

DISABILITIES & INACCESSIBLE ELECTRONIC & INFORMATION TECHNOLOGY

May 18, 2015
2015 Oklahoma Higher Ed Annual IT Summit
Oklahoma Council on Information Technology

Charles K. Babb¹, General Counsel
Regional University System of Oklahoma
cbabb@ruso.edu

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability. The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life.

Under Title II of the Americans with Disabilities Act Amendment Act (ADAAA) no qualified individual with a disability shall by reason of such disability be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. The statute and regulations prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities. Both the U.S. Department of Justice and the U.S. Department of Education have enforcement authority under Title II of the ADA, which covers public universities. In addition, the Department of Education enforces Section 504 of the Rehabilitation Act of 1973 with respect to public and private colleges and universities that receive federal financial assistance from the Department of Education.

Title III prohibits discrimination on the basis of disability in the activities of places of public accommodation which includes private entities whose operations affect commerce that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices. One of the specific categories also includes undergraduate or postgraduate private school or other place of education. The U.S. Department of Justice is responsible for enforcement and implementation of Title III of the ADA, which covers private colleges and universities.

¹ The opinions expressed in this paper and at the presentation of the same are those of the author and are not necessarily the position of the Regional University System of Oklahoma, the Regents or the Administrative Office; nor has there been any effort to obtain or express those positions. The author further reserves the right to argue a different position depending on the then current interests of his client.

When the ADA was enacted in 1990, the Internet as we know it today did not exist. Today the Internet plays a critical role in the daily personal, professional, civic, and business life of Americans. Increasingly many public entities under Title II are using websites to provide the public access to their programs, services, and activities. Many websites of public accommodations and governmental entities, however, render use by individuals with disabilities difficult or impossible due to barriers posed by websites designed without accessible features.

Beyond goods and services, information available on the Internet has become a gateway to education. Schools at all levels are increasingly offering programs and classroom instruction through websites. Many colleges and universities offer degree programs online; some universities exist exclusively on the Internet. Even if they do not offer degree programs online, most colleges and universities today rely on websites and other Internet-related technologies in the application process for prospective students, for housing eligibility and on-campus living assignments, course registration, assignments and discussion groups, and for a wide variety of administrative and logistical functions in which students and staff must participate.

Definitions (as used by the U.S. Department of Education)

A. "**Accessible**" means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use.

B. "**Electronic and information technology**" or "**EIT**" includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to,

- the internet and intranet websites,
- content delivered in digital form,
- electronic books and electronic book reading systems,
- search engines and databases,
- learning management systems,
- classroom technology and multimedia,
- personal response systems ("clickers"),
- office equipment such as classroom podiums, copiers and fax machines

Equipment or interconnected system or subsystem of equipment that is used in the automatic

- acquisition,
- creation,
- storage,
- manipulation,

- management,
- movement,
- control,
- display,
- switching,
- interchange,
- transmission, or
- reception of data or information.

This term includes telecommunications products such as

- telephones,
- information kiosks,
- Automated Teller Machines (ATMs) transaction machines,
- computers,
- ancillary equipment,
- software,
- firmware and similar procedures,
- services (including support services), and
- related resources.

C. "**Equally effective**" means that the alternative format or medium communicates the same information in as timely a fashion as does the original format or medium.

D. "**WCAG 2.0 level A and AA standards**" ("WCAG 2.0 standards") are non-technology-specific "Web Content Accessibility Guidelines" for making Web content accessible to a wide range of people with disabilities.

EIT is not just about classes, software, or disability services. It is also about virtual tools in the workplace and inaccessible content on an accessible system.

Higher Education

University of Montana-Missoula (March 2014)

(<http://www.ahead.org/Presidents%20Post/March%202014/Final%20Agrmt%20Univ%20Montana-Missoula%203-10-14%20Accessible.pdf> last visited April 28, 2015)

See Appendix B at page 11, *infra*.

Innes v. Board of Regents of the University System of Maryland, 29 F.Supp.3d 566 (D.Md. July 1, 2014)

Plaintiffs are deaf and brought suit under the ADA alleging that the football and basketball games at the respective physical venues and the university athletic website are inaccessible. The plaintiffs seek to have the university provide close captioning for the games and the broadcasts. The court has determined that it would not be a fundamental alteration to the program or activity for a university to provide captioning but that factual issues existed as to whether providing captioning would be an undue burden on the university. As of this presentation, the case is still pending.

