

RESOLUTION AGREEMENT
Henrico County Public Schools
OCR Case No. 11-16-1300

OCR and Henrico County Public Schools (the Division) enter into this Agreement to resolve the allegations in the above-referenced complaint. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the Division. The Division assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively.

Prior to the completion of OCR's investigation, the Division agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, to resolve the issues of this investigation, the Division agrees to take the following actions.

Assurances of Nondiscrimination. The Division hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the Division'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 Division'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 Division programs, services, and activities delivered online, as required by Section 504 and Title II and their implementing regulations; and that they receive effective communication of the Division's programs, services, and activities delivered online.

Remedies and Reporting

- 1) Proposed Policies and Procedures Regarding New Online Content and Functionality. By December 15, 2017, the Division will submit to OCR for its review and approval proposed policies and/or 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 Division to provide equally effective alternative access. The Plan for New Content will require the Division, 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 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 Division's online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
 - c) Within thirty (30) days of receiving OCR's approval of the Plan for New Content, the Division will officially adopt and fully implement the amended policies and/or procedures.
 - d) Reporting: Within 45 days of receiving OCR's approval, the Division will submit to OCR the approved policies and/or 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 Division 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 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 determining official. 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 Division as their nondisabled peers.
- 3) Audit of Existing Content and Functionality. The Division will propose for OCR's review and approval the identity and bona fides of an Auditor (corporation or individual internal or external to the Division) to audit all content and functionality on its website, including, but not limited to, the home page, all subordinate pages, and intranet pages and sites, 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. The Audit will use the Benchmarks for Measuring Accessibility set out above, unless the Division receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the Division will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the Division, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.

Reporting:

- a) By December 15, 2017, the Division will submit the *bona fides* of its proposed Auditor to OCR for review and approval. OCR will evaluate whether the proposed Auditor has the requisite experience and knowledge to carry out an appropriate Audit and to develop a Proposed Corrective Action Plan.
- b) Within ninety (90) days of receiving OCR's approval of the proposed Auditor, the Division 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.
- 4) Proposed Corrective Action Plan. Simultaneously with the submission of the Audit, the Division will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the Division's Audit. The proposed Corrective Action Plan will set out a detailed schedule for: (1) 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; (2) 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.

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

- a) Reporting: Within 45 days of receiving OCR's approval of the proposed Corrective Action Plan, the Division 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.
- 5) Notice. Within 15 days of the date of this Agreement, the Division will prominently post on its home page notice that its website is in the process of being updated to ensure compliance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act and that in the interim website accessibility concerns may be brought to the attention of *the Division webmaster, hcpswebdev@henrico.k12.va.us*.

By September 29, 2017, the Division will submit to OCR for review and approval a proposed Notice to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify the Division 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 formal grievances under Section 504 and Title II. Within 10 days of receiving OCR's approval of the proposed Notice, the Division will officially adopt and prominently post the approved Notice on its home page and throughout its website (including all subordinate pages and intranet sites).

Reporting:

- a) Within 10 days of posting notice on its home page that the website is being updated to ensure compliance with Section 504 and Title II, the Division will provide verification of the posting.
 - b) Within 15 days of receiving OCR's approval of the Division's proposed Notice, the Division will provide documentation to OCR regarding the locations and content of its published Notice.
- 6) Training. Starting no later than 30 days from the date of OCR's approval in Item 1 above, and annually thereafter, the Division will provide written notice about its new policies and/or procedures for website content 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 Division will also deliver website accessibility training to personnel responsible for website content, including school-based web editors and other administrative support personnel, on a rolling basis, and will complete this training by no later than May 1, 2018. Wherever possible, this training will be provided on a live, in-person basis, but may be provided electronically.
- a) Reporting: On a quarterly basis, until such time as OCR closes the monitoring of this Agreement, the Division will submit to OCR documentation that all required training has been delivered. The documentation will include a copy of its written notification to personnel, as well as a list of invitees and attendees, including titles for in-person training, together with a description of the delivered training content and the presenters' credentials for giving such training.

The Division 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 Division understands that during the monitoring of this Agreement, if necessary, OCR may visit the Division, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the Division has fulfilled the terms of this Agreement and is in compliance with Section 504 and Title II and their implementing regulations, at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close this case.

The Division 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 Division written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the Division’s representative below.

_____/s/_____
Dr. Patrick C. Kinlaw
Superintendent or Designee
Henrico County Public Schools

Date 9/28/2017