

## **Resolution Agreement**

### **Montana Office of Public Instruction OCR Reference No. 10161224**

The Office for Civil Rights (OCR) of the U.S. Department of Education initiated an investigation into an allegation that the Montana Office of Public Instruction (“Montana OPI”) 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 Montana OPI’s website contains barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in Montana OPI’s programs, services, and activities, and denying them effective communication necessary for full participation in Montana OPI’s programs, services, and activities.

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

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

Montana OPI voluntarily agrees to take the actions set forth below.

### **Remedies and Reporting**

1. Undue Burden and Fundamental Alteration. For any technology-related requirement in this agreement for which Montana OPI 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. If Montana OPI asserts either defense, Montana OPI 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 Superintendent or designee.

2. Policies and Procedures for New Online Content and Functionality. By December 31, 2016, Montana OPI 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 for full implementation, setting up a system of testing and accountability to maintain the accessibility of all online content and functionality on an ongoing basis, and backed by adequate personnel and financial resources. This requirement also applies to Montana OPI's online content and functionality developed by, maintained by, or offered through a third-party vendor or through the use of open sources, and includes setting up systems of accountability and verifying claims of accessibility by vendors or open sources.
- b) When fundamental alteration or undue burden defenses apply, the Plan for New Content will require Montana OPI to provide equally effective

alternate access. The Plan for New Content will require Montana OPI, 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.

- c) Within 45 calendar days of receiving OCR's approval of the Plan for New Content, Montana OPI will officially adopt, and fully implement, the amended policies and procedures.
- d) Reporting: Within 45 calendar days of receiving OCR's approval, Montana OPI will submit to OCR the approved policies and procedures, evidence of their adoption and distribution, and a description of how they are being implemented.

3. Assessment. By December 31, 2016, Montana OPI 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 Montana OPI, that are inaccessible to persons with disabilities. The Assessment will use the Benchmarks for Measuring Accessibility set out above, unless Montana OPI 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, Montana OPI 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.

Reporting: Within 15 calendar days of the date Montana OPI completes its Assessment of Existing Content and Functionality, Montana OPI 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. Simultaneously with the submission of the Assessment, Montana OPI will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during Montana OPI's Assessment. 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 18 months of the date OCR approved the Corrective Action Plan.

a) In its Corrective Action Plan, Montana OPI will acknowledge that if all inaccessible content and functionality identified during the assessment is not removed or made accessible on a timely basis, Montana OPI will be in violation of this agreement, Section 504, and Title II, and OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement.

b) Within 30 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, Montana OPI will officially adopt and implement the Corrective Action Plan.

c) Reporting: Within 45 calendar days of receiving OCR's approval of the proposed Corrective Action Plan, Montana OPI 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 30 calendar days of the date of this agreement, Montana OPI 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 Montana OPI regarding) online information or functionality that is currently inaccessible. The proposed Notice will also include information about, or an accessible link to information about, how to file a formal grievance with Montana OPI pursuant to the requirements of Section 504 and Title II.

Within 10 calendar days of receiving OCR's approval of the proposed Notice, Montana OPI 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 and intranet pages and sites).

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

6. Training. Starting no later December 31, 2016, and annually thereafter, Montana OPI 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 assessing web content and functionality.

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, Montana OPI 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.

7. Montana OPI understands that OCR will not close the monitoring of this agreement until OCR determines that Montana OPI 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.

8. Montana OPI 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, Montana OPI understands that during the monitoring of this agreement, if necessary, OCR may visit Montana OPI, interview staff members, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether Montana OPI 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.

9. Montana OPI 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 Montana OPI written notice of the alleged breach and 60 calendar days to cure the alleged breach.

\_\_\_\_\_/s/\_\_\_\_\_  
Denise Juneau, Superintendent  
For the Montana Office of Public Instruction

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August 24, 2016  
Date