

## Access Ready Educational Legal Foundation

### Educational Technology and Disability Civil Rights

#### **Americans with Disabilities Act**

Title II of the Americans with Disabilities Act (ADA), covering all state and local government activities, was enacted in 1990 and Section 504 of the Rehabilitation Act, covering all recipients of federal funding, has been in place since 1973. These laws are unequivocal: they require covered entities, including public schools, charter schools, and public colleges, to ensure their communications are equally effective for people with disabilities as for people without disabilities. The Department of Justice has made clear that Title II requires all services, programs, and activities of public entities, including those provided through the Internet or other technology, to be accessible. The Department of Education has made clear that Section 504 requires digital educational technology used in public schools and public colleges to be accessible. See <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>; <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201105-ese.html>.

Title III of the ADA covers private schools and private higher education, and Section 504 also applies to private schools that receive federal financial assistance, such as federal grants and financial aid. Therefore, private schools and colleges must comply with Title III's requirement that communications with individuals with disabilities be accessible.

Public and private schools at all levels now frequently use technological means to communicate with students, parents, alumni, and members of the public in a variety of contexts, including for courses and in classrooms, homework and research, examinations, fundraising, application and registration, tuition and fee payment, and sports and cultural events. In addition, virtually all educational institutions have some element of online learning, whether it's through a learning management system, through online classes, or through a hybrid of online and in-person classes. These forms of communication must meet the ADA's "effective communication" standard.

Both Title II and Title III of the ADA also prohibit schools from providing separate educational opportunities for students with disabilities unless the separation is necessary to accommodate the student's disability. The ADA also prohibits schools from unnecessarily segregating students with disabilities from their peers.

Effective communication generally means people with disabilities can access or acquire the same information, engage in the same interactions, and enjoy the same products and services that the educational institution offers its sighted participants with substantially equivalent ease of use. To be effective, online or information and communications technology-based educational communications must be provided in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. These requirements apply to both communications the institution makes to members of the community and communications it receives from the community.

The only defenses available are when the educational institution documents in advance, and can prove, that, using all its available resources, it is too difficult or too expensive to accomplish accessible communication or it would fundamentally alter the nature of the communication or program to make it accessible. Even if one of those defenses applies, the school is required to do everything it can to provide accessible communication up to the point where the burden becomes too great. This is a high bar.

The primary defense to a charge of unnecessarily providing separate education to students with disabilities is that the separation is necessary to accommodate the student's disability or providing the student with a disability the same benefit everyone else receives would be an undue burden or fundamental alteration.

If a person with a disability is denied equally effective communication or is unnecessarily provided a separate learning opportunity in education, he or she can file a case in court or a complaint to a federal agency. Either way, the discriminating school can be required to make its educational technology accessible, adopt policies to ensure accessibility going forward, and to undertake any other steps necessary to remediate the problem. Public schools and public colleges can also be required to pay damages for any extra expenses, time, or other burdens the complainant incurred, as well as damages for the harm of being obstructed in accessing his or her education and of experiencing discrimination. Both public and private schools can also be required to pay the complainant's attorneys' fees and costs. Finally, and significantly, under Section 504, the school can be required to give up its federal funding.

So, if a public or private school or college is providing learning tools or information via the Internet or ICT, or if it is receiving information, registration applications, and the like from students, prospective students, parents, alumni, and the community via the Internet or ICT, it ignores the accessibility of those communications at its own peril.

## **Accessibility of Learning Technologies**

In the bygone era of just paper books and paper-and-pencil exams and documents, effective communication generally meant providing an assistant to read assignments and a scribe to write papers and exam answers for a blind student or a sign language interpreter to interpret lectures, videos and audio programming. However, these approaches are often expensive, unreliable, time-consuming, and simply inadequate in today's technology-driven learning environments. These approaches also undermine privacy and independence, as well as the flexibility, portability, and convenience that are key benefits of educational technology.

Online and information and communications technology (ICT) educational tools offer greater opportunities to access information, collaborate, and demonstrate knowledge. Nowadays, most people with vision disabilities have access to screen reader software, magnification software, or Braille displays that can translate a web page or electronic document into large print, computerized speech, or Braille. A website can, therefore, be made accessible to blind and low vision people simply by ensuring it will work with such assistive devices and software programs, that certain standards are met for images and other visual information, and that input and navigation can be achieved through keyboard commands as well as mouse commands. Now, captioning for video and audio information is readily available for people with hearing disabilities. A video or audio presentation or meeting can be made accessible to people who are deaf or hard of hearing simply by providing captions online. However, if educational software is not designed to interact with assistive technology, or if ICT equipment (such as kiosks or clickers) relies exclusively on visual input or output (e.g., touchscreens) or exclusively audio input or output, the benefits of the new technologies are lost for students with disabilities.

Recognizing the advent of both digital communication and digital assistive technology, the regulations implementing the ADA provide that accessible electronic and information and communications technology is a type of auxiliary aid or service required by the law.

### **Other Applicable Laws**

#### **Individuals with Disabilities Education Act**

The Individuals with Disabilities Education Act (IDEA) requires public elementary and secondary schools to ensure students with disabilities receive a free appropriate public education, including any special education services and education-related services the student needs because of a disability. While the IDEA does not specifically require that educational technology be accessible to students with disabilities from the beginning, ensuring accessibility of new technologies is the only effective way to ensure schools' IDEA obligations can be consistently achieved.

Educational technologies that are designed and implemented accessibly can work for all students without additional staff, delay, and segregation. Relying on workarounds for inaccessible technology both denies the student the full benefits of the educational tools provided to her/his peers and denies the student the ability to learn to use the technologies that will likely be used in higher education and in employment, all while requiring the school to expend additional staff and financial resources to implement workarounds.

In addition, similar to Section 508 of the Rehabilitation Act, which requires technology purchased or used by the federal government to be accessible, many state and local laws require government entities, including public schools, to ensure their technology purchases comply with accessibility requirements.

### **Teacher and Employee Access**

As student and public-facing educational information has moved into technology, so have schools' teacher- and employee-facing systems. Teachers, aides, administrators, and other school employees are protected by Title I of the ADA. Title I does not specifically require jurisdictions to ensure their employee-facing technology is always accessible. However, any school that does not ensure its technology is accessible will most likely fail to meet its legal obligations. If a school uses existing technology that is inaccessible, it theoretically has two options - 1) make the technology accessible or 2) if it is too expensive or difficult to make the technology accessible, provide a work-around for the employee with a disability (e.g., a staff person or contractor to act as a reader, scribe, or interpreter). If, on the other hand, the school has purchased or developed employee-facing technology since the ADA was enacted, it is less likely to be able to succeed in making an undue hardship defense. That is because, if an accessible version of the technology was available or it was not difficult to make the technology accessible when it was developed, then it would not have been an undue hardship to use accessible technology. The cost of remediating a new technology should have no bearing if the technology could have been accessible from the beginning. In addition, workarounds for inaccessible technology are inefficient, expensive, and often fail to provide equal access for employees with disabilities. For example, when an educational technology or grading database is readily available on-demand to employees without disabilities as they perform their duties, but an employee with a disability must await the availability of a part-time reader in order to access it, the employee with a disability is being denied an equal opportunity to perform his or her job.

Eve L. Hill - Inclusivity Consulting