

RESOLUTION AGREEMENT

University of Phoenix Case Number 08-15-2040

- 1) The U. S. Department of Education, Office for Civil Rights (OCR), initiated the above-referenced investigation of University of Phoenix (University) pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104. Specifically, the Complainant alleged that the University's new online learning platform, the "New Classroom," was inaccessible to her and prevented her and similarly situated students from participating fully in the University's educational programs.
- 2) Prior to the completion of OCR's investigation, the University agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual (CPM). This resolution has been entered into voluntarily between the parties and does not constitute a finding or admission that the University is not in compliance with Section 504 and/or its implementing regulation. Accordingly, to ensure compliance with Section 504 and its implementing regulation and to resolve the issues of this investigation, the University voluntarily agrees to take the actions set forth below.

Definitions

- 3) Terms in this Agreement have the same meaning as defined in the Section 504 regulation, 34 C.F.R. § 104.3.
- 4) "Equally effective alternate access" to electronic and information technology for persons with disabilities is based on (1) timeliness of delivery, (2) accuracy of content, and (3) delivery in a manner and medium appropriate to the person's disability.
- 5) "Fundamental Alteration" means a change to the essential purpose of the service, program, or activity at issue.
- 6) A "learning management system" (LMS) means a software application made available by the University through the Internet or its Intranet that has the primary purpose of collecting and delivering course content, including syllabi, assignments, educational materials, presentations, examinations, and study materials, whether used in a single course, by a Department, by a college or by a school, or across the University. The New Classroom is one LMS used by the University.
- 7) "Timely" and "timeliness" means access in sufficient time for the person with the disability to make the same use of the content or software as persons without disabilities.
- 8) "Undue financial and administrative burdens," or "undue burdens," are created when a proposed course of action causes significant difficulty or expense.
- 9) Benchmarks for Measuring Accessibility. For the purposes of this Agreement, the accessibility of online content and functionality will be measured, initially, according to the following accessible technology standards, as applicable, which are incorporated by reference:

- 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;
 - W3C’s Authoring Tool Accessibility Guidelines (ATAG) 2.0 for software used to create web content;
 - W3C’s User Agent Accessibility Guidelines (UAAG) 1.0 for web browsers, media players, and assistive technologies;
 - W3C’s Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content;
 - W3C’s MathML 3.0 specification for digital mathematical and scientific notation; and
 - The DAISY Consortium’s Digital Accessible Information System (DAISY) Standard or the International Digital Publishing Forum’s (IDPF) EPUB 3 specification for digital publications and documents.
- 10) Adherence to these accessible technology standards is one way to ensure compliance with the University’s underlying legal obligations to ensure applicants, students, and members of the public are able to independently 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; and that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any University programs, services, and activities delivered online.

Remedies and Reporting

- 11) Assurances of Nondiscrimination. The University hereby reaffirms its commitment to ensure that applicants, students, and members of the public with disabilities have an opportunity equal to that of their nondisabled peers to enjoy the University’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.
- 12) Undue Burden and Fundamental Alteration. For any technology-related requirement in this Agreement for which the University asserts undue burden or fundamental alteration, such assertion may only be made by the President of the University or by an individual designated by the President 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 (President or designated official with budgetary authority). If such a determination is made, the University 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 University as their nondisabled peers.

- 13) Proposed Plan Regarding New Online Content and Functionality. By September 1, 2015, the University will submit to OCR for its review and approval a full set of proposed policies and procedures to ensure that all new, newly-added, or modified online content and functionality, including the New Classroom and other educational platform features, will be accessible to people with disabilities as measured by conformance to the benchmark standards 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 will require the University to provide equally effective alternative access. The Plan will require the University, 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 must include sufficient quality assurance procedures, backed by adequate personnel and financial resources for full implementation. This provision applies with equal strength to the University's online content and functionality developed by, maintained by, or offered through a third party vendor or by using open sources.
 - c) Within thirty (30) days of receiving OCR's comments on the full set of proposed policies and procedures, the University will meaningfully incorporate OCR's comments, officially adopt, and fully implement the amended policies and procedures. Within forty-five (45) days of receiving OCR's comments, the University will distribute the Plan by email to all instructional and administrative employees and contractors and make the Plan publicly available, directly linked from www.phoenix.edu.

13.1 Reporting: Within 45 days of receiving OCR's comments, the University will submit to OCR the specific wording of the amended policies and procedures, evidence of their adoption and distribution, and a description of how they are being fully implemented.