Board of Supervisors for the University of Louisiana System with and on behalf of Louisiana Tech University (July 2013)(<http://www.ada.gov/louisiana-tech.htm> last visited April 28, 2015)

A professor required an online learning product [MyOMLab] which was inaccessible to the student who is blind. The online learning product was "available to other students twenty-four hours per day, was used for tutorials on course subject matter; was required for the completion of homework in the course (including an interactive aspect that allowed for immediate feedback to student on the correctness of answers provide and an opportunity to re-answer any question for full credit); and was used for the administration of tests in the course." The student complained to the professor who directed the student to consult with the vendor. Having no luck the student then contacted the university disability services. The lack of access persisted nearly one month into the quarter, at which time the student felt he was so far behind that he was compelled to withdraw from the course.

The student had another course with the same professor. In that course the professor distributed inaccessible, hard copy course materials to the student. The inaccessible materials, copied by the professor for distribution immediately prior to the class session were distributed during class for students to use during that class session and as out-of-class study materials for a future exam. When contacted the professor delegated to another student the responsibility to provide accessible materials to the blind student, which ultimately occurred several days after the class session. The delay prevented the student from having the same opportunity that students without disabilities had to participate in the class and to study and prepare for the exam.

In the course of OCR's investigation ***the Department identified additional disability related university policies and/or practices.*** These issues were addressed in the Agreement.

In the five year agreement the university agreed:

1. Within 120 days to amend and disseminate policies to include:
 - a. require accessible technology and course content,
 - b. ensure the office of disability services takes an active role in working with all persons involve in providing class instruction,
 - c. ensure the office of disability services is the main point of contact on issues related to ADA compliance,
 - d. ensure university recognized modifications are implemented,
 - e. ensure the office of disability services timely responds to reasonable requests for assistance, and
 - f. ensure university disability policy has correct contact information for filing complaints with OCR as reflected at http://www.ada.gov/fact_on_complaint.htm
2. Within 90 days develop an annual training program for faculty and staff. The proposed curriculum for the training as well as the names and qualifications of the trainers to be sent to OCR.
3. Within 90 days report fulfillment of policy implementation and training. Include attendance logs associated with the training. Every year on the anniversary of the first report include:
 - a. The dates and attendance logs of the University's ADA faculty and staff training;
 - b. The dates and attendance logs of the University's ADA student training;
 - c. All complaints, formal or informal, received by the University about technology-related accessibility issues for people with disabilities in any University course.
4. Permanently purge student's transcript of any reference to the course and pay \$23,543.00 to the student.

South Carolina Technical College System (March 2013)

The U.S. Department of Education Office of Civil Rights investigated the South Carolina Technical College System for accessibility. The South Carolina Technical College System is comprised of sixteen technical colleges located around South Carolina. Specifically the OCR looked at the system website and the website of two of the colleges. The OCR found that a number of the aspects of the websites are not fully compliant with the Section 508 standards. The system entered into an agreement with the OCR to bring the websites into compliance.

U.S. Department of Education press release which includes links to the resolution letter and agreement can be found at <http://www.ed.gov/news/press-releases/civil-rights-agreement-reached-south-carolina-technical-college-system-accessibility-websites-people-disabilities> (last visited April 29, 2015)

Penn State University (October 2011)

The National Federation of the Blind filed a complaint against Penn State University. Eventually an agreement was reached between the OCR, the NFB, and Penn State. Some of the particulars include:

1. **Library Services and Library Website** shall be Accessible in accordance with WCAG 2.0 Level AA within one year. The University shall conduct an accessibility scan monthly thereafter to ascertain whether any new posted content is accessible. The University shall notify content authors if corrections to their pages are needed and of reasonable timelines for corrections to be made. The University shall note if corrective action has been taken during the next monthly scan.

Also, with one year the University shall implement a **search engine** that is Accessible in accordance with WCAG 2.0 Level AA that can search across all Library collections, including, but not limited to, e-journals, databases and e-books.

2. The University shall adopt WCAG 2.0 level AA standards for all University **websites**.
3. The University shall select an Accessible **course management system** that complies with the Section 508 Guidelines to replace ANGEL.
4. The University shall implement system changes that will allow a blind faculty member to control the **classroom** podium and LCD equipment without the assistance of another individual. In the interim, the University shall make a technician available to provide assistance in the classroom or remotely.
5. Any personal response system (“**clicker**”) utilized by the University shall include an Accessible option that is available to blind students at the same price and at the same time as the clicker that is available to sighted students.
6. Any bank website that is reported as inaccessible shall be fully Accessible within three (3) months of the University’s request and shall also request

that the Automated Teller Machines (**ATMs**) on each University campus be voice-guided; that is, the ATM meets the requirements of <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> If the ATM is neither made Accessible within three (3) months after the University's request nor are plans for accessibility made within that time, the bank shall be requested to remove the ATM.

