

## **Resolution Agreement**

University of Hawaii System  
OCR Reference No. 10172117

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the University of Hawaii System (the university) 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 university's website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the university's programs, services, and activities, and denying them effective communication necessary for full participation in the university's programs, services, and activities.

Assurances of Nondiscrimination. The university hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the university'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 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 the university's underlying legal obligations to ensure people with disabilities who wish to access its on-line programs, services and activities 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 university 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, the university's programs, services, and activities delivered on-line.

The university 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 university asserts an undue burden or fundamental alteration defense, such assertion may only be made by the university president, or by an individual designated by the president, 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 university asserts either defense, the university 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 president or his or her designee.

2. Policies and Procedures for New On-line Content and Functionality. The university will adopt 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 the university's 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 the university to provide equally effective alternate access. The Plan for New Content will require the university, 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 90 calendar days of receiving OCR's approval of the Plan for New Content, the university will officially adopt and begin implementing the policies and procedures.

Reporting:

- a) Within 180 calendar days from the execution of this Agreement, the university 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 university will make the changes and re-submit the Plan for New Content within 60 calendar days of receiving OCR's notice of the required changes. OCR and the university will follow the same process until OCR approves the Plan for New Content.
- b) Within 120 calendar days of receiving OCR's approval, the university 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. The university 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) Within 180 calendar days of the execution of this agreement \_\_\_\_\_, the university will submit the identity and qualifications of its proposed Auditor for OCR's review and approval. If OCR requires the university to submit the identity and qualifications of another proposed Auditor, the university will submit information about another proposed Auditor within 90 calendar days of receiving OCR's notice of the requirement. OCR and the university will follow the same process until OCR approves an Auditor.
  - b) Within 180 calendar days of receiving OCR's approval of the proposed Auditor, the university 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 university's website, including, but not limited to, the home page, all of the university's subordinate pages, and the university's intranet pages and sites, 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 the university receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the university will seek input regarding the accessibility of its website from persons knowledgeable about website accessibility, including employees, students, and members of the public with disabilities.

Reporting:

Within 90 calendar days of receiving OCR's approval of the proposed Auditor, the university 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, the university will develop a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the Audit. The Corrective Action Plan will not address or include Legacy Pages, however. "Legacy Pages" are defined as content that was published prior to August 1, 2015, and that have not been edited, updated, or modified in any way since that date. In lieu of the Corrective Action Plan addressing Legacy Pages, the university

agrees that if requested by a qualified individual with a disability, it will conform the Legacy Page to the Benchmarks for Measuring Accessibility or otherwise provide equally effective alternative access to the identified Legacy Pages. 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, the university will officially adopt and implement the Corrective Action Plan.

Reporting:

- a) Simultaneously with the submission of the Audit, the university 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, the university will make the changes and re-submit the Corrective Action Plan within 20 calendar days of receiving OCR's notice of the required changes. OCR and the university will follow the same process until OCR approves the Corrective Action Plan.
  - b) Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the university 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. The university 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 university regarding) on-line 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 university pursuant to the requirements of Section 504 and Title II. Within 30 calendar days of receiving OCR's approval of the Notice, the university will officially adopt and publish the Notice by prominently posting the Notice on its home page and throughout its website (including all high traffic subordinate pages and intranet pages and sites that begin with "hawaii.edu").

Reporting:

- a) Within 30 calendar days of the date of this agreement, the university will submit to OCR for review and approval a proposed Notice. If OCR requires any changes to the Notice, the university will make the changes and re-submit the Notice within 20 calendar days of receiving OCR's required revisions. OCR and the university will follow the same process until OCR approves the Notice.

b) Within 15 calendar days of receiving OCR's approval of the university's proposed Notice, the university will provide documentation to OCR regarding the locations and content of its published Notice.

7. Training. Starting no later than 180 calendar days from the date of this agreement, and annually thereafter, the university will make available and regularly 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:

By December 31, 2018, and annually thereafter until such time as OCR closes its monitoring of this agreement, the university 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 university understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the university understands that during the monitoring of this Agreement, if necessary, OCR may visit the university, interview staff and students, and request such additional reports or data, as are necessary for OCR to determine whether the university 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 matter. Upon completion of the obligations under this Agreement, OCR shall close this case. The university anticipates completing the terms of the Agreement by February 9, 2022.

9. The university 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, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the university 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 university's representative below.

/s/

February 9, 2018

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Dr. David Lassner

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Date

President

University of Hawaii System