Frequently Asked Questions about Community College Website Accessibility[1]

Website accessibility has become a particularly hot topic in recent months as institutions of higher education are receiving more complaints that their websites are not accessible to persons with disabilities.[2] This document answers some of the more frequently asked questions about community college website accessibility and encourages colleges to begin taking proactive steps to make their websites accessible to all users, including those with disabilities.

1.   **What is a *disability*?**

The Americans with Disabilities Act (ADA) defines a *disability* as a mental or physical impairment that substantially limits one or more of a person's major life activities, such as seeing, hearing, learning, reading, and communicating. The definition also refers to conditions in which a person has a record of or is regarded as having such an impairment.[3] The definition also applies to Section 504 of the Rehabilitation Act of 1973 (Section 504).[4]

2.   **What is *website accessibility*?**

A website is accessible if it has been designed so that people with disabilities can perceive, navigate, interact with, and understand the website. The concept encompasses all disabilities that affect online access:

- Visual impairments, such as blindness or color blindness

- Auditory impairments, such as deafness

- Cognitive impairments, such as learning disabilities, memory impairments, and inability to focus

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[1]   An electronic version of this document is available on TASB College eLaw at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/website_accessibility_resources.pdf.

[2]   E.g., UC Berkeley Public Affairs, *Campus Message on Course Capture Video, Podcast Changes* (Mar. 1, 2017), news.berkeley.edu/2017/03/01/course-capture/ (opting to restrict public access to, rather than caption, over 20,000 online videos and podcasts of classroom lectures in response to federal investigation that concluded they were not accessible to individuals with hearing impairments); U.S. Dep't of Justice, Civil Rights Div., *The United States' Findings and Conclusions Based on its Investigation Under Title II of the Americans with Disabilities Act of the University of California at Berkeley*, DJ No. 204-11-309 (Aug. 30, 2016), news.berkeley.edu/wp-content/uploads/2016/09/2016-08-30-UC-Berkeley-LOF.pdf. *See also* Carlson, L., Higher Ed Accessibility Lawsuits, Complaints, and Settlements, www.d.umn.edu/~lcarlson/atteam/lawsuits.html.

[3]   42 U.S.C. § 12102(1)-(2).

[4]   29 U.S.C. §§ 794(a), 705(20)(B).

- Motor impairments, such as difficulty using a mouse, delayed response time, and inadequate fine motor control[5]

Through the use of certain design features and tools, web content can be displayed in ways that are more likely to be accessible to users with disabilities. For example, a web designer may use headings and formatting tools in documents and alternative text in images to assist users dependent on screen readers. The designer may caption videos to assist users with hearing impairments and may use plain language to assist users with cognitive disabilities. The designer may also carefully organize links and other navigation elements to assist users who cannot use a mouse.

Individuals with disabilities are not the only users who benefit from accessible websites. They often enhance the user experience of people without disabilities, such as users with temporary physical impairments like a broken arm, users with changing abilities due to aging, and users with structural impediments like slower Internet speeds.

3.   Is a community college required to make its website accessible?

Yes, under both the ADA and Section 504. Title II of the ADA requires community colleges and other public entities to provide qualified individuals with disabilities equal access to their programs, activities, and services unless doing so would impose an undue financial burden or fundamentally alter the program, activity, or service. Section 504 protects people with disabilities from discrimination in programs and activities that receive federal funding.[6]

Neither the ADA nor Section 504 specifically addresses websites, but it is clear from the language of the statutes and their implementing regulations that websites are covered by these statutes. This interpretation is supported by guidance issued by the U.S. Department of Justice (DOJ), Civil Rights Division and the U.S. Department of Education, Office for Civil Rights (OCR). The entities have stated that the ADA and Section 504 apply to all forms of technology. Colleges must always plan for accessibility when implementing technology, even if an individual with disabilities will not immediately be using that technology.[7]

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[5]   World Wide Web Consortium (W3C) Web Accessibility Initiative, Introduction to Web Accessibility, www.w3.org/WAI/intro/accessibility.php; WebAIM, *Introduction to Web Accessibility*, webaim.org/intro/#people.

[6]   42 U.S.C. § 12131-12134 (ADA); 28 C.F.R. pt. 35 (ADA); 29 U.S.C. § 794 (Section 504); 34 C.F.R. pt. 104 (Section 504).

