

RESOLUTION AGREEMENT

West Memphis School District Case Number 06171823

The U.S. Department of Education, Office for Civil Rights (OCR) and the West Memphis School District (“the Recipient”) enter into this resolution agreement (Agreement) to resolve the allegation in the above-referenced complaint. This Agreement does not constitute an admission of liability, noncompliance, or wrongdoing by the Recipient. The Recipient assures OCR that it will take the following actions to comply with Section 504 of the Rehabilitation Act of 1973, 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, 42 U.S.C §§ 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 Recipient 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 Recipient voluntarily agrees to take the actions set forth below.

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

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

Remedies and Reporting

- 1) Proposed Administrative Regulations and Procedures Regarding New Online Content and Functionality. Within **one hundred and twenty (120) calendar days** of execution of this Agreement, the Recipient will submit to OCR for its review and approval proposed

administrative regulations 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, the Plan for New Content will require the Recipient to provide equally effective alternative access. The Plan for New Content will require the Recipient, 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 Recipient’s online content and functionality developed by, maintained by, or offered through a third-party vendor or by using open sources.
- c) Within forty-five (45) calendar days of receiving OCR’s approval of the Plan for New Content, the Recipient will officially adopt, and fully implement the amended administrative regulations and procedures.
- d) Reporting: Within forty-five (45) calendar days of receiving OCR’s approval, the Recipient will submit to OCR the approved administrative regulations 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 Recipient 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 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 Recipient as their nondisabled peers.

- 3) Audit of Existing Content and Functionality. Within **ninety (90) calendar days** of execution of this Agreement, the Recipient will propose for OCR’s review and approval the identity and *bona fides* of an Auditor (corporation or individual, external or internal) 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 Recipient receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the Recipient will also seek input from members of the public with disabilities, including parents, students, employees, and others associated with the Recipient, and other persons knowledgeable about website accessibility, regarding the accessibility of its online content and functionality.
 - a) Reporting: Within **ninety (90) calendar days** of the execution of this Agreement, the Recipient 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) Reporting: Within **one hundred twenty (120) calendar days** of receiving OCR’s approval of the proposed Auditor, the Recipient 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 Recipient will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the Recipient’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 **twenty-four (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 (3) setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis.
- 5) Within **forty-five (45) calendar days** of receiving OCR’s approval of the proposed Corrective Action Plan, the Recipient will officially adopt and implement the Corrective Action Plan.
 - a) Reporting: Within **forty-five (45) calendar days** of receiving OCR’s approval of the proposed Corrective Action Plan, the Recipient 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 (6) months thereafter until the Corrective Action Plan has been completed.

- 6) **Notice.** Within **sixty (60) calendar days** of the date of this Agreement, the Recipient 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 Recipient 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 thirty (30) calendar days of receiving OCR's approval of the proposed Notice, the Recipient will officially adopt and prominently post the approved Notice or link to the approved Notice on its home page and on the homepage and throughout its website (including all subordinate pages and intranet sites).
 - a) **Reporting.** Within thirty (30) calendar days of receiving OCR's approval of the Recipient's proposed Notice, the Recipient will provide documentation to OCR regarding the locations and content of its published Notice.
- 7) **Training.** Starting no later than **one hundred and eighty (180) calendar days** from the date of this Agreement, and annually thereafter, until such time as OCR closes its monitoring of this Agreement, the Recipient 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 Recipient 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 presenter's credentials for giving such training.

- 8) The Recipient may request an extension of time for the Recipient to comply with the deadlines as stated above if there are reasons that the Recipient is unable to meet such deadlines, specifically including extensions to accommodate normal in-service training dates. Such extensions are subject to OCR approval.

The Recipient 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 Recipient understands that during the monitoring of this Agreement, if necessary, OCR may visit the Recipient, interview staff, and request such additional reports or data, including

simulated website accounts and passwords, as are necessary for OCR to determine whether the Recipient has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), and Title II, at 28 C.F.R. §§ 35.130 and 35.160, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss the case.

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

The Agreement will become effective immediately upon the signature of the Recipient's representative below.

Mr. Jon Collins
Superintendent
West Memphis School District

Date