Website accessibility in higher education: Evolving regulatory standards

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In recent years, the U.S. Department of Education's Office of Civil Rights (OCR) and the U.S. Department of Justice (DOJ) have begun rigorously enforcing accessibility requirements at institutions of higher education across the country, alleging violations of federal discrimination laws. The crux of the federal government's complaint is that colleges and universities have failed to make their online content, services and other technology accessible to students and adults with disabilities including, but not limited to, vision and hearing impairments.

The DOJ enforces Title III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by private entities, while OCR enforces both Title II of the ADA, which applies to public entities, and Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination on the basis of disability by recipients of federal financial assistance. Taken together, these laws stand for the proposition that a private college or university cannot discriminate against individuals with disabilities or deny individuals with disabilities full and equal access to and enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" that it offers. [1] The federal government has previously interpreted "goods and services" to include a number of web-based tools offered by universities, including e-readers, online lectures and other educational materials and now appears to be targeting university websites in general. [2]

In 2010, OCR and the DOJ's Civil Rights Division sent a joint letter to university and college presidents, stating that federal disability laws require that individuals with disabilities be provided "an equal opportunity to achieve the same result or the same level of achievement as others." Since that time, OCR, the DOJ and advocacy groups have increasingly targeted colleges and

universities for complaints related to accessibility of their electronic platforms. In 2011, Northwestern University and New York University were targeted by the National Federation for the Blind related to their recent adoptions of Google Apps for Education. In February of 2015, Harvard University and the Massachusetts Institute of Technology (MIT) were sued in federal court by hearing impaired advocacy groups for failing to provide equal access through closed captioning in their online lectures, courses, podcasts and other educational materials.

Universities like these are often forced to settle these complaints by agreeing to implement extensive university-wide remedies, in order to avoid the extensive costs of litigation. Though resolution agreements vary on a case-by-case basis, such agreements will generally require universities to agree to the following:

- Review and revise relevant policies and procedures (e.g., nondiscrimination, accessibility, etc.)
- Ensure compliance with certain established guidelines (e.g., the Web Content Accessibility Guidelines 2.0, published by the Web Accessibility Initiative of the World Wide Web Consortium, which was used to resolve the Harvard and MIT cases)
- Create new policies (e.g., a Website Accessibility Policy)
- Appoint certain personnel to ensure compliance (e.g., Website Accessibility Coordinator)
- Provide subject matter training to relevant staff
- Provide necessary assistive technology
- Create vendor/provider standards and revise vendor/provider agreements to reflect those standards

In addition, an institution that is subject to a Resolution Agreement will likely be required to submit a report(s) detailing its compliance with the terms of the agreement to OCR and/or the DOJ on a regular basis.

As colleges and universities continue to adapt to and adopt new technology, they must also remain aware of their obligations under federal law, including the requirement that they provide "full and equal" access to all of their "goods and services." As evidenced by the recent wave of action at the federal level against colleges and universities for failing to do just that, it is important for all higher education institutions to consider whether their web-based tools and resources are accessible to individuals with disabilities — and to continually ensure such accessibility continues to evolve.

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[1] Public entities are subject to similar prohibitions under Title II regulations, which states, "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." See 28 C.F.R. § 35.130 for more prohibitions.

[2] See e.g., June 29, 2010 Letter from the DOJ and OCR.

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