[7]   U.S. Dep't of Justice, Civil Rights Div., *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations*, 75 Fed. Reg. 43460 (July 26, 2010) (to be codified at 28 C.F.R. pts. 35 & 36), gpo.gov/fdsys/pkg/FR-2010-07-26/pdf/2010-18334.pdf; U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter* (May 26, 2011), www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.html (regarding the use of

On April 29, 2016, DOJ issued a *Statement Regarding Rulemaking on Accessibility of Web Information and Services of State and Local Government Entities*, recognizing the need for accessibility standards to guide public entities in meeting the legal requirements for website accessibility.[8] In addition, DOJ issued a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) titled *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities*.[9] Through this SANPRM, DOJ posed 123 questions, seeking public comment on a wide range of complex issues from technical accessibility requirements to the costs and benefits of the proposed rule. The comment period expired October 7, 2016. The SANPRM contemplates that the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA standards, discussed below, will be the technical standards for web content. It also suggests that entities will have two years after final adoption to comply.

In its most recent submission to the semiannual *Unified Agenda of Federal Regulatory and Deregulatory Actions*, DOJ indicated that it would finally propose regulations in this area in July 2017[10]; however, it is not clear how the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs, signed by the President on January 30, 2017, will impact this rulemaking.[11]

4. **Are community college required by Section 508 community colleges to take certain steps to make their websites accessible?**

Section 508 of the Rehabilitation Act of 1973 requires federal agencies to meet certain website accessibility requirements.[12] The law is extended to apply to community colleges only in limited circumstances, including if a state receives funds under the Assistive Technology Act and that state requires institutions of

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emerging technologies in the classroom), *Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter* (May 26, 2011), www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.pdf, *Joint "Dear Colleague" Letter: Electronic Book Readers* (June 29, 2010), www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html; U.S. Dep't of Justice, Civil Rights Div., *Accessibility of State and Local Government Websites to People with Disabilities*, ada.gov/websites2.htm.

[8] U.S. Dep't of Justice, Civil Rights Div., *Statement Regarding Rulemaking of Accessibility of Web Information and Services of State and Local Government Entities* (Apr. 29, 2016), www.ada.gov/regs2016/sanprm_statement.html.

[9] U.S. Dep't of Justice, Civil Rights Div., *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities*, 81 Fed. Reg. 28658 (May 9, 2016) (to be codified at 28 C.F.R. pt. 35), gpo.gov/fdsys/pkg/FR-2016-05-09/pdf/2016-10464.pdf.

[10] Office of Info. & Regulatory Affairs and the Office of Mgmt. & Budget, *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Fall 2016), reginfo.gov/public/do/eAgendaViewRule?pubId=201610&RIN=1190-AA65.

[11] The White House, Office of the Press Sec'y, *Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017), whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling.

[12] 29 U.S.C. § 794d.

higher education to comply with the law or if a state independently chooses to apply it to community colleges.

Texas Government Code chapter 2054, subchapter M, required DIR to adopt accessibility rules applicable to state agencies, including institutions of higher education. DIR subsequently adopted website accessibility rules at 1 Texas Administrative Code chapters 206 and 213. The rules reference the general definition of institution of higher education and therefore include the community colleges.[13]

In 2011, through the passage of Texas Government Code section 2054.0075, the Texas Legislature excepted community colleges from much of Chapter 2054, including the website accessibility rules at Subchapter M.[14] Though the administrative rules as written still include community colleges, the DIR recently indicated that the administrative rules do not apply to the colleges but recommended that the colleges consult their local counsel to confirm.

Note, the Section 508 website accessibility standards were recently revised and require compliance by federal agencies in January 2018. The new regulations incorporate many of the WCAG 2.0 standards discussed below.[15]

5.   What are the technical standards for website accessibility?

As stated above, DOJ's SANPRM suggests that WCAG 2.0, Level AA, will be the technical standards with which public entities' websites must comply. Similarly, these are the standards generally specified in OCR Resolution Agreements with educational entities.

