VOLUNTARY RESOLUTION AGREEMENT

University of California, Berkeley

09-23-2187

The Regents of the University of California ("UC Regents"), and the University of California, Berkeley campus ("University" for the purposes of this agreement), and the U.S. Department of Education, Office for Civil Rights ("OCR"), hereby agree to resolve allegations raised in a complaint of discrimination (Docket No. 09-23-2187) (the "Complaint") under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). The Complainant alleged that employees with disabilities are not consistently able to accurately submit their time and attendance hours, verify leave balances, or engage in other transactions typical for line employees and supervisory employees due to technological barriers to access within the University's time and attendance web application (CalTime Program). The Complainant also alleged the University's and UC Regents' professional development training course platform (SumTotal) contains barriers to access for employees with disabilities, who are unable to readily identify the required training modules or comprehend the contents of the training, and that the training platform times out prematurely for those who take more time with entries due to difficulties navigating the platform while using assistive technologies or because of other disability-related factors. With regard to both the time and attendance and training job functions, the Complainant alleged that employees with disabilities often received inadequate reasonable accommodations. The Complainant alleged employees have experienced negative employment consequences due to accommodations that inadequately addressed technological barriers with respect to both systems. OCR developed preliminary concerns with respect to these allegations. Before OCR made findings, the University and the UC Regents asked to resolve this matter under Section 302 of OCR's Case Processing Manual.

Accordingly, the parties enter into this Voluntary Resolution Agreement to resolve the allegations at issue in this case. This Agreement is entered into voluntarily, and it does not constitute an admission of liability, non-compliance, or wrongdoing by the University and/or the UC Regents.

1. General provisions

    a. The University and the UC Regents have adopted as their accessibility standard the Web Content Accessibility Guidelines 2.0 Level AA ("WCAG 2.0 AA"), which will be the technical standard governing all actions in this Agreement until the regulatory amendments to Title II of the Americans with Disabilities Act of 1990 addressing web content and mobile apps take effect for large entities.

2. CalTime Program. The following provisions apply only to the University.

    a. Within 180 days of this Agreement, the University shall complete an accessibility audit, using the manual testing techniques set out in Appendix A, to identify barriers to access for people with disabilities to its time and attendance program (CalTime). The Audit shall consist of taking an inventory and engaging in manual testing to identify barriers, as follows:

i. With respect to both the CalTime desktop interface and the iPad interface reportedly designed specifically for employees with disabilities, the University will undertake accessibility audits, using the manual testing techniques set out in Appendix A, of the functions of CalTime, from the end-user perspective for both line staff and supervisors. Each audit will include, but is not limited to, the CalTime registration process for new employees, logging in to the system, entering time and attendance, requesting leave, and all other employee-facing functions, including functions typically performed by supervisory employees who review and approve or deny others' time and attendance entries.

ii. The University will also audit all online CalTime training materials, including the web pages on which they are hosted, videos, and documents, to ensure all employees with disabilities have access to all the information needed to learn how to operate the CalTime desktop interface and the iPad interface enabling CalTime access equal to that afforded their nondisabled peers.

b. Under this Agreement, to the extent that the audit of the CalTime desktop interface reveals (or previous testing has made known) barriers to access for people with disabilities, it is permissible for the University to use the iPad interface as an aspect of a reasonable modification in policies, practices, or procedures to provide access to CalTime for people with disabilities.

c. Taken together, all aspects of reporting an employee's time and attendance – or carrying out supervisory functions with respect to time and attendance – must be fully accessible to people with disabilities using a combination of the CalTime desktop interface and the iPad interface, or the University must provide adequate reasonable accommodations for all functions that are not accessible on either interface, including for supervisory employees, until such time as the University may replace CalTime with a system compliant with the applicable technical standard. Under this Agreement, the University is committing that it will ensure that technological barriers on the CalTime system do not prevent employees with disabilities from serving in supervisory roles. To the extent that the University is relying on reasonable accommodations to overcome known or identified barriers on the CalTime desktop interface or iPad interface, the University will submit for review and approval its policies and procedures for developing reasonable accommodations in this regard.

d. Reporting Provision: Within 180 days of this Agreement, the University will submit a report for OCR's review and approval the results of its Audit, including the testing protocols used on both the CalTime desktop and iPad interfaces, detailed testing results, a plan to address identified barriers or otherwise ensure the University's time and attendance system is fully accessible to people with disabilities or they have received adequate accommodations to overcome any deficiencies, and a detailed description of any reasonable accommodations the University anticipates employing in light of identified barriers, either as interim measures or otherwise.

