

The Pennsylvania State University
Docket #03-11-2020

The Pennsylvania State University (“University”) and the National Federation of the Blind (“NFB”) mutually agree to enter into this voluntary Resolution Agreement (Agreement) as part of the U.S. Department of Education, Office for Civil Rights (OCR) Early Complaint Resolution (ECR) process to resolve the issues the Complainants raised in complaint #03-11-2020 (“OCR Complaint”).

PREAMBLE

WHEREAS, the NFB is the largest advocacy organization of blind individuals in the United States, whose members include current and future students and faculty of the University;

WHEREAS, the NFB desires to ensure that current and future students and faculty of the University who have vision impairments enjoy equal access to all educational opportunities, services and information provided by the University;

WHEREAS, the University is one of the largest public systems of higher education in the United States and strives to maintain strong academic leadership and a commitment to equal access to educational information and services for all students and faculty;

WHEREAS, the University must provide students, faculty and staff with disabilities the same benefits, programs, and services, but when technically unfeasible to do so, may provide an Accessible alternate benefit, program or service.

WHEREAS, the Parties desire to resolve amicably all matters raised in the OCR Complaint;

WHEREFORE, the following terms and conditions of this Agreement have been agreed to by the Parties after full discussion and good faith negotiations:

DEFINITIONS

“Accessible” means fully and equally accessible to and independently usable by blind individuals so that blind students and faculty members are able to acquire the same information engage in the same interactions and enjoy the same services as sighted students and faculty, with substantially equivalent ease of use.

“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, telecommunications products (such as telephones), information kiosks, Automated Teller Machines (ATMs) and transaction machines, internet and intranet websites, electronic books and electronic book reading systems, search engines and databases, course management systems, classroom technology and multimedia, personal

response systems (“clickers”), and office equipment such as classroom podiums, copiers and fax machines.

“Information technology” means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

I. Accessibility Audit:

A. The University shall complete an accessibility audit of its electronic and information technologies (“EITs”) no later than February 15, 2012 that will examine the accessibility and usability of the EITs provided by the University to students, prospective students, staff and faculty who are blind. The audit shall examine various aspects of the University’s EITs, including but not limited to, University websites, application processes, library services, course management systems, access to classroom podiums and LCD devices, course registration software, personal response systems (“clickers”) and banking arrangements offered to students and faculty, including website and ATM access.

B. The audit shall be conducted in a professional manner and benchmarked by appropriate processes.

C. By March 31, 2012, the University shall develop an EIT corrective action strategy (“Strategy”) based on the audit findings. The Strategy shall include dates by which corrective action shall be completed. The dates agreed to in this Agreement shall be incorporated into the University’s Strategy.

D. No later than April 15, 2012, the University shall disseminate the Strategy among its colleges and campuses and post it on the following website: <http://accessibility.psu.edu>.

II. Policy Statement on Accessibility and Implementing Procedures:

A. The University shall develop an EIT Accessibility Policy Statement that continues to demonstrate its commitment to implementing accessibility of EIT to blind and other print disabled students, as required by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. This Policy shall be posted on a University website no later than August 31, 2011, and shall disclose that an audit is taking place and that a Strategy will be disseminated and posted by April 15, 2012.

B. No later than May 30, 2012, the University shall develop procedures to implement its EIT Accessibility Policy across all disciplines. The University shall disseminate its Policy and procedures to all levels of University personnel, including senior academic leadership (deans and chancellors), department heads, faculty and staff.

C. No later than August 15, 2012, the University shall conduct training, instruction and support at all levels about the University's EIT Accessibility 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 Accessibility Policy and procedures are effectively and consistently implemented.

D. No later than July 15, 2012, each University campus shall hire or designate a staff person with responsibility and commensurate authority, to monitor the University's EIT Accessibility Policy and procedures.

E. No later than August 15, 2012, the University shall provide and make readily available to faculty and staff, who develop or post content on the website or through other EITs, information on how to make digital information Accessible and how to use automated tools to check and ensure the accessibility of content.

F. No later than August 15, 2012, the University shall include one full-time personnel at each campus who will attend its annual accessibility conference and interact with the University Park Adaptive Technology Committee to ensure accessibility for each campus.

G. The University will distribute its policies on accessibility to all staff and will provide additional instruction and support to both staff and faculty in 2011. The University will provide presentations and workshops to the senior academic leadership (deans and chancellors), department heads, and IT staff early in the fall semester.

H. The University will maintain a rich set of web resources which will be located at <http://accessibility.psu.edu> and will provide both tools and training to the webmasters.

III. Procurement:

A. No later than October 15, 2012, 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 that they do to individuals without disabilities, except that when it is technically unfeasible to do so, in which case the procedures must require the University to provide Accessible alternate EITs. The Vice Provost shall work in consultation with the Office of Disability Services and/or other departments to provide students with access to the EIT services and information provided by the University.

B. The University shall effectuate these obligations by, among other things, implementing as part of its RFP process language that bidders meet the accessibility standards set forth in WCAG 2.0 Level AA for web-based technology, and Section 508 of the Rehabilitation Act and the Americans with Disabilities Act for other EIT; 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 disability law.

IV. Library Services and Library Website:

A. The University's library website shall be Accessible in accordance with WCAG 2.0 Level AA no later than October 15, 2012. 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.