WCAG 2.0 was developed in December 2008 by the World Wide Web Consortium (W3C) to provide a single shared standard for website accessibility. WCAG 2.0 comprises 12 guidelines. Each guideline has testable success criteria at three levels, each successive level indicating greater accessibility: Level A, the minimum level of conformance; Level AA, reached by satisfying all Level A and AA success criteria; and Level AAA, reached by satisfying all Level A, AA, and AAA success criteria. Level AAA is generally not required as it is impossible to meet for some content.[16]

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[13]   Tex. Gov't Code ch. 2054, subch. M; 1 Tex. Admin. Code ch. 206, 213.
[14]   Tex. Gov't Code § 2054.0075.
[15]   36 C.F.R. pts 1193 and 1194; U.S. Access Bd., *Information and Communications Technology (ICT) Final Standards and Guidelines*, www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule.
[16]   W3C, Facts about W3C, w3.org/Consortium/facts, *Web Content Accessibility Guidelines (WCAG) 2.0* (Dec. 11, 2008), w3.org/TR/WCAG20/; W3C Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) Overview, w3.org/WAI/intro/wcag.php.

The 12 guidelines are organized under four principles with the acronym POUR: perceivable, operable, understandable, and robust. *Perceivable* means that web content is accessible to the senses, particularly vision and hearing, either through the browser or through a screen reader or other assistive technology. *Operable* means users can employ a mouse, keyboard, or assistive device to access the full functionality of the website. *Understandable* means that content is presented clearly so as to limit confusion and ambiguity. *Robust* means that the content is accessible to a wide range of technologies.[17]

W3C, WebAIM, and related organizations offer several resources to determine if a community college is complying with WCAG 2.0 or a website is accessible.[18]

6.   **What can Texas community colleges do to minimize risk?**

Community colleges should begin discussing issues related to website accessibility to avoid complaints or, at a minimum, to respond to and resolve complaints quickly and easily. TASB Community College Services recommends colleges take the following steps, many of which are based on conditions and requirements contained in OCR Resolution Agreements with community colleges and other educational agencies:[19]

1. Talk to the college's technology director or webmaster and local counsel and begin educating the board of trustees and administration on these concepts;

2. Employ an entity with relevant experience and expertise to conduct an accessibility audit of content and functionality under WCAG 2.0, Level AA, including third-party content;

3. Develop a corrective action plan to address barriers to access identified in the audit;

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[17]   WEbAIM, *Introduction to Web Accessibility*, webaim.org/intro/; W3C, Web Accessibility Initiative, WCAG 2 at a Glance, w3.org/WAI/WCAG20/glance/.

[18]   W3C, Web Accessibility Initiative, How to meet WCAG 2.0, w3.org/WAI/WCAG20/quickref/, Web Accessibility Evaluation Tools List, w3.org/WAI/ER/tools/; WebAIM, WebAIM's WCAG 2.0 Checklist, webaim.org/standards/wcag/checklist, Web Accessibility Evaluation Tool, wave.webaim.org/; Digitalgov, Improving the Accessibility of Social Media in Government, www.digitalgov.gov/resources/improving-the-accessibility-of-social-media-in-government/; National Center on Disability and Access to Education (NCDAE), Cheatsheets, ncdae.org/resources/cheatsheets/.

[19]   *See, e.g.*, U.S. Dep't of Educ., Office for Civil Rights, *Resolution Agreement between the Davis School District, Utah, and the U.S. Dep't of Educ.*, OCR Case No. 08-16-1240, www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08161240-b.pdf; U.S. Dep't of Educ., Office for Civil Rights, *Re. OCR No. 18-16-1240, Davis School District, Utah* (July 15, 2016), www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08161240-a.pdf; U.S. Dep't of Educ., Office of Civil Rights, *Settlements Reached in Seven States, One Territory to Ensure Website Accessibility for People with Disabilities* (June 29, 2016), www.ed.gov/news/press-releases/settlements-reached-seven-states-one-territory-ensure-website-accessibility-people-disabilities.

4. Train all staff responsible for website content;

5. Publish notice on the college website and in college publications of the process to request access to inaccessible content or functionality and to file a complaint, if necessary;

6. Develop a web accessibility policy and administrative regulations:

   a) Commit to equal access to programs, benefits, and services, including those available online;

   b) Make new and modified content accessible, unless doing so would impose an undue burden or fundamentally alter the program, benefit, or service at issue;

   c) Commit to periodic audits of content and functionality;

   d) Provide periodic training to all staff responsible for web content; and

   e) Identify the college webmaster and the method for requesting access to inaccessible content or filing a complaint.

Additionally, a community college should consider engaging with users with disabilities to determine where and how college websites present barriers to accessibility. Colleges should also consider requiring accessibility assurances from third-party content vendors. A college should work with its attorney in preparing appropriate procurement and contract language.

For more information on community college law topics,
visit TASB College eLaw online at colleges.tasb.org/elaw.