3. SumTotal Employee Training Program. The following provisions apply to both the UC Regents and the University, in concert:

a. The SumTotal system will be audited to identify barriers to access for people with disabilities, using the manual testing protocols set out in Appendix A.

b. The training modules currently required or that are otherwise reasonably deemed to be necessary for work performance of University employees on the SumTotal system ("Covered Training") will be audited or, as technically appropriate, sampled, over time, to identify barriers to access for people with disabilities, using the manual testing protocols set out in Appendix A. The parties agree that the UC Regents' and the University's responsibilities will be guided by the principle that the trainings required of the greatest number of individuals should be prioritized first. The UC Regents and/or the University are currently in the process of identifying Covered Training. The UC Regents and/or the University shall initially identify and audit, or as technically appropriate, sample, all Covered Training that is required of one thousand (1,000) or more University employees ("Priority Covered Training"). The UC Regents and/or the University shall diligently continue the process of identification and auditing or as technically appropriate, sampling, of additional Covered Training affecting fewer than one thousand (1000) employees until the regulatory amendments to Title II of the Americans with Disabilities Act of 1990, addressing web content and mobile apps, go into effect for large entities. To the extent additional (fully optional) training materials are hosted on SumTotal, after the above-described actions have been completed, the University and/or the Regents will ensure that such trainings are either accessible or that appropriate and timely accommodations are provided to ensure that all employees have equitable access to them. Further, the University agrees that commencing no later than 180 days from the execution of this agreement, it will not post or deliver new training on SumTotal unless it has been audited and found to be compliant with the applicable standard.

c. Reporting Provision: Within 180 days of this Agreement, the University and the Regents will jointly submit for OCR's review and approval the results of their Audit. The Audit will include the testing protocols used on both the SumTotal system, and Priority Covered Training, detailed testing results, a plan to address identified barriers and otherwise ensure the SumTotal system and Priority Covered Training are fully accessible to people with disabilities. To the extent such training is not accessible, the University and/or UC Regents shall provide a detailed description of any reasonable accommodations the University and the UC Regents anticipate employing in light of identified barriers, either as interim measures or otherwise. With respect to all Covered Training, the parties will pay particular attention to the accessibility of all PDF documents provided to employees with disabilities as reasonable accommodations for online training modules recognized to contain accessibility barriers. OCR acknowledges that certain training may include links to externally-created third party content over which the UC Regents and/or the University have no contractual control and that such material is not subject to required auditing or remediation under this agreement. However, to the extent such material is included in training, appropriate accommodations enabling equitable access will be afforded.

4. Remedies. The University will conduct comprehensive evaluations of all circumstances under which employees with disabilities requested accommodations in order to utilize the programs and systems at issue in this case ("Requested Accommodations") for a period of three years

back from the date of this Agreement. If it is determined that any employee or former employee with a disability experienced disability discrimination in the form of adverse employment actions in regard to promotion, probation, demotion, termination, or early retirement that was reasonably attributable to a technological barrier to access CalTime, SumTotal, or Covered Training, combined with a failure to provide adequate employment accommodations to address those barriers ("Covered Employees"), the University will engage in good faith with each such Covered Employee to determine how to provide full compensatory remedies to such Covered Employee to ameliorate the impact of the adverse employment action he/she/they experienced due to technological barrier(s) to CalTime, SumTotal, or Covered Training. Potential remedies include, but are not limited to, backpay, new time-in-grade calculations, promotions to the level and type of responsibility for which they were overlooked (backdated for all Human Resources purposes), and offers of reinstatement of any former Covered Employees who were wrongly terminated or sought retirement prematurely.

5. Data and Reporting Needs: The University and UC Regents understand that by signing this Agreement, they agree to provide OCR data and other information in a timely manner in accordance with the requirements of the resolution agreement. Further, the University understands that during the monitoring of this Agreement, if necessary, OCR may visit the University and/or UC Regents, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University and/or UC Regents have fulfilled the terms of the Agreement. The University and UC Regents understand that OCR will not close the monitoring of the agreement until such time as OCR determines that they are in compliance with the terms of the agreement and the statutes and regulations at issue in the case.

6. Enforcement: The University and UC Regents understand that OCR may initiate administrative enforcement proceedings or refer the case to the Department of Justice for judicial proceedings in the event of breach of this agreement. Before initiating such proceedings, OCR will give the University and UC Regents written notice of the alleged breach and 60 calendar days to cure the alleged breach.

Disclaimer: The University will comply fully with Title II of the ADA, including newly-added Subpart H when it goes into effect. *See* 28 C.F.R. §§ 35.200 *et seq*. At that time, the amended regulatory language will supersede the terms of this Agreement, to the extent there are any conflicts or inconsistencies.

This Agreement will become effective upon the signature of the representative for the University and UC Regents, set out below.

//S//	9/25/2024
Richard K. Lyons Chancellor University of California, Berkeley	Date

//S//	9/25/2024
Rachael Nava Executive Vice President, Chief Operating Officer University of California, Regents	Date

Appendix A

For the purposes of this Agreement, testing using the technical standard WCAG 2.0AA, must address these protocols and questions for assessing digital technology to ensure access to people with disabilities. See OCR's video series for assessing digital technology to ensure access to people with disabilities.

