

## Ensuring Accessibility as Institutions Shift Instruction and Operations Online

In response to the COVID-19 pandemic, colleges and universities have shifted to online education to encourage social distancing and prevent the spread of the virus. A herculean task for many institutions, this presents a unique opportunity for institutions to evaluate the accessibility of their websites, learning management systems and online communication platforms for compliance with applicable law.

The recent shift to online learning might also prompt faculty to integrate online learning even after social distancing has been lifted. Administrators may also wish to maximize online tools in both public-facing and student-facing aspects of the school's website (admissions, development, bursar's office, alumni association, athletics, etc.). Thus, the current social distancing measures may result in a school's website, online learning tools and other technological resources playing a more central role going forward. A renewed focus on web accessibility is therefore both prudent and timely.

### ***What is web accessibility?***

Generally speaking, a website or online learning platform will be deemed accessible if a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions and enjoy the same services as a person without a disability in an equally effective and integrated manner, with substantially equivalent ease of use. In higher education, accessibility standards are dictated primarily by two federal laws: Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

**Section 504 of the Rehabilitation Act of 1973** (Section 504) governs institutions that receive federal funding. It requires "no otherwise qualified handicapped individual.... shall, solely by reason of his [or her] handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Act is enforced by the U.S. Department of Education (DOE) and applies to most institutions of higher learning.

**The Americans with Disabilities Act** (the ADA) prohibits discrimination against qualified individuals with disabilities and prohibits the exclusion of such individuals from participation in the services or receipt of the benefits of the programs or activities of a public entity or public accommodation. The ADA is jointly enforced by the U.S. Department of Justice and the DOE.

Notably, under the both Section 504 and the ADA, public entities and private entities that are public accommodations discriminate if individuals with disabilities are denied participation, given unequal benefits or given separate benefits that are not as effective as the benefits afforded to others. When it comes to web accessibility, the issuance of accommodations through an interactive process, and the expectation that an individual self-identify and provide information about his or her limitations is insufficient to ensure compliance. Instead, when analyzing accessibility of their websites, institutions should approach accessible web design in much the same way that they approach accessibility in physical spaces on campus, by ensuring that new material is equally available to all individuals and by removing barriers to access from already existing material.

As a practical matter, web accessibility touches almost all areas of education and student services in higher education institutions. In response to COVID-19, many institutions have shifted classroom instruction online; students and faculty are utilizing learning management systems and video conference platforms to complete course curricula in a timely manner. Admissions departments are reaching out to prospective students online, offering virtual campus tours and hosting virtual events for admitted students. Appointments with financial aid officers, academic advisors and the campus counseling services are also conducted online.

### ***What technical standards apply to institutions of higher education?***

Unfortunately, there exists no bright-line rule for the technical standards required to ensure institutional websites and online programs are fully accessible. However, in applying the standard outlined above, there are several resources available to institutions:

- **Web Content Accessibility Guidelines**, available [here](#) provide technical instructions on how institutions can make online material (audio-visual, text, etc.) accessible to individuals with various accommodation needs. While they are not law, the DOE Office for Civil Rights often references them in resolution agreements, and their recommendations often can translate into the higher education environment.
- **Web Accessibility Evaluation Tools** – Many vendors provide programs to assist in auditing current websites and web-based learning modalities for accessibility. While they cannot guarantee compliance, they may serve as a useful starting point in identifying gaps in current compliance.
- **Resources from Advocacy Groups** – Many disability rights advocacy groups publish resources to promote accessibility in web design and distance learning programs. These resources may inform your institution's approach to enhancing accessibility in current programs.

For example, the National Federation for the Blind has published [guidance](#) for distance education and online learning platforms. Similarly, the National Deaf Center also provides [resources](#) for institutions seeking to enhance web accessibility.

### ***Where should we begin?***

Decentralization is a hallmark of higher education institutions. The culture of the academy lends itself to academic freedom requiring that faculty have a certain level of autonomy to direct their scholarly pursuits. The academic programs within any institution are diverse and divergent. The technological needs of the engineering department will vary greatly from those of the dance department.

Public-facing websites of colleges and universities are often a compilation of various pages developed by a broad range of constituency groups: academic departments, student services personnel, business operations and media relations. Affiliated entities such as registered student organizations, foundations and alumni associations often also maintain pages on institutional websites.

In light of this inherent complexity, where should an institution begin?

Start by determining what you already have.

### **Create an Index of Web Pages and Instructional Technology**

The first step to ensure the accessibility of your website and instructional materials is to determine what you already have. Create an index of the various webpages maintained by your institution and its recognized affiliates and identify

the custodian for each webpage. Your IT department should be able to assist in creating this index.

Second, work with your procurement or purchasing arm to determine what technologies you currently utilize for online instruction. Find out who uses them within the institution and what they are used for. Include this information in your index.

### **Form a Web Accessibility Team**

Once you've identified the websites and instructional technology currently used, form a team of key stakeholders to determine what policies and procedures your institution has and should implement to ensure these resources are and remain accessible. While the stakeholders will vary from institution to institution, examples could include those from the following departments:

- ADA/Section 504 Personnel
- IT
- Academic Affairs
- Academic Senate
- Public Relations/Media Relations
- Student Affairs
- Marketing
- Development
- Athletics
- General Counsel's Office

### **Adopt Appropriate Policies and Procedures**

At a minimum, if you do not have one already, consider adopting a general policy affirming your institution's commitment to accessibility and identifying the appropriate office to which individuals can raise concerns. This will serve both as a reflection of your institutional values and a means through which you may be able to address concerns proactively.

In addition to this general statement, you should also consider creating policies and procedures that more clearly delineate your institution's expectations with respect to the accessibility of its website and the different forms of technology identified in the indices you've created. For example, you might: adopt aspects of the Web Content Accessibility Guidelines as requirements for your websites; choose to incorporate web accessibility in your internal audit plan; develop specifications for your procurement department to ensure that instructional technology purchased by the institution is accessible for all users; and consider including accessibility and user satisfaction as part of your student course evaluations.

The key is to adopt policies and procedures that promote accessibility within your unique environment. Your team will need to determine what resources it can devote to this area and prioritize projects accordingly. While perfect accessibility is always the goal, it is important to remember that policies are only helpful if they can realistically be followed, and that the technology required to ensure compliance will likely change over time.

Be creative. Use your resources. Be flexible and willing to revise policies as technology changes. Incorporate regular internal reviews to keep things up to date.

## Provide Training

Once you have developed and implemented your web accessibility policies and procedures, make sure you provide adequate training to all users. These will include faculty and students who use online learning platforms, web developers and administrators who maintain the institution's website and users throughout the institution. Make sure to incorporate an assessment tool in your training to ensure it is effective and update the training as your technology changes.

### *Where can we turn for help?*

Please contact [Sarah Luke](#), any [attorney](#) in the [Higher Education Practice Group](#) or the attorney in the firm with whom you are regularly in contact.



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