

## Resolution Agreement

### Hawaii School for the Deaf and Blind OCR Reference No. 10161255

The Hawaii School for the Deaf and Blind (“the school”) enters into this agreement to resolve a 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 school, OCR Reference No. 10161255. OCR conducted the investigations 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 school website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in school programs, services, and activities, and denying them effective communication necessary for full participation in school programs, services, and activities.

OCR evaluated web pages on the school’s 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. The school hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the school’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) 1.1 techniques for web content, which are incorporated by reference.

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

1. Undue Burden and Fundamental Alteration. For any technology-related requirement in this agreement for which the school 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, and who has budgetary authority after considering all resources available for use in the funding and operation of the service, program, or activity. If the school asserts either defense, the school 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 designee.
2. Policies and Procedures for New Online Content and Functionality. The school will comply with all policies and procedures adopted by the Hawaii Department of Education (HIDOE) relating to all new, newly added, or modified online content and functionality of its website to ensure that the website is 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.
3. Corrective Action Plan. The school commits to construct and implement for the school a new website which does not contain barriers to access for people with disabilities except where doing so would impose a fundamental alteration or undue burden. 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.

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

Reporting:

- a) By May 30, 2018, the school will submit to OCR for its review and approval a proposed Corrective Action Plan, which includes vendor specifications or other documentation demonstrating that the new school website will be accessible to people with disabilities as measured by the Benchmarks for Measuring Accessibility set forth above. If OCR requires any changes to the Corrective Action Plan, the school will make the changes and re-submit the Corrective Action Plan within 20 calendar days of receiving OCR's notice of the required revisions. OCR and the school will follow the same process until OCR approves the Corrective Action Plan.
  - b) Within 45 calendar days of receiving OCR's approval, the school 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.
4. Designation of Auditor. The school will assign or retain an internal or external Auditor (corporation or individual) to audit all existing content and functionality on its new 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 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 November 30, 2018, the school will submit the identity and qualifications of the proposed Auditor for OCR's review and approval.
  - b) Within 7 calendar days of receiving OCR's approval of the proposed Auditor, the school 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 of its new website.
5. Audit of All Existing Content and Functionality. The Auditor approved by OCR will audit all content and functionality on the school's new website, including, but not limited to, the home page, all subordinate pages, and the school's intranet pages and sites, and 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 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 the school receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the school will seek input regarding the accessibility of its new website from persons knowledgeable about website accessibility, including employees, parents,

students, and members of the public with disabilities. After the Audit, the school will remediate any inaccessible online content and functionality identified by the Audit.

Reporting:

- a) Within 90 calendar days of receiving OCR's approval of the proposed Auditor, the school 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.
  - b) Within 150 calendar days of OCR's approval of the proposed Auditor, the school will submit to OCR for OCR's review and approval documentation of the steps taken by the school to remediate any inaccessible online content and functionality identified by the Audit.
6. Notice. The school will adopt a Notice for its new website to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the school regarding) online information or functionality that is currently inaccessible. The school will shut down its existing website pending the development of the new website. The Notice will also include information about, or an accessible link to information about, how to file a formal grievance with the school pursuant to the requirements of Section 504 and Title II. Within 10 calendar days of receiving OCR's approval of the Notice, the school will officially adopt and publish the Notice by prominently posting a link to the Notice on its new home page and throughout its new website (including all subordinate pages and intranet pages and sites).

Reporting:

- a) Within 180 calendar days of the date of this agreement, the school will submit to OCR for review and approval a proposed Notice. If OCR requires any changes to the Notice, the school will make the changes and re-submit the Notice within 20 calendar days of receiving OCR's required revisions. OCR and the school will follow the same process until OCR approves the Notice.
  - b) Within 15 calendar days of receiving OCR's approval of the school's proposed Notice, the school will provide documentation to OCR regarding the locations and content of its published Notice.
7. Training. Within 90 calendar days from the date the new website is launched, and annually thereafter, the school will deliver website accessibility training to all appropriate personnel at the school, including any person who may publish content to the website. In addition, the school will comply with any training provided by the HDOE. The training will include information about how to comply with the Benchmarks for Measuring Accessibility set forth above.

Reporting: Within 120 calendar days from the date the new website is launched, and by December 31st of each calendar year thereafter until such time as OCR closes its monitoring of this agreement, the school 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 school 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 school understands that during the monitoring of this agreement, if necessary, OCR may visit the school, interview staff members, and request such additional reports or data, as are necessary for OCR to determine whether the school 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. Upon completion of the obligations under this Agreement, OCR shall close this case.
9. The school 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 school written notice of the alleged breach and 60 calendar days to cure the alleged breach.
10. This Agreement will become effective immediately upon the signature of the school's representative below.

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s/s  
Dr. Christina M. Kishimoto  
Superintendent  
Hawaii Department of Education

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February 16, 2018  
Date