

Legal Challenges Impacting Educational Technology in Higher Education

Please Note: This list is not comprehensive. It is a snapshot of the legal challenges impacting educational technology in higher education that have been brought on by individuals with disabilities (mostly, sensory) and/or their advocates.

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Settled Cases

University of Cincinnati

OCR initiated a compliance review of the accessibility of the University of Cincinnati's website to persons with disabilities, particularly those with sensory impairments who might require the use of assistive technology to access the sites. OCR also looked at the university's actions to facilitate the accessibility of Blackboard and distance learning programs.

Settled: December 2014

Summary: Accessibility concerns identified include:

- Lack of alternative text on all images;
- Documents not posted in an accessible format;
- Lack of captions on all videos;
- Inability to operate video controls using assistive technology;
- Improperly structured data tables;
- Improperly formatted and labeled form fields; and
- Improper contrast between background and foreground colors.

Resolution:

- Designation of Section 504/Title II coordinators
- Adoption and publication of notice of nondiscrimination
- Establishment of EIT accessibility policy
- Designation of EIT Accessibility Coordinator
- Adoption of grievance procedure

- Establishment of remediation and implementation (EIT) plan
- Accessibility audit
- Annual training

Youngstown State University

OCR initiated a compliance review of the accessibility of the Youngstown State University's website to persons with disabilities, particularly those with sensory impairments who might require the use of assistive technology to access the sites. In its investigation, OCR reviewed documentation provided by the University, including the University's policies related to the creation of websites. OCR also interviewed staff directly involved in overseeing the University's website, procuring software and technology, and working with students with disabilities. In addition, OCR contacted students with visual and hearing disabilities who were registered with the University's disability services office for the 2011-2012 and/or 2012-2013 academic years, and interviewed the nine students who responded to OCR contacts. OCR also reviewed a sampling of the University's web pages to determine whether the pages are accessible to users with disabilities through the use of assistive technology; including but not limited to the University's homepage and pages related to financial aid, disability services, distance education, housing, and registration.

Settled: December 2014

Summary: Accessibility concerns identified include:

- Lack of alternative text on all images;
- Documents not posted in an accessible format;
- Lack of captions on all videos;
- Inability to operate video controls using assistive technology;
- Improperly structured data tables;
- Improperly formatted and labeled form fields; and
- Improper contrast between background and foreground colors.

Resolution:

- Designation of Section 504/Title II coordinators
- Adoption and publication of notice of nondiscrimination
- Establishment of EIT accessibility policy
- Designation of EIT Accessibility Coordinator
- Adoption of grievance procedure
- Establishment of remediation and implementation (EIT) plan
- Accessibility audit
- Annual training

University of Montana

Filed with **OCR – US Dept. of Education (Enforces Sect. 504 and Title II of ADA.** These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities. The University receives federal financial assistance from the U.S. Department of Education, is a public entity, and is, therefore, subject to the requirements of these laws.)

Filed by: NFB on behalf of Blind student(s) at U of M.
Settled: May 2014

Summary: Complaint alleged discrimination by university against students with disabilities by using inaccessible electronic and information technology.

- Class assignments and materials in Moodle (LMS).
- Inaccessible live chat and discussion board in Moodle.
- Inaccessible documents that are scanned on web pages and websites.
- Inaccessible videos, and videos in Flash format that are not captioned.
- Inaccessible library database materials.
- Inaccessible course registration through website, CyberBear.
- Inaccessible classroom clickers.

Definitions: Accessible, E & IT, Equally Effective, Legacy Websites

Resolutions:

- Establishment of EIT Policy, posted on website, and disseminated to University personnel, including senior academic leadership (deans and chancellors), department heads, faculty, and staff. Presentations and workshops about the policy and procedures to university senior academic leadership, department heads, and IT staff.
- Establishment of grievance procedures regarding EIT accessibility barrier to Office of Equal Opportunity and Affirmative Action.
- Establishment of Procurement procedures.
- Establishment of EIT Accessibility Training.
- Establishment of University website dedicated to accessibility.
- EIT Coordinator position.
- Student survey for students attending university from FY12-FY14 to identify any and all EIT accessibility barriers.
- EIT accessibility audit to include, but not limited to, university websites, documents posted to websites and webpages, application processes, library services, LMS, access to classroom podiums and LCD displays, course

registration software, videos, clickers, and banking arrangements offered to students, faculty, staff, including website and ATMs.

