

Resolution Agreement
North Dakota Department of Public Instruction
Case Number 05-16-1149

The North Dakota Department of Public Instruction (“NDDPI”) submits the following resolution agreement ("Agreement") to the U.S. Department of Education, Office for Civil Rights ("OCR") in resolution of OCR complaint #05-10-1149. The NDDPI submits this Agreement to ensure its compliance with 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. Part 104, and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, and its implementing regulation, at 28 C.F.R. Part 35.

This Agreement has been entered into voluntarily and does not constitute an admission that NDDPI violated Section 504 or Title II or their respective implementing regulations.

Assurances of Nondiscrimination. The NDDPI hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the NDDPI’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 World Wide Web Consortium’s (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 for web content, which are incorporated by reference.

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

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

Remedies and Reporting

- 1) Policies and Procedures Regarding New Online Content and Functionality. By August 31, 2016, the NDDPI will submit to OCR for its review and approval proposed 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.

- a) When fundamental alteration or undue burden defenses apply as outlined in Item 2, the Plan for New Content will require the NDDPI to provide equally effective alternative access. The Plan for New Content will require the NDDPI, 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, alternates 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 NDDPI'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 NDDPI will officially adopt, and fully implement the amended policies and procedures.
 - d) Reporting: Within 45 calendar days of receiving OCR's approval, the NDDPI will submit to OCR the approved policies and 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 NDDPI asserts an undue burden or fundamental alteration defense, such assertion may only be made by the State Superintendent or by an individual designated by the State Superintendent and 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 NDDPI as their nondisabled peers.
- a) Reporting: Within 30 calendar days of making the determination, NDDPI will submit the written statement and appropriate supporting documentation to OCR for review and approval.

- 3) Audit of Existing Content and Functionality. By October 28, 2016 the NDDPI will propose for OCR's review and approval the identity and credentials of an Auditor (corporation or individual) 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 NDDPI receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the NDDPI will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the NDDPI, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.
 - a) Reporting: By October 28, 2016 the NDDPI will submit the credentials 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. Within ninety (90) calendar days of receiving OCR's approval of the proposed Auditor, the NDDPI 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. By January 6, 2017, the NDDPI will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the NDDPI'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 18 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.
- 5) Within 30 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the NDDPI will officially adopt and implement the Corrective Action Plan.
 - a) Reporting: Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, the NDDPI 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. Within 30 calendar days of the date of this Agreement, the NDDPI 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

NDDPI 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 and the Section 504 and Title II coordinator(s). Within 10 calendar days of receiving OCR's approval of the proposed notice, the NDDPI will officially adopt and prominently post the approved notice on its home page and throughout its website (including all subordinate pages and intranet sites).

- a) Reporting. Within 15 calendar days of receiving OCR's approval of the NDDPI's proposed notice, the NDDPI will provide documentation to OCR regarding the locations and content of its published notice.
- 7) Training. By September 30, 2016, and annually thereafter, the NDDPI 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.
 - a) Reporting: For each training session required by this Agreement, until such time as OCR closes the monitoring of this Agreement, the NDDPI will submit to OCR documentation that it has been delivered. The documentation will include a list of invitees and attendees, including titles; a description of the delivered training content; and the presenters' credentials for giving such training.

The NDDPI understands that OCR will not close the monitoring of this Agreement until OCR determines that the NDDPI has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4, 104.8, and Title II, at 28 C.F.R. §§ 35.130, and 35.160(a), which were at issue in this case.

The NDDPI also 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 NDDPI understands that during the monitoring of this Agreement, if necessary, OCR may visit the NDDPI interview staff, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the NDDPI has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4, 104.8, and Title II, at 28 C.F.R. §§ 35.130, and 35.160(a), which were at issue in this case.

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

_____/s/
For the NDDPI

Date