

Web Accessibility

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Practice Area: School Law

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Technology and internet usage has become an integral part of the way that school districts deliver educational services and curriculum and inform the public. In keeping with this industry trend, the Department of Education Office of Civil Rights ("OCR") has become increasingly aggressive in its enforcement efforts with respect to web accessibility and school district compliance with Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act of 1990 and its amendments ("ADA").

Neither the ADA nor Section 504 specifically addresses website access. However, Section 504 prohibits discrimination based upon disability by entities which receive federal funding, *e.g.*, school districts. 29 U.S.C. § 794(a); 34 C.F.R. § 104.4(a). The ADA provides similar protections. 28 C.F.R. § 35.130(a). A school district may not discriminate on the basis of disability when providing any aid, benefit, or service, and must provide individuals with disabilities an equal opportunity to participate in or benefit from its activities. 34 C.F.R. § 104.4(b). The ADA further requires that districts take appropriate steps as to individuals with disabilities to ensure that communications are as effective as communications with others, which ensures individuals with a vision, hearing, or speech disability can communicate effectively with the district. 28 C.F.R. § 35.160(a). In simple terms, school websites cannot contain any barriers which limit or prevent access for individuals with disabilities. As it relates to school districts, OCR is charged with enforcement of these two federal anti-discrimination provisions.

Web accessibility lawsuits – and enforcement efforts by OCR – continue to rise. The enforcement efforts of OCR have resulted in resolution agreements, at a significant cost in time, effort, and expense, for the offending school districts. This enforcement effort has targeted school district websites which lack basic features to allow all users to access district website content.

In its overly simplified form, web accessibility requires that individuals with disabilities be able to substantively use a website. More specifically, web accessibility requires that people with disabilities be able to perceive, understand, navigate, and interact with the web, and that they can contribute to the web in a way that is equal to and as effective as that of individuals without disabilities. Web accessibility encompasses all disabilities that affect access to the web, including visual, auditory, physical, speech, cognitive, and neurological disabilities. Web accessibility also has the unintended benefit of assisting individuals with changing abilities due to aging.

OCR's enforcement reached its pinnacle in 2016 with multi-settlements in seven states and one territory (involving eleven education organizations) to ensure website accessibility for individuals with disabilities. See *Juneau Sch. Dist. (AK)* (10-16-1109); *Guam Dep't of Educ.* (10-16-1098); *Montana Sch. for the Deaf & Blind* (10-16-1160); *Santa Fe Public Schs. (NM)* (08-16-1189); *Washoe County Sch. Dist. (NV)* (10-16-1134); *Davidson Academy of Nevada (NV)* (10-16-1133); *Nevada Dep't of Educ.* (10-16-1101); *Oregon Dep't of Educ.* (10-16-1102); *Granite Sch. Dist. (UT)* (08-16-1232); *Bellingham Sch. Dist. (WA)* (10-16-1108); *Washington Office of Superintendent of Public Instruction* (10-16-1103). Those settlements came on the heels of complaints received by OCR alleging certain pages on the entities' websites were not accessible to persons with disabilities. The complaints identified a number of common accessibility concerns.

Videos. Videos without captions or technologically deficient captions are not accessible to those who are deaf or hard of hearing. Those with visual impairments may not be able to access videos without audio descriptions narrating or without playback controls that can be read by screen reading software.

Images. Screen reading software and other visual assistive technologies utilized by those with visual impairments can only process text – not photographs, charges, or other undescribed website images on the screen. In order for images to be accessible to those using screen reading software, hidden alternative text which describes the image should be utilized because the alternative text may be read by the screen reading software.

Documents. PDFs, GIFs, and other image-based document formats are not properly formatted to be accessible by screen reading software and cannot be read by programs that enlarge text or change font and color settings.

Text/Font. Individuals with vision impairments are unable to distinguish color contrast or fonts and/or font sizes.

Access. Individuals who have limited manual dexterity and use speech recognition or keyboard alternatives are unable to access content because options for access are not provided, such as access via keyboard only without the use of a mouse.

The eleven entities entered into separate resolution agreements to resolve the complaints and address accessibility concerns. Those settlement agreements provided a number of the following actions:

- Selecting an auditor who has the requisite knowledge and experience to identify barriers to access on the entity's website;
- Conducting a thorough audit to identify barriers to access and conducting a thorough assessment of existing online content and functionality;
- Making all new website content and functionality accessible to people with disabilities;
- Developing a corrective action plan to prioritize the removal of online barriers over an 18 to 24-month period;
- Posting a notice to persons with disabilities about how to request access to online information or functionality that is currently inaccessible;
- Providing website accessibility training to all personnel responsible for creating or distributing information on the entity's website; and
- Develop and implement web accessibility policies.
- Ensure all new and existing web content is fully accessible to individuals with disabilities.

