

Resolution Agreement

Fruitvale Elementary School District

OCR Reference No. 09-17-1183

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the Fruitvale Elementary School District (Recipient) 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 Recipient’s website contains barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the Recipient’s programs, services, and activities, and denying them effective communication necessary for full participation in the Recipient’s programs, services, and activities.

Assurances of Nondiscrimination. The Recipient hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the Recipient’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 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.

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

The Recipient agrees to take the actions set forth below.

Remedies and Reporting

1. Policies and Procedures for New Online Content and Functionality. By June 30, 2017, the Recipient 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 the Recipient to provide equally effective alternate access. The Plan for New Content will require the Recipient, 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, 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.
 - 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 the Recipient’s online content and functionality developed by, maintained by, or offered through a third-party vendor or through the use of open sources.
 - c) Within 30 calendar days of receiving OCR’s approval of the Plan for New Content, the Recipient will officially adopt, and fully implement, the amended policies and procedures.
 - d) Reporting: Within 45 calendar days of receiving OCR’s approval, the Recipient 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 Recipient asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Recipient’s Superintendent (“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 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 same benefits or services provided by the Recipient as their nondisabled peers.
 3. Designation of Auditor. By June 30, 2017, the Recipient 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, 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.

- a) Reporting: OCR will evaluate whether the Auditor proposed according to Paragraph 3 has the requisite experience and knowledge to carry out an appropriate Audit and to develop a proposed Corrective Action Plan. Within 7 calendar days of receiving OCR's approval of the proposed Auditor, the Recipient will submit to OCR documentation that it has assigned or retained the Auditor approved by OCR to conduct the Audit of existing content and functionality.
4. Audit of Existing Content and Functionality. The Auditor approved by OCR will audit all content and functionality of the Recipient's website, including, but not limited to, the home page, all 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 Audit will use the Benchmarks for Measuring Accessibility set out above, unless the Recipient receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the Recipient will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the Recipient, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.
 - a) Reporting: Within 90 calendar days of receiving OCR's approval of the proposed Auditor, the Recipient 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.
5. Proposed Corrective Action Plan. Simultaneously with the submission of the Audit, The Recipient will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the Recipient'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, 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.
 - a) In its Corrective Action Plan, the Recipient will acknowledge that if all inaccessible content and functionality identified during the Audit is not removed or made accessible on a timely basis, the Recipient 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 this agreement.
 - b) Within 30 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the Recipient will officially adopt and implement the Corrective Action Plan.
 - c) Reporting: Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the Recipient 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.

6. Notice. Within 30 calendar days of the date of this Agreement, the Recipient 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 Recipient 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 with the Recipient under Section 504 and Title II. Within 10 calendar days of receiving OCR's approval of the proposed Notice, the Recipient will officially adopt and publish the approved Notice by prominently posting the approved Notice on its home page and throughout its website (including all subordinate pages and intranet pages and sites).
 - a) Reporting. Within 15 calendar days of receiving OCR's approval of the Recipient's proposed Notice, The Recipient will provide documentation to OCR regarding the locations and content of its published Notice.

7. Training. Starting no later than 60 calendar days from the date of this Agreement, and annually thereafter until such time as OCR closes its monitoring of this Agreement, the Recipient, will deliver 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. After OCR closes monitoring of this agreement, training shall be continued on a schedule designed to maintain website accessibility consistent with, or superior to, that which is required under federal law.
 - a) Reporting: For each training session required by this Agreement, until such time as OCR closes its monitoring of this Agreement, the Recipient 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 Recipient understands that OCR will not close the monitoring of this Agreement until OCR determines that the Recipient 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 Recipient 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 Recipient understands that during the monitoring of this agreement, if necessary, OCR may visit the Recipient, interview staff members, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the Recipient 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 Recipient 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 Recipient written notice of the alleged breach and 60 calendar days to cure the alleged breach.

_____/s/_____
Recipient Superintendent or Designee

_____03/06/2017_____
Date