Grand Rapids Community College (November 2012). This was a complaint alleging inaccessible school website and online courses. The college agreed to provide accessible content.

And Just to Show that everyone is subject to the requirements:

National Federation of the Blind v. U.S. Department of Education (October 2014)

Scott Berry, a blind student, filed a complaint with the U.S. DOE alleging that his student loan servicer denied him an accessible format and refused to assist him over the phone. He also filed a complaint on behalf of all similarly situated students. The DOE agreed to grant Mr. Berry relief but declined to provide systemic relief. The National Federation of the Blind intervened to assist Mr. Berry and eventually the NFB and DOE entered into a Settlement Agreement to require accessibility from the student loan servicers.

Help from U.S. Department of Education

Dear Presidents Letter From Thomas E. Perez, Assistant Attorney General, and Russlynn Ali Assistant Secretary for Civil Rights, issued jointly by the U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office of Civil Rights, June 29, 2010, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.pdf>

This letter was issued to College and University Presidents in the wake of the settlement agreement entered into with colleges and universities that used the KindleDX. The federal government had determined that the KindleDX was an inaccessible, electronic book reader.

The government stated: "[i]t is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students."

Dear Colleague Letter from Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Department of Education, May 26, 2011

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.pdf>

Frequently Asked Questions, U.S. Department of Education, May 26, 2011

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.pdf>

See Also, Appendix A for information about an in-state resource for compliance.

CONCLUSION

Accessibility to electronic and information technology is not only a legal requirement, it is the right thing to do. The U.S. Department of Education has provided much guidance and examples of bringing electronic information to all of our students, faculty and staff. Best practices would encourage taking advantage of those resources to avoid investigations and possible fines.

FOUR TIPS TO HELP REDUCE THE RISK OF HAVING TO TALK TO YOUR LAWYER

Tip #1: Find the Rules and Follow Them

Where are the Rules?

- State and Federal Laws and Regulations
- Ethics Commission
- Regents' policies
- University Policy and Procedure
- Faculty, staff and student handbooks
- Department Policies

Tip #2: The Modified Miranda Warning

"Everything that you say ***(and write)*** can ***(and will)*** be used against you in ***(and out of)*** a court of law."

Tip #3: Learn to "Issue Spot"

Familiarize yourself with the hot issues

- Discrimination and/or Harassment (student, faculty, and staff)
(race, age, gender, transgender, physical/psychological/learning disability, national origin, religion, sexual orientation, political)
- Personnel Matters
- Compliance
- Procurement/Purchasing/Contracting
- Retaliation and Whistle-Blowing *(Never retaliate, even if they deserve it)*

Tip #4: Call for Help

Some people operate on the theory that it is easier to ask for forgiveness than it is to get permission. However, after an adverse jury verdict, forgiveness may involve you having to get out your personal checkbook.

CAVEAT: Following these tips will not guarantee that you will never be sued, that no grievance will be upheld against you, or that you won't turn grey.

Web Accessibility in Higher Education Project (WAHEP)
http://www.ok.gov/abletech/IT_Accessibility/WAHEP/
a part of
Oklahoma ABLE Tech
www.ok.gov/abletech

Oklahoma ABLE Tech is the statewide Assistive Technology Act Program located at Oklahoma State University in the Department of Wellness. ABLE Tech is funded through the Rehabilitation Services Administration, U.S. Department of Education which is made possible through the Assistive Technology Act of 1998 as amended in 2004 (ATA 2004). The ABLE Tech mission is to improve access to and acquisition of assistive technology for individuals with disabilities of all ages.

The Web Accessibility in Higher Education Project (WAHEP) has is a part of ABLE Tech with a goal to make the digital environment in higher education more accessible. The project involves 29 teams from higher education institutions throughout Oklahoma. Each team has a memorandum of understanding with ABLE Tech that covers three specific areas:

- Improving accessibility in the institution's public-facing website
- Creating policy around technology accessibility
- Team member participation in the WAHEP webinar series

WAHEP records each webinar then publishes them at http://www.ok.gov/abletech/IT_Accessibility/WAHEP/Webinars.html for repeat or future viewing. Look for the Webinar Archive section on that page. WAHEP works to create more broad technology accessibility initiatives that reach into academic material, human relations, and other areas of the campus; provide training at events like the CoIT Summit (Rob Carr, Accessibility Coordinator is presenting tomorrow) and other state conferences; and provide direct technical assistance on topics ranging from policy and implementation to making specific pieces of content more accessible. Additionally work directly with third party vendors that provide web design or other technology services to institutions to help the vendors get a better handle on the nuts and bolts of accessibility.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE

