



## Frequently Asked Questions about School District Website Accessibility

Published online in [TASB School Law eSource](#)

The accessibility of school district websites remains a hot topic as districts continue to receive complaints that their websites are not accessible to persons with disabilities. This memo answers frequently asked questions about school district website accessibility and encourages districts to take steps to make their websites accessible to *all* users.

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

The Americans with Disabilities Act (ADA) defines a disability as “a physical or mental impairment that substantially limits one or more major life activities of [an] individual.”<sup>1</sup> This definition also applies to Section 504 of the Rehabilitation Act of 1973 (Section 504).<sup>2</sup>

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

*Website accessibility* means that people with disabilities can perceive, understand, navigate, and interact with a website. The concept encompasses all disabilities that affect access to the Web: visual (blindness, low vision, color blindness), auditory (deafness, hard of hearing), motor (inability to use a mouse, slow response time, limited fine motor control), and cognitive (learning disabilities, distractibility, inability to remember or focus on large amounts of information).<sup>3</sup>

By using certain design features and tools, web content can be displayed in ways that are more likely to be accessible to users with disabilities. Examples include using plain language to assist users with cognitive disabilities, using headings and formatting tools in documents and alternative text in images to assist users dependent on screen readers, captioning videos to assist users with hearing impairments, and organizing links and other navigation elements to assist users who cannot use a mouse.

Accessible websites allow full participation and foster independence, privacy, and security. These qualities are compromised when a user with a disability must seek assistance to use an inaccessible website. Designing for accessibility also benefits users without disabilities, such as users with temporary disabilities like a broken arm, users with changing abilities due to aging, or users with other impediments like slower Internet speeds.

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<sup>1</sup> 42 U.S.C. § 12102(1)(A).

<sup>2</sup> 29 U.S.C. § 794; *see also* U.S. Dep’t of Educ., Office for Civil Rights, [Frequently Asked Questions About Section 504 and the Education of Children with Disabilities](#).

<sup>3</sup> Web Accessibility Initiative, [Introduction to Web Accessibility](#); WebAIM, [Introduction to Web Accessibility](#).

### 3. Is a school district *required* to make its website accessible?

In short, yes. Although no law or regulation specifically requires school district *websites* to be accessible, the ADA and Section 504 require public entities to ensure equal access to all programs, services, and activities for individuals with disabilities; this includes programs, services, and activities offered online.

#### Legal Requirements

The ADA and Section 504 are federal civil rights laws that prohibit discrimination based on disability. Title II of the ADA applies to public entities, including public school districts, and requires those entities to provide people with disabilities equal access to programs, services, and activities unless doing so would impose an undue financial burden or fundamentally alter the program, service, or activity. Section 504 protects people with disabilities from discrimination in programs and activities that receive federal funding. Neither statute specifically addresses websites, but it is clear from the language of the statutes and their implementing regulations,<sup>4</sup> along with the interpretations of the Department of Justice (DOJ), Civil Rights Division and the Department of Education, Office for Civil Rights (OCR), that these statutes cover websites.

The ADA became law in 1990 at a time when the Internet was in its infancy and no one could have imagined its expansion and use for such widely varied purposes as we see today. The interaction of the ADA and the accessibility of government websites was first acknowledged in June 2003 when DOJ issued guidance describing steps a public entity could take to ensure that its websites have accessible features for users with disabilities.<sup>5</sup>

In June 2010, DOJ and OCR issued a joint Dear Colleague Letter (DCL) to college and university presidents expressing concern over the use of electronic book readers that were not accessible to students with visual impairments. In May 2011, OCR sent a second DCL with a copy of the first to public school officials, along with an FAQ document regarding the application of the first DCL to other forms of emerging technology: “[A]ll school programs or activities—whether in a ‘brick and mortar,’ online, or other ‘virtual’ context—must be operated in a manner that complies with Federal disability discrimination laws.” The FAQ further emphasized that these obligations apply to the use of technology in a class or school, regardless of the presence of students with visual impairments or other disabilities: “Just as a school system would not design a new school without addressing physical accessibility, the implementation of an emerging technology should always include planning for accessibility.”<sup>6</sup>

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<sup>4</sup> Title II of the ADA, 42 U.S.C. § 12131, et seq., and its implementing regulation at 28 C.F.R. pt. 35; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. pt. 104.