- 14) Audit of Existing Content and Functionality. By October 1, 2015, the University will audit all online content and functionality, including, but not limited to, all University-specific websites, subordinate pages, intranet pages and sites, the New Classroom portal and content, financial aid and admission portals, library resources, vehicles to upload class assignments, and all other University public-facing and student-facing online systems to identify any 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 use the benchmarks set out above for measuring accessibility. During the audit, the University will also specifically seek input from members of the public with disabilities, and current and former students who are known to use assistive technology, especially those

who are blind and who use screen readers and those other disabilities who use mouse alternatives such as sip-and-puff mechanisms, keyboard-only options, eye tracking devices, etc.

14.1 Reporting: By October 1, 2015, the University will submit to OCR documentation of the steps taken 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.

- 15) Proposed Corrective Action Plan. By November 15, 2015, the University will submit to OCR for its review and approval a proposed Corrective Action Plan to address all inaccessible content and functionality identified during the University'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 18 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 systems of automated and manual testing with manual quality control and accountability to maintain the accessibility of all online content and functionality on an ongoing basis. Within 30 days of receiving OCR's comments on the proposed Corrective Action Plan, the University will meaningfully incorporate OCR's comments, officially adopt, and fully implement the Corrective Action Plan.

15.1 Reporting: Within 45 days of receiving OCR's comments on the proposed Corrective Action Plan, the University will submit to OCR documentation that the proposed Corrective Action Plan has been amended, as needed, to address OCR's comments, and is being implemented according to the approved schedule. Reports will be due every six months thereafter until the Corrective Action Plan has been completed.

- 16) Proposed Plan for Disability Technology Help Desk Support. By October 1, 2015, the University will report to OCR how it plans to provide help desk support to students who use assistive technology that is as effective as and as timely as help desk support that is provided to their nondisabled peers. In making its plan to provide effective disability technology help desk support services, the University will take into account the knowledge needed by personnel to carry out such help desk functions, including in-depth knowledge of commonly used assistive technologies, the University's technology, and the University's disability services policies and personnel. Any such Disability Technology Help Desk Plan will incorporate feedback mechanisms, so the University can use the knowledge gained by disability help desk personnel to improve the accessibility of its technology generally on a regular basis. During the development of the Disability Technology Help Desk Plan, the University will also specifically seek input from current and former students who are known to use assistive technology, especially those who are blind and who use screen readers and those with other disabilities who use mouse alternatives. Within thirty (30) days of receiving OCR's comments on the Proposed Plan for Disability Technology Help Desk Support, the University will meaningfully incorporate OCR's comments, officially adopt, and fully implement this Plan.

16.1 Reporting: Within 45 days of receiving OCR's comments, the University will confirm to OCR the establishment of the Disability Technology Help Desk, the credentials of the personnel hired or appointed to staff this function, and their training. The University will also report to OCR how the availability of this help desk has been communicated to students who use assistive technology.

17) Inaccessible Document Conversion Submissions. By October 1, 2015, the University will create a webpage that conforms to WCAG 2.0 AA with instructions for students on submitting or uploading inaccessible files for remediation and conversion into accessible formats. Trained, knowledgeable University staff will regularly monitor the submissions and uploads, and any file generated or circulated by the University students will be remediated and converted into an accessible format and returned to the submitting student within twenty-four (24) hours of submission. Upon creation of the webpage, the University will communicate its existence to all current students who are known to use assistive technology.

17.1 Reporting: By October 1, 2015, the University will report to OCR that it has completed the requirements of this paragraph.

18) Training. On an ongoing basis, starting no later than 90 days from the date of this Agreement, and repeated at least annually to effectuate meaningfully the other the provisions of this Agreement, the University will deliver technology accessibility training to all appropriate personnel, including, but not limited to: content developers such as professors, staff, administrators, etc.; webmasters; procurement officials; information technology professionals, and all others responsible for developing, loading, maintaining, or auditing online content and functionality. This provision requires the University to train all appropriate personnel at each of the key stages set forth in this Agreement, such as the adoption of the Plan Regarding New Web Content and Functionality, the Audit of Existing Content and Functionality, the Corrective Action Plan, and other required steps. To the extent these stages overlap each other in time, the training may be combined as appropriate. Throughout the life of this Agreement, the University will provide the training to all covered employees upon hire or, for existing employees, at least annually.

18.1 Reporting: On a semi-annual basis, starting on October 1, 2015, the University will submit to OCR documentation that it has delivered the required training. The documentation will include a list of invitees and attendees, including titles; a description of the delivered training content; and the presenters' credentials for giving such training.

