

TYPES NOT MAPPED YET September 11, 2023 | TTR not mapped yet | Scott Z. Goldschmidt, Katie E. Kraft

# Joint letter from DOJ and ED signals increased scrutiny of online accessibility for institutions of higher education

On May 19, 2023, the U.S. Department of Justice, Civil Rights Division (“DOJ”) and the U.S. Department of Education, Office of Civil Rights (“OCR”) issued a joint letter (the “Letter”) to notify colleges and universities of recent enforcement actions it has taken against postsecondary institutions in relation to online accessibility. The Letter highlighted the DOJ and OCR’s commitment to online accessibility for all, including those with disabilities. Specifically, the Letter recognizes the importance of online accessibility, as colleges, universities, and other postsecondary institutions rely heavily on online platforms and social media to provide services, programs, and other activities to students and the public.

### Legal Framework

There are two main federal laws that govern website accessibility for institutions of higher education: The Americans with Disabilities Act (the “ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”).

Title II of the ADA prohibits publicly-funded institutions of higher education from denying qualified individuals with disabilities the opportunity to participate in or benefit from their programs, services, or activities. Title III of the ADA prohibits discrimination based on disability in places of public accommodation. Private institutions of higher education are considered to be “public accommodations” under Title III.

As explained in the Letter, under the ADA, public and private institutions “must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with [non-disabled individuals], including providing appropriate auxiliary aids and services.” Public and private institutions must also “make reasonable modifications in policies, practices, and procedures where necessary to avoid discriminating on the basis of disability, and where necessary to afford their goods and services to individuals with disabilities.”

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (“ED”). Similar to the ADA, institutions subject to Section 504 must “provide appropriate auxiliary aids to ensure students with disabilities are not denied the benefits of the recipients’ programs or activities.” Both the ADA and Section 504 apply to online services, programs, and activities offered to the public.

DOJ and ED share responsibility for enforcing these laws. Both have enforcement authority under Title II of the ADA. DOJ is responsible for enforcement and implementation of Title III of the ADA. ED enforces Section 504 with respect to public and private colleges, universities, and other postsecondary institutions that receive financial assistance from the Department of Education.

Moreover, state and local laws, including anti-discrimination or human rights laws, govern online accessibility and can vary greatly based on the jurisdiction. While the Letter does not address state and local laws, institutions should be sure to understand and abide by relevant state-specific requirements in addition to federal law.

### Recent Enforcement Actions by DOJ and OCR

The Letter specifically points out the efforts that the DOJ and OCR have taken to enforce federal laws as they relate to online accessibility. In particular, the Letter references a December 2022 [consent decree](#) entered into between the United States and the University of California at Berkeley (“UC Berkeley”). The consent decree requires that UC Berkeley make public online content on its website and other online platforms accessible to individuals with disabilities. The consent decree also directs UC Berkeley to take steps to ensure future compliance

with online accessibility laws. These compliance efforts include revising policies, training relevant personnel, designating a web accessibility coordinator, conducting accessibility testing of its online content, and hiring an independent auditor to evaluate the accessibility of its content.

The Letter highlights the efforts by OCR to enforce the laws in relation to online accessibility. Namely, the Letter notes the hundreds of enforcement actions OCR has previously taken and explains that in May 2022 OCR proactively launched 100 compliance reviews to address issues of online accessibility.

By including a section detailing enforcement actions in the Letter, DOJ and OCR are likely signaling that the enforcement of website accessibility laws will be a priority for the Biden Administration, and that it will not shy away from enforcement actions.

## Resources

The Letter provides the following guidance and resources for postsecondary institutions:

- **DOJ Resources** - In March 2022, the DOJ issued [guidance](#) describing how state and local governments and businesses can make sure websites are accessible to people with disabilities as required by the ADA. The guidance identifies common website accessibility barriers, educates readers on when the ADA requires web content to be accessible, and explains how to achieve accessibility. The guidance also provides a list of resources, including the 18F Accessibility Guide and the U.S. Access Board's standards for access to information and communication technology under Section 504.
- **OCR Resources** - In March 2022, OCR released a [20-part video series](#) to provide guidance on online accessibility. The video series provides a basic introduction to online accessibility and covers a range of topics including how individuals with disabilities use online resources, federal laws, and how to remediate barriers to online accessibility. Colleges, universities, students with disabilities, and other stakeholders also can contact OCR for technical assistance by emailing [OCRWebAccessTA@ed.gov](mailto:OCRWebAccessTA@ed.gov).

## Practical Guidance

Because courts, DOJ, and OCR have often looked to [Web Content Accessibility Guidelines](#) ("WCAG") standards to assess whether an institution has fulfilled its website accessibility obligations, institutions should strongly consider implementation of WCAG compliant websites to guard against potential litigation or administrative enforcement actions. The most current WCAG standard is 2.1.

Institutions can consider taking the following steps to move toward compliance:

- **Create a website accessibility team:** Identify stakeholders within the organization to tackle website accessibility issues. For example, an institution's disability services office, information technology office, procurement office, and faculty all likely have a stake and role in ensuring compliance.
- **Review current website and online products:** Understand the scope of your institution's website, online footprint, and current levels of compliance. There are a number of free tools that can be used to check the accessibility of documents ([Accessibility Checker and Checklist \(cpp.edu\)](#)) or websites ([WAVE Web Accessibility Evaluation Tool \(webaim.org\)](#)). There also are a number of companies that can provide an accessibility audit for your institution.
- **Ensure new content posted by the institution is accessible:** New content posted on websites by staff and faculty should meet applicable accessibility standards. The University of Washington has great [resources](#) that may help give your institution a sense of what is required.
- **Future procurements and web design:** In all future procurements for websites or online products, make sure that accessibility is a consideration. Consider specifying the level of required compliance in future contracts - for example, WCAG 2.1 Level AA or similar standard - so there is no question that the product your institution acquires is compliant.

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