

## Resolution Agreement

### **Kenai Peninsula Borough School District**

OCR Reference No.10171106

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the Kenai Peninsula Borough School District (“the district”) violated Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and its implementing regulations at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (“Title II”) and its implementing regulations at 28 C.F.R. Part 35. Specifically, the complainant alleged that the district’s website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the district’s programs, services, and activities, and denying them effective communication necessary for full participation in the district’s programs, services, and activities.

Assurances of Nondiscrimination. The district hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the district’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) 1.0 techniques for web content, which are incorporated by reference.

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

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

1. Undue Burden and Fundamental Alteration. For any technology-related requirement in this agreement for which the district asserts an undue burden or fundamental alteration defense, such assertion may only be made by the district 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 district asserts either defense, the district 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 district will adopt 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.

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 online content and functionality on an ongoing basis, and backed by adequate personnel and financial resources. This requirement also applies to the district's online 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 the district to provide equally effective alternate access. The Plan for New Content will require the district, in providing equally effective alternate access, to take any actions that do not result in a fundamental alteration or undue financial and administrative burden, but nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the same benefits or services as their nondisabled peers.

Within 30 calendar days of receiving OCR's approval of the Plan for New Content, the district will officially adopt and fully implement the policies and procedures.

Reporting:

- a) By February 2, 2018, the district 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, the district will make the changes and re-submit the Plan for New Content within 20 calendar days of receiving OCR's notice of the required revisions. OCR and the district will follow the same process until OCR approves the Plan for New Content.
- b) Within 90 calendar days of receiving OCR's approval, the district 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. Corrective Action Plan. The district commits to construct and implement for the district 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 district will officially adopt and implement the Corrective Action Plan.

Reporting:

- a) By March 2, 2018, the district will submit to OCR for its review and approval a proposed Corrective Action Plan, which includes vendor specifications, if utilized, or other documentation demonstrating that the new district 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 district 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 district will follow the same process until OCR approves the Corrective Action Plan.
  - b) Within 45 calendar days of receiving OCR's approval, the district 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 district will assign or retain an internal or external Auditor (corporation or individual) to audit all 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) Within 21 calendar days of the Corrective Action Plan being fully implemented, the district 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 district 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.

5. Audit of All Existing Content and Functionality. The Auditor approved by OCR will audit all content and functionality on the district's new website, including, but not limited to, the home page, all subordinate pages, and the district'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 district receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the district 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 district 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 district 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 district will submit to OCR for OCR's review and approval documentation of the steps taken by the district to remediate any inaccessible online content and functionality identified by the Audit.
6. Notice. The district will adopt a Notice for its website to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the district 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 the district pursuant to the requirements of Section 504 and Title II. Within 10 calendar days of receiving OCR's approval of the Notice, the district will officially adopt and publish the Notice by prominently posting the Notice on its home page and throughout its website (including all subordinate pages and intranet pages and sites).

Reporting:

- a) Within 45 calendar days of the date of this agreement, the district will submit to OCR for review and approval a proposed Notice. If OCR requires any changes to the Notice, the district will make the changes and re-submit the Notice within 20 calendar days of receiving OCR's required revisions. OCR and the district will follow the same process until OCR approves the Notice.

- b) Within 30 calendar days of receiving OCR’s approval of the district’s proposed Notice, the district will provide documentation to OCR regarding the locations and content of its published Notice.
7. Training. Starting no later than 90 calendar days from the date of this agreement, and annually thereafter, the district 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 120 calendar days from the date of this agreement, and annually thereafter until such time as OCR closes its monitoring of this agreement, the district 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. Extensions. The District understands that it may make good faith requests for an extension of any of the timelines proscribed in this Resolution Agreement. OCR will review the requests on a case-by-case basis to determine if the requests are reasonable. OCR will respond timely to the requests.
9. The district 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 district understands that during the monitoring of this agreement, if necessary, OCR may visit the district, interview staff members, and request such additional reports or data, as are necessary for OCR to determine whether the district 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.
10. The district 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 district written notice of the alleged breach and 60 calendar days to cure the alleged breach.

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/s/ \_\_\_\_\_ November 17, 2017  
Superintendent Date  
Kenai Peninsula Borough School District