

Resolution Agreement

Hawaii Department of Education
OCR Reference No. 10161099

The Hawaii Department of Education (“Hawaii DOE”) enters into this agreement to resolve compliance issues identified by the Office for Civil Rights (OCR) of the U.S. Department of Education in its investigation of the complaint filed against the Hawaii Department of Education. OCR conducted the investigation under its authority to enforce Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. § 104, and Title II of the Americans with Disabilities Act of 1990 (“Title II”), 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. § 35. These federal civil rights laws and the regulations that implement these laws prohibit discrimination on the basis of disability in any program or activity operated by a recipient of federal financial assistance and by public entities. The complaint alleged that the Hawaii DOE website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in Hawaii DOE programs, services, and activities, and denying them effective communication necessary for full participation in Hawaii DOE programs, services, and activities.

OCR evaluated web pages on the Hawaii DOE website and found that some contained barriers to access for people with disabilities, including but not limited to the following:

- some important content and functionality could only be accessed by people who can use a computer mouse, which meant that content and functionality was not available to those people who are blind, many of whom have low vision, and those people with disabilities affecting fine motor control;
- parts of web pages lacked visual focus indicators, making them inaccessible to key-board only users;
- some images had missing alternative text or missing text on images where important information was contained;
- videos lacked captioning or transcriptions, making them inaccessible to some deaf and hard of hearing users, and lacked audio description, making them inaccessible to blind and low vision users;
- calendars were formatted in a way that made them inaccessible to screen reader users and had functions and content that were inaccessible to keyboard-only users;
- documents in portable document format were inaccessible to screen reader users; and
- insufficient color contrast made some content inaccessible to persons with low vision.

Assurances of Nondiscrimination. Hawaii DOE hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in Hawaii DOE 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 on-line 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 techniques for web content, which are incorporated by reference.

Adherence to these accessible technology standards is one way to ensure compliance with Hawaii 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 Hawaii DOE programs, services, and activities delivered on-line, as required by Section 504 and Title II and those statutes' implementing regulations; and that they can receive effective communication of, and engage with, Hawaii DOE's programs, services, and activities delivered on-line.

1. Undue Burden and Fundamental Alteration. For any technology-related requirement in this agreement for which Hawaii DOE asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Hawaii DOE 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. If Hawaii DOE asserts either defense, Hawaii DOE must provide a written statement of the reasons for reaching that conclusion, including the cost of meeting the requirement, the available funding and other resources, and its plan for providing equally effective alternate access. 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. The written statement will be certified by the superintendent or his or her designee.
2. Policies and Procedures for New On-line Content and Functionality. Hawaii DOE will adopt proposed policies and procedures ("the Plan for New Content") to ensure that all new, newly added, or modified on-line 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.

The Plan for New Content must include sufficient quality assurance procedures for full implementation, setting up a system of testing and accountability to maintain the accessibility of all on-line content and functionality on an ongoing basis, and backed by adequate personnel and financial resources. This requirement also applies to Hawaii DOE on-line content and functionality developed by, maintained by, or

offered through third-party vendors or through the use of open sources, and includes setting up systems of accountability and verifying claims of accessibility by vendors or open sources.

When fundamental alteration or undue burden defenses apply, the Plan for New Content will require Hawaii DOE to provide equally effective alternate access. The Plan for New Content will require Hawaii 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.

Within 60 calendar days of receiving OCR's approval of the Plan for New Content, Hawaii DOE will officially adopt and fully implement the policies and procedures.

Reporting:

- a) By March 21, 2018, Hawaii DOE will submit to OCR for its review and approval a proposed Plan for New Content. If OCR requires any changes to the Plan for New Content, Hawaii DOE will make the changes and re-submit the Plan for New Content within 30 calendar days of receiving OCR's notice of the required changes. OCR and Hawaii DOE will follow the same process until OCR approves the Plan for New Content.
 - b) Within 60 calendar days of receiving OCR's approval, Hawaii DOE will submit to OCR the approved Plan for New Content, evidence of the adoption and distribution of the Plan for New Content, and a description of how the Plan for New Content is being implemented.
3. Designation of Auditor. Hawaii DOE will assign or retain an internal or external Auditor (corporation or individual) to audit all existing content and functionality on its website and to identify any on-line content or functionality that is inaccessible to persons with disabilities. The Auditor will have sufficient knowledge and experience in website accessibility to carry out all related tasks. OCR will evaluate whether the proposed Auditor has the requisite experience and knowledge to carry out an appropriate Audit.

