

## Resolution Agreement

### Tri-Valley SELPA OCR Reference No. 09-17-1174

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the Tri-Valley SELPA (SELPA) violated Section 504 of the Rehabilitation Act of 1973 ("Section 504") and that statute's implementing regulations at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 ("Title II") and that statute's implementing regulations at 28 C.F.R. Part 35. Specifically, the complainant alleges that the SELPA's public website contains barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the SELPA's programs, services, and activities, and denying them effective communication necessary for full participation in the SELPA's programs, services, and activities.

This Agreement has been entered into voluntarily and does not constitute an admission that the SELPA violated Section 504 and Title II and those statutes' implementing regulations.

Assurances of Nondiscrimination. The SELPA hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the SELPA'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 guided by 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 for web content, which are incorporated by reference.

Adherence to these accessible technology standards is one way to ensure compliance with the SELPA's underlying legal obligations to ensure people with disabilities are able to acquire the substantially similar information, engage in the same interactions, and enjoy comparable 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 SELPA programs, services, and activities delivered online, as required by Section 504 and Title II and those statutes' implementing regulations; and that they receive effective communications with SELPA programs, services, and activities delivered online.

The SELPA voluntarily agrees to take the actions set forth below.

### Remedies and Reporting

1. Policies and Procedures for New Online Content and Functionality. By June 15, 2017, the SELPA will submit to OCR for its review and approval proposed procedures (“the Plan for New Content”) to ensure that the new Tri-Valley SELPA Website and SELPA created 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. The Tri-Valley SELPA will not be required to make any changes to the old website (trivalleyselpa.org). Effective the date of signing of this agreement the SELPA may cease paying the web hosting company that maintains the cached copy of the old website pages.
  - b. When fundamental alteration or undue burden defenses apply, the Plan for New Content will require the SELPA to provide equally effective alternate access. The Plan for New Content will require the SELPA, in providing comparably 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 comparable benefits or services as their nondisabled peers. To provide equally effective alternate access, alternatives are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities an 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. Under no circumstances will the SELPA be held to the requirement to provide technology service that are deemed “state of the art”, “best available in the marketplace” or equivalents thereof.
  - c. 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 the SELPA’s online content and functionality developed by, maintained by, or offered through a third-party vendor or through the use of open sources.
  - d. Within 30 calendar days of receiving OCR’s approval of the Plan for New Content, the SELPA will officially adopt, and fully implement, the amended procedures.
  - e. Reporting: Within 45 calendar days of receiving OCR’s approval, the SELPA will submit to OCR the approved 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 SELPA asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Director or by an individual designated by the Director 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 Superintendent or designee. 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 comparable benefits or services provided by the SELPA as their nondisabled peers. Under no circumstances will the SELPA be held to the requirement to provide technology service that are deemed “state of the art”, “best available in the marketplace” or equivalents thereof.
3. Notice. By June 1, 2017, the SELPA will submit to OCR for review and approval a proposed Notice on its website to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the SELPA 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 more formal grievances under Section 504 and Title II. Within 10 calendar days of receiving OCR’s approval of the proposed Notice, the SELPA will officially adopt and publish the approved Notice by linking the approved Notice on its home page and throughout its website (including all subordinate pages and sites).
  - a. Reporting. Within 15 calendar days of receiving OCR’s approval of the SELPA’s proposed Notice, the SELPA will provide documentation to OCR regarding the locations and content of its published Notice.
4. Designation of auditor. By June 15, 2017, the SELPA will propose for OCR’s Review and approval the identity and bona fides of an Auditor (corporation or individual, which may include but not necessarily be limited to an individual employed by or under contract with the Tri-Valley SELPA or one its member school districts) to audit all content and functionality on its website and to identify any online content or functionality that is inaccessible to persons with disabilities. The Auditor will have sufficient knowledge and experience in website accessibility to carry out relevant related tasks including development of a Proposed Corrective Action Plan. 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.

- a. Reporting: Within 7 calendar days of receiving OCR's approval of the proposed Auditor, the SELPA will submit to OCR documentation that it has assigned or retained the Auditor approved by OCR to conduct the
5. Audit of Existing Content and Functionality. The Auditor approved by OCR will audit content and functionality on the SELPA's website, including but not limited to, the home page, all subordinate pages, and SELPA intranet pages and sites, to identify any online content or functionality that is inaccessible to persons with disabilities. The Audit will use the Benchmarks for Measuring Accessibility set out above, unless the SELPA receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the SELPA will also seek input from members of the public with disabilities, about website accessibility, regarding the accessibility of its online content and functionality. Input sought through an on-line survey is sufficient.
  - a. Reporting: Within 90 calendar days of receiving OCR's approval of the proposed Auditor, the SELPA 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.
6. Proposed Corrective Action Plan. Simultaneously with the submission of the Audit, the SELPA will submit to OCR for its review and approval a proposed Corrective Action Plan to address accessible content and functionality identified during the SELPA's Audit. The proposed Corrective Action Plan will set out a detailed schedule for 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.
  - a. Within 30 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the SELPA will officially adopt and implement the Corrective Action Plan.
  - b. Reporting: Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the SELPA 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.

7. Training. Starting no later than 30 calendar days from the date of this Agreement, and annually thereafter, the SELPA will deliver website accessibility training to all appropriate “need to know” personnel, that will include the SELPA executive secretary and SELPA director.
  - a. Reporting: For each training session required by this Agreement, until such time as OCR closes its monitoring of this Agreement, the SELPA will submit to OCR documentation that the training has been delivered. The documentation will include a list of invitees and attendees and their position titles, a description of the delivered training Content and the presenters’ credentials for providing such training.
8. The SELPA understands that OCR will not close the monitoring of this Agreement until OCR determines that the SELPA has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. 104.4 and the regulations implementing Title II at 28 C.F.R. 35.130 and 35.160(a), which were at issue in this case.
9. The SELPA 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, the SELPA understands that during the monitoring of this Agreement, if necessary, OCR may visit the SELPA, interview staff members, and request such additional reports or data, as are necessary for OCR to determine whether the SELPA has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. 104.4 and the regulations implementing Title II at 28 C.F.R. 35.130 and 35.160(a), which are at issue in this case.
10. The SELPA 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 and 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the SELPA written notice of the alleged breach and 60 calendar days to cure the alleged breach.

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Senior Director Tri-Valley SELPA

05/24/2017

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DATE