

# ADA Title II update

Presentation for NWCCTS

# Department of Justice ADA title II

- The Department of Justice announced the long-awaited ADA rules on web content and mobile apps this Spring. Prior to the announced final rules, they offered up a draft of what they were proposing and included dozens of questions for feedback to shape their final draft.
- We've already been required to provide reasonable accommodations to students with disabilities in our higher education institutions. This has spanned the range of physically accessible classrooms, accessible digital documents, content in Braille format, American sign language interpreters in the classroom and extended time to complete tests to name a few.

# All instructional materials need to be made accessible

What is new with the ADA's Title II is that instead of being reactive and making some course content accessible on becoming aware that we have a student with a disability enrolled in particular classes, we'll be required to make ALL course content accessible in a pro-active manner. This will be the most intensive of changes we'll all face both with instructional content we've created internally and with third-party instructional materials we use.

# When does this new rule come into effect?

- For most institutions it will be April of 2026. Institutions serving smaller populations will have one more year to come into compliance but likely few will qualify for the longer 3-year deadline.
- The distinction between those required to do this in 2-years versus 3-years is based on census numbers of 50,000 or greater for 2-year, 3-years for those less than 50,000 in number. This is causing confusion for many who may believe it is referring to their total campus population of students, staff, and faculty when it instead speaks to the greater community we're located in and serving.

# What is the technical standard to measure against?

- Web Content Accessibility Guidelines (WCAG) 2.1 AA for web content and mobile applications. (Although 2.2 has been out as the latest version for a few months the DOJ went with 2.1 for the time being.)
- Some argued for using WCAG 2.2 while others wanted to stick with 2.0 of the WCAG.

# Mobile applications focus

Many will access our resources using smart phones and tablets. We need to test and make sure users of these have an accessible experience too.

# Accessibility of non-course content elements

- In addition to closed captions for instructional videos, accessible documents, and the other common course content accommodations, students need an accessible experience when enrolling in classes, applying for financial aid, taking part in campus events and likely, working part time at our institutions. They may want to attend a campus sponsored trip, a sporting event, student club membership, special lectures, and other common activities.
- We must also provide an accessible environment (physical and virtual) for faculty, employees, and at times, the general public.

# Archived web content exemption

- Where we have a lot of content that may not be accessible, those items that are no longer actively being used can be sorted into clearly delineated zones where we don't have to remediate them. This might include past course catalogs, campus newspapers, and other such items.
- Anything still needed and used on a regular basis would not qualify for being sorted into an exempt, archived files location as students might still need to read those instructions, complete that form, use that campus map and so on.



# Pre-existing social media posts exemption

- Another exemption will reduce the load for institutions. Social media content already online prior to the law coming into effect would not need to be remediated (Alt text, closed captioning). But again, we need to distinguish elements of an archival nature with those still being actively used.
- A YouTube video explaining the dormitory check-in process, despite having been made prior to April 2026, is likely to still be in use by all students including those with disabilities and should include closed captions and possibly audio description when applicable.

# Alternate Conforming Version

*“the use of conforming alternate versions is permitted only in limited, defined circumstances, which represents a slight departure from WCAG 2.1. Section 35.202(a) states that a public entity may use conforming alternate versions of web content to comply with § 35.200 only where it is not possible to make web content directly accessible due to technical or legal limitations.”*

# Common Accessibility Failures – The Low Hanging Fruit

- Untagged PDFs. Accessibility tags are what assistive technology hooks into to help interpret and navigate through content in PDF files.
- Documents without proper heading structure. Headings help break content into navigable sections to access content more easily and efficiently with assistive technology.
- Images without alt text. If meaningful content is relayed with an image, then alternative text descriptions are required.
- Unlabeled form fields. Users of assistive technology encountering form fields need to know what is expected for their entries, proper formatting and which of the fields is optional versus required.
- Color-contrast. There needs to be a 4.5 to 1 ratio of text to the background to meet the standard to be visible to most users with vision.
- Color Alone used to distinguish items.” The poisonous mushrooms are indicated with red text.” is inadequate. Something in addition to color needs to clearly differentiate items in content.
- Inadequate alternative text for hyperlinks “click here” , “more” or overly long hyperlinks filled with numbers, random characters and forward slashes provide no indication of where the link will take the user.
- Hard to find and use mechanisms to request and receive accessibility assistance in a timely manner.

# Institution-wide responsibility

It is unrealistic to think that a small group of accessibility experts on campus will do all the work of finding and remediating inaccessible assets. There is instead, a need for campus wide training akin to other required onboarding (ethics, sexual harassment prevention, workplace violence prevention) that could address much of the need to remediate the above low hanging fruit. The more complex remediation work would then be the primary work of campus accessibility experts.

# Ongoing Challenges with Third-party tools

- Most of our institutions no longer create our own electronic tools and applications in-house but instead rely upon third-party vendors for our Learning Management System (LMS), course catalog, lecture capture software, parking permits and so on. The Office for Civil Rights and likely the DOJ as well, expect us to procure accessible software and software as a service.
- When we become aware of accessibility shortcomings in these third-party tools, we're expected to persuade the vendor to remediate those, or we're expected to switch to an accessible alternative product or service. This is of course easier said than done.
- Don't like the response from your LMS vendor on accessibility? How much effort will it take to find a more accessible one and train your staff, faculty and students to transition to it? OCR believes that as a collective of institutions, that we have more power to convince vendors to improve on accessibility issues than we do as a single college or university.

# Why we should make these changes to our accessibility efforts

- It is the right thing to do.
- To minimize institutional risk of losing a costly lawsuit.
- Hopefully we'll do it for both of these reasons.

# How will the Department of Justice enforce this?

This is yet unknown. We're already familiar with the Department of Education's Office for Civil Rights (OCR) and what they do in two current modes:

- Complaint-based investigations carried out by OCR where they believe a student with a disability is being denied their rights and they promptly intercede forcing systemwide changes to come into compliance.
- A second method that OCR has been carrying out in just the last few years are “random” self-audits of higher education institutions. Institutions near military bases are likely to have combat-injured veterans returning to pursue educational opportunities. These returning veterans may have hearing loss, PTSD, mobility impairments, vision loss or a combination of some of these that would likely call for accommodations in their studies. This has influenced which of the 100 random institutions they have chosen so far.

# What if we don't act now?

What are the likely outcomes of failing to comply with the existing regulations or these new ones?

We don't know how the DOJ will handle cases but do know that OCR steps in on behalf of students in a timely manner with the hope that the institution can be brought into compliance so that students can continue without barriers to their academic success. Institutions that have failed to meet this obligation in a timely manner tend to go on to facing stiff legal consequences in settlement payments as well as a loss in standing amongst their peer institutions.



# References

- [Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps Provided by State and Local Governments](#)
- [WCAG 2.1](#)
- [Techniques for WCAG 2.1](#)
- [Introduction to Web Accessibility](#)
- [Higher Ed Accessibility Lawsuits, Complaints, and Settlements](#)
- [BGL team secures \\$240,000 jury verdict for blind students in discrimination lawsuit against the Los Angeles Community College District.](#)
- [ADA Lawsuit Prompts Institutional Change, Draws More Students](#)
- [Web Accessibility Related Lawsuits and Settlements in the United States](#)
- [Mount Hood Community College Resolution Agreement 2014](#)

# Questions?

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