March 10, 2014

Via U.S. Mail and Facsimile (406) 243-2797

Dr. Royce C. Engstrom
President
University of Montana-Missoula
32 Campus Drive
Missoula, Montana 59812-2522

Re: University of Montana-Missoula
OCR Reference No. 10122118

Dear Dr. Engstrom:

The Office for Civil Rights (OCR) in the U.S. Department of Education is discontinuing its investigation of the above-referenced complaint filed against the University of Montana-Missoula on May 4, 2012. The complaint alleged that the university is discriminating against students with disabilities by using inaccessible electronic and information technology, including:

- inaccessible class assignments and materials on the learning management system, Moodle;
- inaccessible live chat and discussion board functions in the learning management system, Moodle;
- inaccessible documents that are scanned images on webpages and web sites;
- inaccessible videos, and videos in Flash format, that are not captioned;
- inaccessible library database materials;
- inaccessible course registration through a web site, Cyber Bear; and
- inaccessible classroom clickers.

915 2ND AVE., SUITE 3310, SEATTLE, WA 98174-1099
www.ed.gov

Page 2 – OCR Reference No. 10122118

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, and the regulations that implement these statutes.

The university has agreed to take the actions set forth in the enclosed agreement, which, when fully implemented, will resolve the issues raised by the complaint.

OCR will monitor the university's implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. I have enclosed a document summarizing the remedial and reporting provisions and dates required by the agreement. The first report under the agreement is due from the university by March 14, 2014.

Thank you for the assistance the university extended to OCR in resolving this complaint, which we recognize raises complex issues for the university. I particularly thank you for the assistance of Ms. Lucy France, the university's Legal Counsel. If you have any questions, please feel free to contact Noel Nightingale, Lead Attorney, by telephone at (206) 607-1632, or by e-mail at noel.nightingale@ed.gov.

Sincerely,



Barbara Wery
Team Leader

Enclosures: Resolution Agreement
Summary of Remedial and Reporting
Provisions of Agreement

cc: Lucy France, Office of Legal Counsel

RESOLUTION AGREEMENT

This Agreement is entered into between the University of Montana and the U.S. Department of Education, Office for Civil Rights.

I. BACKGROUND AND JURISDICTION

A. The U.S. Department of Education, Office for Civil Rights (OCR) enforces Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and the regulations that implement those statutes at 34 C.F.R. Part 104 and 28 C.F.R. Part 35. These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities. The University receives federal financial assistance from the U.S. Department of Education, is a public entity, and is, therefore, subject to the requirements of these laws.

B. OCR received a Complaint of disability discrimination against the University of Montana on May 4, 2012 (OCR Reference No. 10122118). The Complaint alleged that the University is discriminating against students with disabilities by using inaccessible electronic and information technology, including: inaccessible class assignments and materials on the learning management system, Moodle; inaccessible live chat and discussion board functions in the learning management system, Moodle; inaccessible documents that are scanned images on webpages and websites; inaccessible videos in Flash format, that are not captioned; inaccessible library database materials; inaccessible course registration through a website, Cyber Bear; and inaccessible classroom clickers.

II. DEFINITIONS

A. “Accessible” means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use.

B. “Electronic and information technology” or “EIT” includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, the internet and intranet websites, content delivered in digital form, electronic books and electronic book reading systems, search engines and databases, learning management systems, classroom technology and multimedia, personal response systems (“clickers”), and office equipment such as classroom podiums, copiers and fax machines. It also includes any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, creation, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This term includes telecommunications products (such as telephones),

information kiosks, Automated Teller Machines (ATMs) transaction machines, computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

C. “Equally effective” means that the alternative format or medium communicates the same information in as timely a fashion as does the original format or medium.

D. “Legacy websites” are University Program and Department websites published before July 30, 2013.

III. REMEDIAL ACTIONS

To resolve the concerns identified in the Complaint, the University will take effective steps, the specifics of which are described below, designed to ensure that EIT used in University programs and activities is accessible to individuals with disabilities.

A. EIT Accessibility Policy and Procedures

1. By March 14, 2014, the University shall develop a draft EIT Accessibility Policy that demonstrates its commitment to implementing accessibility of EIT. Along with the policy, the University shall develop draft procedures to implement its EIT Accessibility Policy across all disciplines and will provide to OCR for review and comment the draft policy and procedures. OCR will provide comments about the draft policy and procedures as promptly as possible, and the University will incorporate OCR’s comments into its policy and procedures unless there is disagreement, in which case the University and OCR will work together in good faith to resolve the disagreement.

2. Within 30 calendar days of receiving OCR’s comments about the draft EIT Accessibility Policy and Procedures developed pursuant to Section III.A.1. of this Agreement (or the resolution of any disagreement that arises about OCR’s comments, whichever is later), the University shall incorporate OCR’s comments and adopt and implement the policy and procedures.