The resolution agreements sought to ensure accessibility to persons with disabilities, particularly those with visual, hearing, or manual impairments or those who otherwise require the use of assistive technology. Accessibility, OCR found, is required to provide access to the website or the online learning environment in an equally effective and integrated manner as persons without disabilities.

Making a website accessible can be simple or complex, depending on many factors such as the type of content, the size and complexity of the site, and the development tools and environment. Fixing inaccessible websites can require significant effort, especially sites that were not originally “coded” properly and sites utilizing multiple media. The W3C[®] maintains the Web Content Accessibility Guidelines (“WCAG”) 2.0, which are widely accepted standards for accessibility. See <https://www.w3.org/TR/WCAG20/>. These guidelines are organized around four major principles aimed to make web content more perceivable, operable, understandable, and robust.

Principle #1: Perceivable. Information and user interface components must be presentable to users in a way they can perceive (meaning that alternatives are provided for a user who cannot use one of his senses).

Text: Ensure all images for text alternatives or “alt text.”

Media: All audio or video content must have a text alternative that presents “equivalent information,” *i.e.*, closed captioning or text transcripts (which would include nonspeech information conveyed through sound).

Adaptable: The content structure should be clear without styling, *i.e.*, a simpler layout.

Distinguishable: Text with sufficient color contrast to see and hear content; separate foreground from background.

Principle #2: Operable. User interface components and navigation must be operable (meaning users may utilize a variety of different devices to navigate, *i.e.*, keyboard versus mouse)

Keyboard: Access all elements on the page through keyboard navigation

Time: Ensure enough time to read and use content and implement of override for content time out.

Seizures: Avoid content known to cause seizures, *i.e.*, ensure no content flashes more than 3 times in any 1-second period.

Navigable: All pages have titles and content on the page is broken into sections with descriptive headings and labels. Provide a way to bypass repeated content.

Principle #3: Understandable. Information and the operation of user interface must be understandable.

Readable: Ensure text is “readable,” *i.e.*, reading level cannot be higher than “lower secondary education.” Provide mechanism to identify abbreviations and definitions.

Predictable: Content appears and operates in a predictable fashion. Consider warning visitors of any sudden change in context, *i.e.*, do not open links in a new window or tab without a clear warning.

Input Assistance: Ensure accessibility of forms. Utilize help text by the form fields and perceivable error messaging, *i.e.*, accompanying text should make it clear that there was an error for these users.

Principle #4: Robust. Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies; meaning webpages should maximize compatibility with current and future user tools and software.

Validation: Ensure that elements are properly nested and that there are not duplicate attributes and IDs.

Districts should act now to ensure their website are accessible to all individuals. Districts should seek to proactively engage website developers to assist with bringing webpages into compliance. Website developers should be provided with the WCAG 2.0 and must be advised of the need to work collectively with districts to bring websites into compliance.

A Reactive or Proactive Approach?

Many school districts may be unaware that they are at risk of an OCR complaint or compliance review or even litigation regarding website accessibility. One approach for a school district to take is "wait and see." If OCR never investigates, or a lawsuit is never filed, there would be nothing that a school district is legally compelled to do to address accessibility concerns.

On the other hand, a school district could determine that a proactive approach would be more reasonable. In that circumstance, OCR resolution agreements and consent orders provide guidance for steps school districts may elect to take to minimize liability for a website deemed inaccessible to individuals with disabilities under the ADA or Section 504. School districts should act now to ensure their websites (and their vendors' websites) are compliant with WCAG 2.0.

Unless your district is already actively working on accessibility concerns, your district probably fails one of the WCAG 2.0 guidelines. (They are not easy.) Districts should consider conducting a full accessibility audit now. This will give the district a clear idea of which portions of the district's site may need to be updated for compliance. It will also provide a sense of the scope and scale of changes required to bring your district's website into compliance, and to create an implementation plan to make these changes incrementally to be fully compliant. School districts should also conduct ongoing monitoring of their website accessibility as new technology for accessibility develops, and ensure all personnel who add web content are appropriately and adequately trained in accessibility requirements. Finally, districts should work with website developers to ensure their websites are in compliance with the WCAG accessibility guidelines.

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