<sup>5</sup> U.S. Dep’t of Justice, Civil Rights Div., [Accessibility of State and Local Government Websites to People with Disabilities](#).

<sup>6</sup> U.S. Dep’t of Justice, Office for Civil Rights, [Dear Colleague Letter](#) (May 26, 2011); U.S. Dep’t of Educ., Office for Civil Rights, [Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter](#); U.S. Dep’t of Educ., Office for Civil Rights, [Joint “Dear Colleague” Letter: Electronic Book Readers](#) (June 29, 2010).

Also in 2010, DOJ initiated the rulemaking process on website accessibility under the ADA. In its initial Advance Notice of Proposed Rulemaking (ANPRM), DOJ stated that “[t]he ADA’s promise to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of American civic and economic life will be achieved in today’s technologically advanced society only if it is clear to . . . local governments . . . that their Web sites must be accessible.”<sup>7</sup>

On April 29, 2016, DOJ issued a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) seeking public comment on a wide range of complex issues from technical accessibility requirements to the costs and benefits of the proposed rulemaking.<sup>8</sup> In January 2017, the President signed Executive Order 13,771, *Reducing Regulation and Controlling Regulatory Costs*, requiring that (1) two regulations be repealed for every new regulation proposed and (2) the cost of proposed new regulations be zero.<sup>9</sup> On December 26, 2017, DOJ formally withdrew its Advance Notices of Proposed Rulemaking in the area of website accessibility, stating, “The Department will continue to assess whether specific technical standards are necessary and appropriate to assist covered entities with complying with the ADA.”<sup>10</sup>

Although no rulemaking is anticipated at this time, DOJ’s statements before and after the withdrawal support the conclusion that the ADA in its present form requires government websites to be accessible to users with disabilities; however, DOJ has rejected the idea that this requires compliance with a particular set of guidelines.<sup>11</sup>

### **Enforcement Activity**

Several lawsuits and numerous complaints have been filed against school districts, educational agencies, and universities around the country alleging inaccessible websites. According to OCR, the agency responsible for investigating complaints against school districts, a district has an underlying legal obligation “to ensure people with disabilities are

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<sup>7</sup> [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).

<sup>8</sup> [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).

<sup>9</sup> [Exec. Order No. 13,771](#), 82 Fed. Reg. 9339 (Jan. 30, 2017).

<sup>10</sup> [Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions](#), 82 Fed. Reg. 60932 (December 26, 2017).

<sup>11</sup> In June 2018, 103 members of Congress signed a [letter](#) to the U.S. attorney general requesting guidance and clarity with regard to website accessibility. The attorney general’s [response](#) included the following:

[DOJ] has consistently taken the position that the absence of a specific regulation does not serve as a basis for noncompliance with a statute’s requirements. Absent the adoption of specific technical requirements for websites through rulemaking, public accommodations have flexibility in how to comply with the ADA’s general requirements of nondiscrimination and effective communication. Accordingly, noncompliance with a voluntary technical standard for website accessibility does not necessarily indicate noncompliance with the ADA.

able to independently acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use; and that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any District programs, services, and activities delivered online.”<sup>12</sup> In most instances, school districts will resolve OCR investigations by entering into an agreement to address the alleged violations and inadequacies.

In 2015, the Seattle Public Schools settled a lawsuit brought by a parent and the National Federation of the Blind. The school district agreed to do such things as make its websites accessible to blind people through existing technology, employ an accessibility coordinator, conduct an accessibility audit and develop a remediation plan, add language to procurement requests and contracts addressing vendor compliance with accessibility guidelines and indemnification, and train district personnel. The estimated cost to the district was between \$665,400 and \$815,400.<sup>13</sup>