3. Within 30 calendar days of adopting and implementing its EIT Accessibility Policy and Procedures pursuant to Section III.A.2. of this Agreement, the University will disseminate those policy and procedures to all staff and faculty, and the University will provide additional instruction and support to both staff and faculty. The University will also post the adopted policy and procedures on a University website. The University shall disseminate its EIT Accessibility Policy and Procedures on an annual basis to all University personnel, including senior academic leadership (deans and chancellors), department heads, faculty, and staff.

4. Within 30 calendar days of adopting and implementing its EIT Accessibility Policy and Procedures pursuant to Section III.A.2. of this Agreement, the University will provide presentations and workshops about the policy and procedures to University senior academic leadership, department heads, and information technology staff.

B. Grievance Procedure

By March 14, 2014, the University shall disseminate a grievance procedure compliant with Section 504 and Title II whereby a student, faculty member, staff member, or member of the public may file a grievance to the University's Office of Equal Opportunity and Affirmative Action ("EO/AA") regarding an EIT accessibility barrier. The grievance procedure shall be posted on the websites for the EO/AA Office, the Office of Disability Services for Students, and the University website dedicated to accessibility. The procedure shall include a mechanism whereby the Director of EO/AA or his or her designee shall investigate the grievance and respond to the grievant within a reasonable timeframe of the filing of the grievance.

C. EIT Procurement Procedures

1. By May 1, 2014, the University shall develop and institute procedures that require the University to purchase or recommend only EITs that will provide the same programs, benefits, and services as they do to individuals without disabilities, except when it would fundamentally alter a program or when it is not technically feasible to do so, in which case the procedures will require the University to provide accessible alternate EITs.

2. By May 1, 2014, the University shall implement as part of its request for proposal process a requirement that bidders meet the accessibility standards of WCAG 2.0 Level AA for web-based technology (as set forth in Appendix A to this Agreement) and Section 508 of the Rehabilitation Act and the Americans with Disabilities Act for other EITs; and requiring or encouraging, at the University's discretion, as part of any contract with its vendors, provisions in which the vendor warrants that any technology provided complies with these standards and any applicable current federal and state disability laws.

D. EIT Accessibility Training

1. By March 14, 2014, the University shall provide and make readily available, to faculty and staff who develop or post content on any University website or through other EITs, or who select, create, or post EIT for students or otherwise incorporate students' use of EIT in their classes, information about their obligations to ensure EIT accessibility and about resources to assist in meeting those obligations, including instruction on how to make digital information

accessible and how to both manually check and use automated tools to ensure the accessibility of such content and EIT.

2. By March 14, 2014, the University will establish a University website that will be dedicated to accessibility, and that will provide tools and information for training of faculty and staff.

3. Within 30 calendar days of adopting and implementing its EIT Accessibility Policy and Procedures pursuant to Section III.A.2. of this Agreement, the University shall conduct training, instruction, and support at all levels of University personnel about the University's policy and procedures and shall list the tools and techniques that are available for faculty and staff to comply with the policy and procedures so that the University's policy and procedures are effectively and consistently implemented. At a minimum, training shall be provided to:

- a) the University's Section 504 and Title II coordinators;
- b) Disability Services for Students staff members;
- c) information technology staff members;
- d) web editors;
- e) personnel responsible for purchasing EIT; and
- f) library staff members.

E. EIT Coordinator

By March 14, 2014, the University shall hire or designate a staff member with responsibility and commensurate authority to coordinate the University's EIT Accessibility Policy and Procedures.

F. Student Survey

By March 14, 2014, the University will issue a confidential survey to students and former students who were registered with the office of Disability Services for Students during the 2011–2012, 2012–2013, and 2013–2014 academic years. The survey will ask such students and former students to identify any and all barriers to EIT they encountered as a student at the University.

G. EIT Accessibility Audit

1. By June 6, 2014, the University shall complete an accessibility audit of its EITs that will examine the accessibility and usability of the EITs provided by the University to students, prospective students, faculty, and staff who have disabilities. The audit shall examine various aspects of the University's EITs, including but not limited to, University websites, documents posted to webpages and websites, application processes, library services, learning management systems, access to classroom podiums and liquid crystal display devices, course

registration software, videos, and videos in Flash format, personal response systems (“clickers”) and banking arrangements offered to students, faculty, and staff, including website and ATM access.

2. The audit required by Section III.G.1. of this Agreement shall be conducted in a professional manner in consultation with an individual or individuals who is or are knowledgeable about access to EIT by students, faculty, and staff with disabilities. The audit will also be benchmarked by appropriate processes.

