intranet sites” throughout this Agreement includes the “Common Logon” site and the “ADEConnect” site.

undue burden.

- a) If ADE claims that certain technology requires a fundamental alteration or undue burden (as more fully described in Paragraph 2), ADE will provide equally effective alternative access. ADE will 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 ADE's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
 - c) Within 30 days of receiving OCR's approval of the Plan for New Content, ADE will officially adopt, and fully implement the amended policies and procedures.
 - d) Reporting: Within 45 days of receiving OCR's approval, ADE 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 ADE 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 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 ADE as their nondisabled peers.
- 3) Audit of Existing Content and Functionality. By September 1, 2016, ADE 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 and all public-facing subordinate pages, 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 ("PCAP"). The Audit will use the Benchmarks for Measuring Accessibility set out above, unless ADE receives prior permission from OCR to use a different standard as a benchmark.
- a) Reporting: By September 1, 2016, ADE 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 PCAP.

Within ninety (90) days of receiving OCR's approval of the proposed Auditor, ADE will submit to OCR documentation of the steps taken by the Auditor during the Audit and a detailed accounting of the results of the Audit.

- 4) Proposed Corrective Action Plan. Simultaneously with the submission of the Audit, ADE will submit to OCR for its review and approval a PCAP to address all inaccessible content and functionality identified during ADE's Audit. The PCAP will set out a detailed schedule for: (1) addressing problems, taking into account identified priorities, with all corrective actions to be completed within 24 months of the date OCR approved the PCAP; (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 PCAP, ADE will commit to use all reasonable efforts to remove or make accessible all content and functionality identified as inaccessible during the Audit within 24 months of the date OCR approves the PCAP. ADE understands that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement, subject to the requirements of Paragraph 10, for a failure to meet the terms of the PCAP.
- 5) Within 30 days of receiving OCR's approval of the PCAP, ADE will officially adopt and implement the approved PCAP.
 - a) Reporting: Within 45 days of receiving OCR's approval of the PCAP, ADE will submit to OCR the approved PCAP, and documentation establishing that the approved PCAP is being implemented according to the approved schedule. Reports will be due every six months thereafter until the approved PCAP has been completed.
- 6) Notice. Within 30 days of the date of this Agreement, ADE 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 ADE regarding) online information or functionality that is currently inaccessible (the "Notice"). 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 10 days of receiving OCR's approval of the proposed Notice, ADE 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 15 days of receiving OCR's approval of ADE's proposed Notice, ADE will provide documentation to OCR regarding the locations and content of its published Notice.
- 7) Training. Starting no later than 30 days from this date of this Agreement, and annually thereafter, ADE will deliver website accessibility training to all appropriate personnel, which may include, but is 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, ADE 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) ADE understands that OCR will not close the monitoring of this Agreement until ADE 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), 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) ADE 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, ADE understands that during the monitoring of this Agreement, if necessary, OCR may visit ADE, interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether ADE 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), 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) ADE 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 ADE written notice of the alleged breach and 60 calendar days to cure the alleged breach.

_____/s/_____
For ADE
Shari Zara, Deputy Superintendent

_____August 3, 2016_____
Date