Reporting:

- a) By April 30, 2018, Hawaii DOE will submit the identity and qualifications of its proposed Auditor for OCR's review and approval. If OCR requires Hawaii DOE to submit the identity and qualifications of another proposed Auditor, Hawaii DOE will submit information about another proposed Auditor within 20 calendar days of receiving OCR's notice of the requirement. OCR and Hawaii DOE will follow the same process until OCR approves an Auditor.

- b) Within 30 calendar days of receiving OCR's approval of the proposed Auditor, Hawaii DOE 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 All Existing Content and Functionality. The Auditor approved by OCR will audit all content and functionality on the Hawaii DOE website, including, but not limited to, homepages, all subordinate web pages, , and identify any on-line content or functionality that is inaccessible to persons with disabilities, including on-line content and functionality developed by, maintained by, or offered through third-party vendors or through the use of open sources. The Audit will be conducted using the Benchmarks for Measuring Accessibility set out above, unless Hawaii DOE receives prior permission from OCR to use a different standard as a benchmark. During the Audit, Hawaii DOE will seek input regarding the accessibility of its website from persons knowledgeable about website accessibility, including employees, parents, students, and members of the public with disabilities.

Reporting:

Within 90 calendar days of receiving OCR's approval of the proposed Auditor, Hawaii 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.

5. Proposed Corrective Action Plan. Based upon the results of the audit, Hawaii DOE will develop a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the 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 24 months of the date OCR approved the Corrective Action Plan.

Within 30 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, Hawaii DOE will officially adopt and implement the Corrective Action Plan.

Reporting:

- a) Simultaneously with the submission of the Audit, Hawaii DOE will submit to OCR, for its review and approval, a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the Audit. If OCR requires any changes to the Corrective Action Plan, Hawaii DOE will make the changes and re-submit the Corrective Action Plan within 30 calendar days of receiving OCR's notice of the required changes. OCR and Hawaii DOE will follow the same process until OCR approves the Corrective Action Plan.

- b) Within 60 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, Hawaii 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 six months thereafter until the Corrective Action Plan has been completed.
6. Notice. Hawaii DOE will adopt a Notice for its website to persons with disabilities regarding how to request the webmasters or other appropriate persons to provide access to (or notify Hawaii DOE regarding) online information or functionality that is currently inaccessible. The Notice will also include information about, or an accessible link to information about, how to file a formal grievance with Hawaii DOE pursuant to the requirements of Section 504 and Title II. Within 30 calendar days of receiving OCR's approval of the Notice, Hawaii DOE will officially adopt and publish the Notice by prominently posting the Notice on its homepages and throughout its website (including all subordinate web pages and intranet pages and sites).

Reporting:

- a) Within 30 calendar days of the date of this agreement, Hawaii DOE will submit to OCR for review and approval a proposed Notice. If OCR requires any changes to the Notice, Hawaii DOE will make the changes and re-submit the Notice within 20 calendar days of receiving OCR's required revisions. OCR and Hawaii DOE will follow the same process until OCR approves the Notice.
 - b) Within 30 calendar days of receiving OCR's approval of Hawaii DOE's proposed Notice, Hawaii DOE will provide documentation to OCR regarding the locations and content of its published Notice.
7. Training. Starting no later than 120 calendar days from the date of this agreement, and annually thereafter, Hawaii DOE 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. The training will include information about how to comply with the Benchmarks for Measuring Accessibility set forth above.

Reporting:

Within 150 calendar days from the date of this agreement, and annually thereafter until such time as OCR closes its monitoring of this agreement, Hawaii DOE 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. Hawaii DOE understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner. Further, Hawaii DOE understands that

during the monitoring of this Agreement, if necessary, OCR may visit Hawaii DOE, interview staff and students, and request such additional reports or data, as are necessary for OCR to determine whether Hawaii DOE 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). Upon completion of the obligations under this Agreement, OCR shall close this case.

9. Hawaii DOE understands and acknowledges that, if it does not fully implement this Agreement, 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, including to enforce this Agreement, OCR shall give Hawaii DOE written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.
10. This Agreement will become effective immediately upon the signature of the Hawaii DOE representative below.

/s/

January 17, 2017

Dr. Christina Kishimoto
Superintendent
Hawaii Department of Education

Date