

Resolution Agreement

Washington Office of Superintendent of Public Instruction OCR Reference No. 10161103

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

This Agreement has been entered into voluntarily and does not constitute an admission that OSPI violated Section 504 and Title II and those statutes’ implementing regulations.

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

OSPI voluntarily agrees to take the actions set forth below.

Remedies and Reporting

1. Policies and Procedures for New Online Content and Functionality. By August 1, 2016, OSPI 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) 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 OSPI’s online content and functionality developed by, maintained by, or offered through a third-party vendor or through the use of open sources.
 - b) Within 30 calendar days of receiving OCR’s approval of the Plan for New Content, OSPI will officially adopt, and fully implement, the amended policies and procedures.
 - c) Reporting: Within 45 calendar days of receiving OCR’s approval, OSPI 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 OSPI asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Superintendent of Public Instruction (“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, 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 Superintendent or designee. 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 OSPI as their nondisabled peers.
3. Assessment of Existing Content and Functionality. By November 15, 2016, OSPI will conduct an assessment of its website, including, but not limited to, the home page, and all subordinate pages, to determine the specific portions, including online content and functionality developed by, maintained by, or offered through a third party vendor or an open source on behalf of OSPI, that are inaccessible to persons with disabilities. The Assessment will use the Benchmarks for Measuring Accessibility set out above, unless OSPI receives prior permission from OCR to use a different standard as a benchmark. The personnel conducting the Assessment will have sufficient knowledge and experience in website

accessibility to carry out all related tasks, including development of a proposed Corrective Action Plan. During the Assessment, OSPI will seek input regarding the accessibility of its website from persons knowledgeable about website accessibility, including employees, parents, students, and members of the public with disabilities.

- a) Reporting: Within 15 calendar days of the date OSPI completes its Assessment of Existing Content and Functionality, OSPI will submit to OCR documentation of the steps taken during the Assessment and a detailed accounting of the results of the Assessment.
4. Proposed Corrective Action Plan. Within 90 calendar days of the date OSPI completes its Assessment of Existing Content and Functionality, OSPI will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during OSPI's Assessment. The proposed Corrective Action Plan will set out a detailed schedule for:
 - a) 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;
 - b) setting up systems of accountability and verifying claims of accessibility by vendors or open sources; and
 - c) 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, OSPI 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, OSPI 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, OSPI will submit to OCR for review and approval a proposed Notice on its website to persons with disabilities regarding how to request the webmaster or other appropriate person to provide access to (or notify Washington OSPI 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 more formal grievances under Section 504 and Title II. Within 10 calendar days of receiving OCR's approval of the proposed Notice, OSPI will officially adopt and publish the approved Notice by prominently posting the approved Notice on its home page and throughout its website (including all subordinate pages).

- a) Reporting. Within 15 calendar days of receiving OCR’s approval of OSPI’s proposed Notice, OSPI will provide documentation to OCR regarding the locations and content of its published Notice.
7. Training. Within 30 calendar days of receiving OCR’s approval of the Plan for New Content, and annually thereafter, OSPI 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: Within 30 calendar days of conducting each training session required by this Agreement, until such time as OCR closes its monitoring of this Agreement, OSPI 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. OSPI understands that OCR will not close the monitoring of this Agreement until OCR determines that OSPI 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 case.
9. OSPI 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, OSPI understands that during the monitoring of this Agreement, if necessary, OCR may visit OSPI, interview staff members, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether OSPI 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.
10. OSPI 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 OSPI written notice of the alleged breach and 60 calendar days to cure the alleged breach.

_____/s/_____
Honorable Randy Dorn
Superintendent of Public Instruction
For Washington Office of Superintendent of Public Instruction

____6/21/2016_____
Date