

Resolution Agreement

Washington State Board of Education OCR Reference No. 10164018

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

This Agreement has been entered into voluntarily and does not constitute an admission that the Board violated Section 504 and Title II and those statutes’ implementing regulations. Furthermore, it is recognized that the Board disputes whether it is subject to the requirements of Section 504, because the Board maintains that it does not receive federal funding from the U.S. Department of Education. This Agreement shall not constitute an admission of those disputed facts, nor shall it be used in future proceedings to enforce the requirements of Section 504 on the Board.

Assurances of Nondiscrimination. The Board hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the Board’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 Board’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 Board 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 the Board's programs, services, and activities delivered online.

The Board 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 the Board asserts an undue burden or fundamental alteration defense, such assertion may only be made by the Executive Director ("Director") or by an individual designated by the Director 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 Director 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. 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.
2. **Policies and Procedures for New Online Content and Functionality.** By January 15, 2017, the Board 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 the Board'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) Within 60 calendar days of receiving OCR’s approval of the Plan for New Content, the Board will officially adopt, and fully implement, the amended policies and procedures.
 - c) Reporting: Within 75 calendar days of receiving OCR’s approval, the Board 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. Designation of Auditor. By October 15, 2016, the Board will propose for OCR’s review and approval the identity and bona fides of an Auditor (corporation or individual) to audit all existing content and functionality on its website and to identify any online content or functionality that is inaccessible to persons with disabilities. The Auditor will have sufficient knowledge and experience in website accessibility to carry out all related tasks, including development of a proposed Corrective Action Plan. 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.
- a) Reporting: Within 30 calendar days of receiving OCR’s approval of the proposed Auditor, the Board will submit to OCR documentation that it has assigned or retained the Auditor approved by OCR to conduct the Audit of existing content and functionality.
4. Audit of All Existing Content and Functionality. The Auditor approved by OCR will audit all content and functionality on the Board’s website, including, but not limited to, the home page, all subordinate pages, and the Board intranet pages and sites, and 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 Audit will be conducted using the Benchmarks for Measuring Accessibility set out above, unless the Board receives prior permission from OCR to use a different standard as a benchmark. During the Audit, the Board 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 90 calendar days of receiving OCR’s approval of the proposed Auditor, the Board 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.

5. Proposed Corrective Action Plan. Simultaneously with the submission of the Audit, the Board will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the Board’s Audit. 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 24 months of the date OCR approved the Corrective Action Plan.
 - a) Within 60 calendar days of receiving OCR’s approval of the proposed Corrective Action Plan, the Board will officially adopt and implement the Corrective Action Plan.
 - b) Reporting: Within 75 calendar days of receiving OCR’s approval of the proposed Corrective Action Plan, the Board 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 Board 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 the Board 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 a formal grievance with the board under Section 504 and Title II. Within 30 calendar days of receiving OCR’s approval of the proposed Notice, the Board will 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).
 - a) Reporting. Within 30 calendar days of receiving OCR’s approval of the Board’s proposed Notice, the Board 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, the Board 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, the Board 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. The Board understands that OCR will not close the monitoring of this agreement until OCR determines that the Board 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. The Board 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 Board understands that during the monitoring of this agreement, if necessary, OCR may visit the Board, interview staff members, and request such additional reports or data, including simulated website accounts and passwords, as are necessary for OCR to determine whether the Board 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. The Board 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 the Board written notice of the alleged breach and 60 calendar days to cure the alleged breach.

/s/

Mr. Ben Rarick
Executive Director
For the Washington State Board of Education

July 21, 2016

Date