19) IT Disability Coordinators. The University will designate at least two IT Disability Coordinators who will be responsible for coordinating its efforts under this Agreement. The IT Disability Coordinators will be persons knowledgeable about the general requirements of Section 504 of the Rehabilitation Act and its regulation; accessibility and usability of web content; accessible document development and remediation; accessibility and usability of assistive technology; testing and evaluating the accessibility of web and other technologies; this Agreement; and the accessible technology benchmarks listed above. Among other things, these officials will be given the responsibility for receiving and remediating notice of online barriers from people including students and members of the public about inaccessible content or functionality. The IT Disability Coordinators will be vested with sufficient authority to marshal University personnel and financial resources, as appropriate, to remediate identified barriers promptly and effectively, and to enact systemic improvements to fully effectuate the University's commitments made in this Agreement.

19.1 Reporting: By October 1, 2015, the University will notify OCR of the identity of its IT Disability Coordinators and their identity, contact information, and extent of authority are being disseminated to students, professors, administrators, and members of the public.

- 20) Remedies for Complainant. The University will issue a written offer to the Complainant inviting her to re-join the University and to waive all fees and tuition for the courses necessary for her to complete the degree she is currently pursuing. In the same letter, the University will also offer to reimburse the Complainant to cover the costs of courses (tuition and expenses) regarding which she reported that she did not have full and equal enjoyment compared to her nondisabled peers due to inaccessible technology. The University may condition its offer upon the receipt of a reasonable release of liability and claims. If the Complainant accepts the University's offer, the University will work with the Complainant to fully carry out the terms of the offer as quickly as possible.

20.1 Reporting: Within 10 days of the effective date of this Agreement, the University will provide to OCR for review and approval a draft of the offer letter. Within three (3) days of receiving OCR's comments, it will incorporate those comments and issue the offer letter to the Complainant. By September 1, 2015, the University will report to OCR whether the Complainant has accepted the University's offer and, if so, documentary evidence of any reimbursement of tuition and expenses to date.

- 21) Communication to and Remedies for Other Students with Disabilities. Within 10 days of the effective date of this Agreement, the University will provide an accessible copy of this Agreement to all current University students who have identified themselves to the University as using assistive technology, as well as those known to use assistive technology who have attended the University during the last 24 calendar months.¹ The University will also post an accessible copy of this Agreement on its public website, www.phoenix.edu. The correspondence to students will include the contact information for the OCR attorney handling the monitoring of this Agreement.

- a) Within thirty (30) days of the date of this Agreement, the University will submit to OCR for its review, comment, and approval, a plan for identifying students other than the Complainant who use screen readers, mouse alternatives, or screen enlargers and who may have encountered problems in their academic career due to barriers to access in the technology deployed by the University. The proposed plan will include a way to determine each such student's eligibility for particular forms of relief under this Agreement:
- i) Regarding such students for whom there is contemporaneous evidence they late-posted assignments or discussion question responses, failed to turn in assignments, or turned in assignments late, and contemporaneously complained to their professors, the Disability Services office, the Help Desk, or other University official regarding problems they believed they were experiencing with the University's technology, the University will re-assess their grades without docking points for late or missed assignments or discussion question responses.

¹ The University will use its best efforts to locate students with disabilities who have attended the University within the last 24 months but who are not current students.

- ii) Regarding such students for whom there is no such contemporaneous evidence, if the student agrees to sign an affidavit that he or she encountered such technological barriers to access, the University will permit the student to repeat the course tuition-free.
 - iii) Regarding such students who were segregated into single-student online classrooms (often called “directed study,”), instead of integrated courses with peer interaction because of technology considerations, the University will invite the students to repeat those or other courses in an integrated setting, tuition-free and with the University covering expenses such as textbooks, up to the number of credit hours for which the student experienced courses in a segregated setting.
- b) Within thirty (30) days of receiving OCR’s comments, the University will implement the plan.

21.1.1 Reporting: The University will comply with OCR’s reasonable requests for information and documentation as this plan is implemented.

General

- 22) Monitoring. The University understands that OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), 104.43, and 104.44, which were at issue in this case.
- 23) Cooperation and Access. The University 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 University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University, interview professors, administrators, staff members, and students, and request such additional reports or data, including simulated online accounts and passwords, as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), 104.43, and 104.44, which were at issue in this case.
- 24) Interim Timelines. The University has agreed in good faith to the interlineated timelines included in paragraphs 13-21 of this Agreement. Should the University subsequently determine that, despite its good faith and timely efforts, a reasonable amount of additional time is required to complete certain agreed-upon actions, it will submit a request (with supporting information) to OCR to modify those timelines. OCR agrees that it will promptly consider the University’s request and will not unreasonably withhold approval.

25) Enforcement. The University 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 University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

_____/s/_____
For University of Phoenix

__ June 12, 2015 ____
Date