B. No later than October 15, 2012, 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.

V. University Websites:

The University shall adopt WCAG 2.0 level AA standards for all University websites no later than October 15, 2011. No later than October 15, 2014, all pages hosted on the University's websites that have been published or updated on or after August 1, 2009 shall be Accessible to blind users. Any other pages shall promptly be made accessible upon request. This requirement shall not apply to pages found at www.personal.psu.edu; however, the University shall provide resources to authors of pages at that site to give guidance on making such pages accessible.

VI. Course Management Systems:

The University shall select an Accessible course management system that complies with the Section 508 Guidelines to replace ANGEL no later than January 3, 2012. A small pilot utilizing the new system will be instituted and the number of pilots will increase until completion on or about August, 2014. Consideration will be given to include blind students and faculty in the pilots to the extent possible and provide Accessible alternatives until the new system is fully implemented.

VII. Classrooms:

No later than September 15, 2011, 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.

VIII. Clickers:

No later than August 15, 2011, 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.

IX. Bank (ATM and Website Accessibility):

The University shall request that any bank website that is reported as inaccessible to the Vice Provost of Affirmative Action's office 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.

X. Terms of Agreement:

This Agreement shall become effective upon execution by the parties and continue in effect until 90 days after the actions contemplated by Section VI of this Agreement have been completed; however, if necessary to resolve any lingering accessibility issues with the course management system, the parties may agree to further extend the term of this Agreement. The parties agree that this agreement resolves OCR complaint #03-11-2020 and understand that OCR will close the complaint upon the effective date of this Agreement.

XI. Grievance Procedure:

The University shall disseminate if in place or develop a grievance procedure whereby a student or faculty member may make a complaint to the Vice Provost for Affirmative Action ("Vice Provost") of the University or his designee regarding an EIT accessibility barrier he or she is confronting. The grievance procedure shall be posted on the websites for the Office of Disability Services, the Affirmative Action Office and the Office for Educational Equity. The procedure shall include a mechanism whereby the Vice Provost or his designees shall investigate the complaint and respond to the Complainant within 60 days of the filing of the complaint, however, the investigation period may be extended for an additional 30 days when the person investigating the complaint believes it necessary for an equitable resolution of the matter or for additional lengths of time with the consent of the Complainant.

XII. Reporting Requirements:

A. The University shall provide NFB with a report on the first anniversary of this Agreement which summarizes the progress it is making in meeting its obligations as set forth in this Agreement. Additional communication will occur before and after the first anniversary to address any possible delays or other obstacles encountered with the implementation of this Agreement. The NFB's contact person is: Daniel Goldstein, Brown, Goldstein & Levy LLP, 120 East Baltimore Street, Suite 1700, Baltimore, MD 21202. The University's contact person is: Vice Provost of Affirmative Action, 328 Boucke Building, University Park, PA 16802.

B. The parties agree that any delays in taking any of the actions provided for pursuant to this Agreement caused by third parties and Acts of God, force majeure, or events beyond the control of the University, including acts of war or the inability to acquire material or

services, will not be deemed to violate the compliance dates set forth herein as long as the University makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

XIII. Dispute Resolution:

A. Any dispute between the Parties arising out of, or related to, this Agreement, shall be subject to the following dispute resolution process.

1. Notification of Non-Compliance and Opportunity to Cure or Address

If at any time a Party believes that another Party has not complied with any provision of this Agreement, the complaining Party shall deliver prompt written Notice to the other Party identifying the provisions of the Agreement that are the subject of the Notice, a statement of the breach and what remedial action is requested. The Party receiving this Notice shall respond in writing within twenty (20) business days of its receipt within its position as to whether a noncompliance exists and the steps that the receiving Party will take, if any, to cure the alleged noncompliance.

2. Meet and Confer

Within twenty (20) business days after receipt of the response to the Notice or as soon as practicable, the Parties shall meet and confer, if agreed upon by both parties, to attempt to reach an agreement regarding the matters stated in the Notice. If the Parties are able to agree on the matters stated in the Notice, they shall work together in good faith to resolve the matters and agree upon an appropriate modification of the Agreement, if one is needed. Any Party may agree to extend any of the deadlines for an opposing Party set forth in this section without the necessity of modifying the Agreement.

3. Right to File Claim

If a meet and confer is agreed upon and the Parties cannot resolve the matters stated in the Notice within forty-five (45) days after they meet and confer, the Parties may agree to mediate. If the Parties cannot agree, the Party who served Notice may bring suit in the United States District Court for the Middle District of Pennsylvania.

XIV. Non- Disparagement Clause:

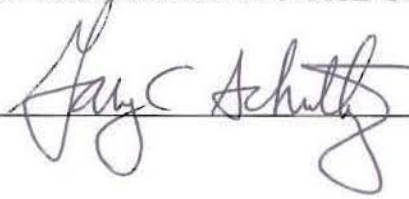
Neither party shall disparage the other.

XIV. Governing Law:

The terms and conditions of this Agreement shall be governed, interpreted and construed, and all disputes arising hereunder determined, in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its choice of law rules.

THE PENNSYLVANIA STATE UNIVERSITY

By

A handwritten signature in dark ink, appearing to read "Jay C. Schutt", is written over a horizontal line.

Dated:

9/27/11

THE NATIONAL FEDERATION OF THE BLIND

By

Dated:

THE PENNSYLVANIA STATE UNIVERSITY

By _____

Dated: _____

THE NATIONAL FEDERATION OF THE BLIND

By Mark Hume

Dated: 9-27-2020