#### 4. What are the technical standards for website accessibility?

In the absence of regulations prescribing standards for website accessibility, districts have flexibility in deciding how to implement and achieve accessibility. Districts often choose to follow the Web Content Accessibility Guidelines (WCAG) developed by the World Wide Web Consortium (W3C). WCAG 2.0 was developed in December 2008 with a goal of providing a single shared standard for web content accessibility. It became the internationally accepted standard for website accessibility. WCAG 2.1 was published in June 2018 and builds on WCAG 2.0. WCAG 2.0 and 2.1 comprise 12 or 13 guidelines organized under four principles with the helpful acronym POUR: perceivable, operable, understandable, and robust. Each guideline has testable success criteria at three levels: A (minimum level of conformance), AA (website satisfies all Level A and AA success criteria), and AAA (website satisfies all Level A, AA, and AAA success criteria; impossible to meet for some content).<sup>14</sup>

*Perceivable* means that web content is available to the senses, especially vision and hearing, either through the browser or assistive technology, such as a screen reader. *Operable* means users can interact with all controls and interactive elements using the mouse, keyboard, or assistive device. *Understandable* means that content is clear and limits confusion and ambiguity. *Robust* means that a wide range of technologies can access the content.<sup>15</sup>

A district should discuss the appropriate guidelines with its webmaster and technology advisers or consultants.

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<sup>12</sup> [Resolution Agreement](#), U.S. Dep’t of Educ., Office for Civil Rights, *OCR Case No. 16161006, Killeen Independent School District* (Apr. 25, 2016).

<sup>13</sup> See Michele Molnar, [Ed-Tech Accessibility Lawsuit Settled by Seattle District, Advocates for Blind](#) (Sept. 30, 2015).

<sup>14</sup> Web Accessibility Initiative, [Web Content Accessibility Guidelines \(WCAG\) Overview](#).

<sup>15</sup> WebAIM, [Introduction to Web Accessibility](#).

## 5. What can Texas school districts do to minimize risk?

While the prospect of making a district's website accessible can seem daunting, districts should begin discussing website accessibility in order to avoid complaints or, at a minimum, to respond to and resolve complaints quickly and easily. TASB Legal Services recommends districts take the following steps, many of which are based on conditions and requirements contained in OCR agreements with school districts and other educational agencies:

- a) Talk to the district's technology director or webmaster, local counsel, and other stakeholders; begin educating the board on these concepts;
- b) Conduct an accessibility audit of content and functionality under accessibility guidelines such as WCAG 2.0 or 2.1, Level AA, including third-party content; this should be performed by an entity with experience and expertise in this area;
- c) Develop a corrective action plan to address barriers to access identified in the audit;
- d) Train all staff responsible for website content;
- e) Publish an accessibility notice on district websites and in district publications that details the process to request access to inaccessible content or functionality, including the contact information for the appropriate district contact, and to file a complaint, if necessary;
- f) Develop a web accessibility policy and administrative regulations:
  - i) Commit to equal access to programs, benefits, and services, including those available online;
  - ii) Make new and modified content accessible, unless doing so would impose an undue burden or fundamentally alter the program, benefit, or service at issue;
  - iii) Commit to periodic audits of content and functionality;
  - iv) Provide periodic training to all staff responsible for web content; and
  - v) Identify the district webmaster and the method for requesting access to inaccessible content or filing a complaint.

In addition, a district should engage with users with disabilities to determine where and how district websites present barriers to accessibility. Districts should consider requiring accessibility assurances from third-party content vendors. A district should work with its school attorney in preparing appropriate procurement and contract language.

The issue of website accessibility cannot be ignored, and it is inadvisable for a district to wait to address it until the district receives a complaint or OCR contacts the district. It is considerably less expensive to make new content accessible than to make existing content accessible. In addition, addressing accessibility may give a district an opportunity to evaluate its Internet presence and, if necessary, make appropriate changes. Such changes might include simplifying or centralizing its approach to putting things online or evaluating its practices and procedures as to who is authorized to post what and where, thus regaining control over district sites and content.

## 6. What resources does TASB offer?

TASB Policy Service has created a sample local policy and a sample administrative regulation at policy code CQA. These incorporate and address many of the issues set out above. Copies can be obtained from a district's TASB Policy Consultant or from TASB Legal Services. These are samples and should be adopted and/or implemented *only* after consultation with a school district's counsel.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/sch\\_district\\_website\\_accessibility.aspx](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/sch_district_website_accessibility.aspx). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

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*Updated April 2019*