H. EIT Corrective Action Strategy

1. By August 29, 2014, the University shall develop an EIT Corrective Action Strategy based on the student survey findings obtained pursuant to Section III.F. of this Agreement and the audit findings made pursuant to Section III.G. The strategy shall include dates by which corrective actions shall be completed. The dates agreed to in this Agreement shall be incorporated into the University’s strategy. The strategy shall include:

- a) priorities for making EIT accessible¹;
- b) schedule for making EIT accessible;
- c) provision for testing of EIT accessibility including by users of that EIT who are representative of the class of students with disabilities;
- d) dates by which the steps of the plan will be completed; and
- e) enhanced efforts to notify students of how to request that the University make accessible for them specific EITs.

2. By August 29, 2014, the University shall disseminate the EIT Corrective Action Strategy it developed pursuant to Section III.H.1. of this Agreement among its colleges and campuses and post it on a University website dedicated to accessibility.

I. Library Services and Library Website

1. By March 14, 2014, the University’s library website shall be accessible in accordance with WCAG 2.0 Level AA standard, as set forth in Appendix A to this Agreement. The Mansfield Library shall conduct monthly accessibility scans to ascertain whether any new posted content is inaccessible. The University shall notify content authors if corrections to pages are needed and of reasonable timelines for corrections to be made. The University shall note if corrective action has been taken during the next monthly scan.

¹ The parties anticipate that the University will identify some EIT that is old and not currently or frequently used and that the strategy will not include provisions for going back to make such EIT accessible. If such EIT becomes currently used in a class or program, it will be made accessible in accordance with the EIT Accessibility Policy.

2. By July 1, 2014, the Mansfield Library shall implement a search engine that is accessible in accordance with WCAG 2.0 Level AA standard, as set forth in Appendix A to this Agreement, which can search across all library collections, including, but not limited to, e-journals, databases, and e-books.

J. Websites

1. By December 31, 2014, all webpages published or hosted by the University on or after July 30, 2013, shall be accessible according to WCAG 2.0 Level AA standard, as set forth in Appendix A to this Agreement. During the interim period (until December 31, 2014), upon a specific request for access by an individual with a disability, the University will update webpages to be in compliance with the WCAG 2.0 Level AA standard, or the University will otherwise make the content available in a timely manner and in an equally effective accessible format to the individual.

2. By May 16, 2014, the University shall identify a strategy to ensure that webpages that provide essential student functions are accessible according to WCAG 2.0 Level AA standard, as set forth in Appendix A to this Agreement.

3. By December 31, 2014, all University Program and Department websites, including legacy pages, unless technically impossible, shall contain a clear statement (or a link to a statement) describing the University's commitment to web accessibility and a method to report barriers and/or to receive an alternative equally effective accessible format.

4. Upon a specific request for access by an individual with a disability, the University will update legacy pages to be in compliance with the WCAG 2.0 Level AA standard, as set forth in Appendix A to this Agreement, or the University will otherwise make the content available to the individual in a timely manner and in an equally effective accessible format.

K. Learning Management Systems

1. By March 14, 2014, the two accessibility issues related to the University's learning management systems cited in the OCR Complaint (chat and forums) will be resolved.

2. By March 14, 2014, the University will identify its strategy to ensure the ongoing accessibility of its learning management systems.

L. Classrooms

By May 1, 2014, the University will implement a program to provide information, education, and support for ensuring that EIT used in classrooms (including, but not limited to, clickers, podiums, blogs, and other software) is accessible.

IV. REPORTING REQUIREMENTS

A. Report about EIT Accessibility Policy and Procedures

1. By March 28, 2014, the University will provide OCR with a detailed report about its draft EIT Accessibility Policy and Procedures developed pursuant to Section III.A.1. of this Agreement. The report will include a copy of the draft policy and procedures, the name, title, and relevant qualifications of the individuals involved in developing the policy and procedures, and the methods the University used to create the policy and procedures.

2. Within 45 calendar days of incorporating OCR's comments about the draft EIT Accessibility Policy and Procedures developed pursuant to Section III.A.1. of this Agreement (or the resolution of any disagreement that arises due to OCR's comments, whichever is later) the University will provide a detailed report to OCR about the adoption and implementation of the policy and procedures required by Section III.A.2. of this Agreement.

3. Within 60 calendar days of adopting and implementing its EIT Accessibility Policy and Procedures pursuant to Section III.A.2. of this Agreement, the University will provide a detailed report to OCR about the dissemination of the policy and procedures required by Section III.A.3. and the presentations and workshops required by Section III.A.4.