For webpages and the CalTime iPad interface: Check the following and document the browser/OS configuration used for testing:

- Keyboard access: Can users access all functions and content, and complete all tasks, independently by using only the keyboard (<tab>, <enter>, <spacebar>, <esc>, and arrow keys)? Verify in particular:
    - There are no keyboard traps that would prevent a user from advancing through the entire page, such as an automatically-refreshing social media embedded feed (tip: try to tab very, very slowly through any such feed to observe whether a user can close it, or move past it, at a reasonable point; if the feed keeps refreshing by automatically adding additional entries to be shown, it causes a trap for those who are unable to use quick keyboard strokes – or a mouse - to navigate);
    - Expandable elements can not only be expanded, but can also be collapsed automatically or with a keyboard command, so they do not block other content.
- Logical reading order: Does keyboard navigation follow a logical, predictable order?
- Bypass Blocks: Can keyboard-only users bypass long navigation menus, embedded social media feeds, etc., without having to use excessive tabbing?
- Visual focus indicator: Can users visually track where they are located on the page while navigating with a keyboard?
- Alternative (Alt) text: Are all important images and graphics labelled with meaningful text, associated captions, or adjoining descriptions so, for example, people who are blind and use assistive technology will have access to the relevant information contained in the image or graphic? For linked images, does the alternative text tell users where the link will take them, rather than describe the image?
- Links: Are links well-named and unambiguous so users who are blind– without having to read nearby content – will understand the purpose and destination of each link? Common examples of ambiguous link names include “click here,” “read more,” “see all,” “http://…”-type, or “event notice,” and other ambiguous phrases.
- Color alone: Are there any instances where color alone distinguishes an object or state? If so, add another way to distinguish the object or state. For example, make sure color is not the only way to distinguish link text from the surrounding paragraph text, which can also be underlined

or have a contrast of 3:1, and ensure color-coding is not the exclusive way used to convey important information (e.g., for calendar dates "no school" dates are marked in purple).

- Color contrast: Using an eyedropper tool or other manual method (automated testing is generally insufficient unless manually verified), is there at least a 4.5:1 contrast ratio for normal size text and a 3:1 contrast ratio for large scale text, comparing foreground and background colors of all text elements and text inside graphics? Text inside logos can be ignored for these purposes.

- Tables: Does the page avoid using tables for layout? If data tables are present, are they necessary to convey information, or could a more accessible means of presentation be considered instead? If a complex data table is used, can it be simplified or converted to multiple simple tables? Are column and row headers programmatically labelled?

- Buttons, form controls, and other operable elements: Are they labelled appropriately, both programmatically and visually? Do the visual labels continue to be properly associated with the elements when the screen is enlarged? If the elements have different states (such as form fields that are required for successful submission), are those conveyed by something other than color alone?

- Heading structure: Are headings programmatically labelled with a meaningful hierarchy, so people who are blind and using a screen reader can navigate a page according to its headings, listen to a list of headings, and skip to where they want to begin reading?

- Embedded videos and slide carousels: Where there are embedded videos or carousels, if they launch or rotate automatically, is that behavior necessary? If so, can a user pause or stop the video or carousel, and later replay the video or carousel, with keyboard commands? The ability to stop the video or carousel rotation can be important, not just while users are on the video or carousel, but while they are in other parts of the page.

- Magnification: Have you tested content when it is magnified at to the 200% on standard laptop screens? Are all contents and all functionality preserved and useful?

    - Paying particular attention to any "hamburger menus," or expandable menus, can they be opened, navigated (including any sub-level items), and closed automatically or easily with the keyboard?

    - Is logical reading order on the page preserved, without the need to scroll right to left for magnification of 200% on laptop, unless horizontal scrolling is required to preserve meaning such as with tables or unless training authoring software limits this ability? If vertical scrolling is required inside windows or objects, can it be done with the keyboard?

    - Do elements meant to be together (such as form labels and text entry boxes) stay together upon magnification?

- Timing Out: Are users able to complete all functions, including the log-on process, while using screen readers and other types of assistive technology that may slow down their ability to receive or input information, without having the system time out?

For electronic documents: In addition to addressing the questions above, and in alignment with WCAG 2.0AA, have you conducted an accessibility review of your documents using the software's accessibility checker (e.g., "Check Accessibility" feature in Microsoft Word, "Accessibility Check" feature in Adobe Acrobat Pro DC, etc.) or other automated checkers and applications?

For videos:

- Is captioning present for videos or is a transcript available? Transcripts should only be used when the audio can be fully understood separately from viewing the video and does not reference video content.

- Does the captioning or transcript meaningfully convey the contents of the audio track (not just phonetically)?

- Does the captioning or transcript indicate the names or appropriate descriptions of the speakers, if more than one person is speaking?

- Does the captioning or transcript use capitalization and punctuation appropriately, if that is important to understanding the contents?

- Is important on-screen information also conveyed audibly, so people who are blind or have low vision have access to the contents?