B. Report about Grievance Procedure

By March 28, 2014, the University will provide OCR with a detailed report about its Section 504 and Title II grievance procedure required by Section III.B. of this Agreement. The report will include a copy of the grievance procedure and a description of the methods used to disseminate the grievance procedure.

C. Report about EIT Procurement Procedures

By May 15, 2014, the University will provide OCR with a detailed report about its EIT procurement procedures developed pursuant to Section III.C. of this Agreement. The report will include a copy of the procurement procedures, the name, title, and relevant qualifications of the individuals involved in developing the procedures, and the methods the University used to create the procedures.

D. Report about EIT Accessibility Training

Within 120 calendar days of adopting and implementing its EIT Accessibility Policy and Procedures pursuant to Section III.A.2. of this Agreement, the University will provide OCR with a detailed report about the resources provided and the trainings conducted pursuant to Section III.D.3., including descriptions of resources provided, training dates, the qualifications of trainers, descriptions of the types of trainings participated in with a corresponding list of personnel who attended each type of training by their position titles and departments, copies of the training agendas, and a copy of any handouts and visual aids used for the trainings.

E. Report about EIT Coordinator

By March 28, 2014, the University will provide OCR with a detailed report about its implementation of Section III.E. of this Agreement, regarding the selection of a staff member to coordinate the University's EIT Accessibility Policy and Procedures.

F. Report about Student Survey

By September 15, 2014, the University will provide OCR with a detailed report about the results of the student survey administered pursuant to Section III.F. of this Agreement. The report will include a summary of the nature of each survey response, any actions taken by the University based on the survey data, and any University actions taken related to students who asserted that EIT inaccessibility had adversely affected their education or otherwise had adversely affected their ability to participate in University programs and activities. The report will also include copies of all survey responses.

G. Report about EIT Accessibility Audit

By June 27, 2014, the University will provide OCR with a detailed report about the results of the accessibility audit of its EITs required by Section III.G. of this Agreement. The report will include a copy of the audit, the name, title, and relevant qualifications of the individuals involved in the audit, the methods the University used to conduct the audit, and each EIT audited.

H. Report about EIT Corrective Action Strategy

By September 15, 2014, the University will provide OCR with a detailed report about the EIT Corrective Action Strategy developed and disseminated by the University pursuant to Section III.H. of this Agreement. The report will include a copy of the University's strategic plan, the name, title, and relevant qualifications of the individuals involved in developing the plan, the methods

the University used to develop the plan, and a description of the dissemination of the plan.

I. Report about Library Services and Library Website

By January 15, 2016, the University will provide OCR with a detailed report about its implementation of Section III.I. of this Agreement regarding the accessibility of its library services delivered through EIT. The report will include a description of the adoption of a search engine, the results of the library's monthly scans, and any notifications issued to content authors.

J. Report about Websites

By January 15, 2016, the University will provide OCR with a detailed report about its implementation of Section III.J. of this Agreement regarding the accessibility of its Program and Department websites. The report will include a summary of all University program and department websites, an analysis of the accessibility of each of these websites and website pages, and a description of any websites and resources that remain inaccessible and the reasons for the inaccessibility.

K. Report about Learning Management Systems

By March 28, 2014, the University will provide OCR with a detailed report about the remedial actions taken with respect to the accessibility of the chat and forum functions of its learning management systems pursuant to Section III.K. 1. of this Agreement and about the strategy the University developed to ensure the ongoing accessibility of all aspects of its learning management systems pursuant to Section III.K.2. The report shall include a description of the accessibility of the learning management systems chat and forum functions, a description of each aspect of the learning management systems, a copy of the document memorializing the strategy, the name, title, and relevant qualifications of the individuals involved in developing the strategy, and the methods the University used to create the strategy.

L. Report about Classrooms

By May 15, 2014, the University will provide OCR with a detailed report describing its implementation of Section III.L. of this Agreement regarding the accessibility of the EIT used in classrooms. The report will include a description of the information, education, and support delivered to University faculty and staff members and any purchases made in implementing Section III.L. The report will also include any methods the University initiated to ensure the ongoing accessibility of classroom EIT.

M. Report about Grievances Filed about EIT Accessibility

By January 15, 2016, the University will provide OCR with a detailed report about any grievances filed under its Grievance Procedure implemented pursuant to Section III.B. of this Agreement. The report will include a summary of each grievance about EIT accessibility filed and the University's response to each such grievance.

N. Report about Full Implementation of Agreement

On the second year anniversary of the University's signing this Agreement, the University will have fully implemented each remedial action required by this Agreement and provide OCR with a detailed report about each remedial provision that OCR had not previously determined had been fully implemented.

V. AGREEMENT MODIFICATION

If the University determines that it is unable to fulfill the terms of this Agreement, including timeframes provided for by this Agreement, the University will make a written request to OCR for a modification to the substantive terms of this Agreement or for an extension of the Agreement timeframes. OCR will respond to the University's modification request in writing and will notify the University and complainant in writing if OCR agrees to significant modifications to this Agreement.

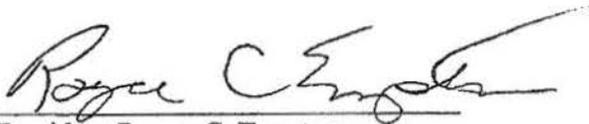
VI. AGREEMENT IMPLEMENTATION DEFICIENCIES

- A. The parties to this Agreement will communicate and work in good faith to fully implement the terms of this Agreement.
- B. OCR will promptly provide written notice to the University of any deficiencies in the University's implementation of the terms of this Agreement, and will request appropriate action to address such deficiencies. In the case that the University notifies OCR that it will not carry out a provision of the Agreement in the agreed-upon time or manner, or when OCR reaches this determination, OCR will take appropriate steps to address the problem. OCR may seek additional commitments where necessary to address the failure of the University to implement commitments it has made in this Agreement.
- C. OCR may initiate administrative enforcement or judicial proceedings to enforce the terms of this Agreement. Before initiating administrative enforcement (34 C.F.R. 100.9 and 100.10) or judicial proceedings, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

VII. GENERAL

- A. This Agreement resolves the allegations OCR accepted for resolution in the Complaint (OCR Reference No. 10122118) and does not constitute an admission by the University of a violation of Section 504 or Title II or those statutes' implementing regulations or any other law.
- B. OCR agrees to discontinue its investigation of the Complaint based upon the University's commitment to take the actions specified in this Agreement, which, when fully implemented, will resolve the allegations OCR accepted for resolution.
- C. The University agrees to provide reports, data, and other information in a timely manner in accordance with the reporting provisions of this Agreement. During OCR's monitoring of the University's implementation of this Agreement, OCR may visit the University; interview staff members and students; and request such additional reports, data, and other information as may be necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the Section 504 regulations at 34 C.F.R. 104.43 and 104.44 and the Title II regulations at 28 C.F.R. 35.130, 35.160, and 35.161, which are at issue in this case.
- D. OCR will not terminate its monitoring of the University's implementation of this Agreement until OCR determines that the University has fulfilled the Agreement's terms and is in compliance with the Section 504 regulations at 34 C.F.R. 104.43 and 104.44 and the Title II regulations at 28 C.F.R. 35.130, 35.160, and 35.161.

Signatures of the Parties to the Resolution Agreement.



President Royce C. Engstrom
Office of the President
The University of Montana
Missoula, Montana

Gary D. Jackson, Director
U.S. Department of Education
Office for Civil Rights
Seattle Office

APPENDIX A

The University, for web-based technology, will meet the accessibility standards set forth in the World Wide Web Consortium’s Web Content Accessibility Guidelines (WCAG) at WCAG 2.0 Level AA, except as follows:

1.4.4 Resize text (Except for [captions](#) and [images of text](#), [text](#) can be resized without [assistive technology](#) up to 200 percent without loss of content or functionality.)

The University will ensure all web pages, sites, and applications meet the Success Criterion for this standard with the following exception: when a viable user agent is capable of fulfilling the criterion and no circumstances are created by the institution to prevent a user from using such user agent, authors are not required to provide zoom functionality through custom development and may rely on the user agent to satisfy the Success Criterion.

Reasoning: as identified in the “Intent of this Success Criterion”^[1] document for 1.4.4, authors would normally be responsible to provide non-native zoom support under an unspecified set of circumstances. This exception serves to clearly define that those circumstances must include a failure of the University to provide an environment where the user agent can meet this criterion.

2.4.5 Multiple Ways (More than one way is available to locate a [Web page](#) within a [set of Web pages](#) except where the Web Page is the result of, or a step in, a [process](#).)

The University will meet this Success Criterion except for Web pages within a Web application, provided that the structure or volume of pages renders the Sufficient Techniques for 2.4.5 unnecessary or impractical.

Reasoning: many Web pages within Web applications are not accessed by a strict Process, as defined in the Success Criterion^[2] of this standard. As a matter of practicality, Web applications that group Web pages in sufficiently large or small numbers may warrant the use of only one Sufficient Technique, where a second technique would be impractical.

^[1]<http://www.w3.org/TR/UNDERSTANDING-WCAG20/visual-audio-contrast-scale.html>

^[2]<http://www.w3.org/TR/UNDERSTANDING-WCAG20/navigation-mechanisms-mult-loc.html>