Louisiana Tech University

Filed with *DOJ (Title II of ADA)*

Filed by: Blind student at LaTech
Settled: July 2013

Summary: Complaint alleged discrimination by university against blind student who alleged to be unable to participate in course based upon professor's adoption of an internet-based application (MyOMLab) that was inaccessible to him. Online application was available to other students 24-hrs/day, was used for tutorials on course subject matter, was required for completion of homework, and was used for administration of tests in course. Student raised issue of accessibility to faculty member who directed the student to follow up with the vendor. Same professor also distributed inaccessible, hard copy course materials to student in different and subsequent course. When student requested accessible copies, faculty member delegated responsibility to another student. Accessibility was typically not provided until several days after student received the hard copy versions. Investigation into this issue uncovered other disability-related policies and practices that needed to be addressed.

Resolutions:

- Revision of policies in disability services office (accommodation letters, faculty communications).
- Establishment of grievance procedures regarding ADA complaints.
- Mandatory annual ADA Training for all individuals who provide course-related instruction to students and all university administrators (according to La Tech Org Chart). Disability services office and university ADA coordinator would provide this training jointly...to cover reasonable accommodations.
- Relief to student in amount of \$23k
- Establishment of policy requiring deployment of accessible technology and course content ([Exhibit 1](#)). Covers the following:
 - Procurement
 - Accessibility language in contracts
 - Web pages, including legacy websites
 - Instructional materials
 - Other technology for effective communication
 - Technical Assistance, Exceptions, and Monitoring...
 - *“An appropriate office will provide resources, information and assistance to programs on plan development and implementation,*

as well as on achieving accessibility of web pages, instructional materials, and other technology.”

South Carolina Technical College System

Initiated by **OCR – US Dept. of Education**

Filed by: Initiated by SCTCS

Settled: March 2013

Summary: OCR initiated a compliance review to assess whether the South Carolina Technical College System’s (SCTCS) communications with persons with disabilities are as effective as communications with persons who are not disabled. The review included an examination of the accessibility of SCTCS’s websites to persons with disabilities, especially those requiring the use of assistive technology to access the sites. OCR conducted an extensive review of SCTCS, FDTC, and HGTC’s websites, including email, course management systems, library resources and websites operated by them. OCR reviewed over 100 websites. Additionally, OCR interviewed staff, including those responsible for website design, technology adoption and provision of services to students with disabilities, and students who use assistive technology to access the Internet.

Findings (sampling of issues identified):

- OCR found portable document format (PDF) files missing tagging, alternative text for graphics, identification on column headers, specified reading order, and tags on critical information such as watermarks and headings.
- Some videos were without proper labeling, keyboard control, or captioning.
- There were several times alternative attributes were insufficient or missing and fields that required filling out were missing labels to enable a screen reader user to fill them in.
- Tables were missing headings for a screen reader to fully access them.
- OCR found several different areas where a keyboard-only user would not be able to access information or use drop down menus.
- There were instances in which content in course management systems was missing captions, alternative texts, and other features required for accessibility.
- Campus calendars were not fully accessible to a screen reader.

Resolutions:

- SCTCS entered into review voluntarily...as such, findings provide guidance on what needs to be done to resolve issues.
 - Websites will be brought into compliance with Section 508 and WCAG 2.0.

- SCTCS will develop resource guide regarding accessibility requirements, standards, and links to reference materials.
- Review and monitor college's websites.

Florida State University

Filed by: NFB on behalf of two blind students
Settled: Feb 2012

Summary: The students claimed that they experienced discrimination in violation of state and federal disability laws, including failure to reasonably accommodate their disability and lack of accessible technology. As a result, they claimed, they were unable to complete courses related to their academic majors.

Findings (sampling of issues identified):

- University relied upon human readers as primary accommodation for access to math materials.
- *eGrade* application is inaccessible to screen reader users.

Resolutions:

- \$75k settlement to each defendant.
- Procurement of accessible digital technology and digital instructional materials by Dept. of Mathematics.
- University agrees to ensure equivalent access to STEM courses in following semesters for two blind students.
- FSU will explore campus-wide policy for procurement of accessible instructional technology and instructional content.
- Removal of bad grades from failed courses.
- Waiver of tuition and fees for retaking of specific courses in future semesters.

Penn State University

Filed with **OCR – US Dept. of Education (Enforces Sect. 504 and Title II of ADA.** These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities. The University receives federal financial assistance from the U.S. Department of Education, is a public entity, and is, therefore, subject to the requirements of these laws.)

Filed by: NFB on behalf of Blind student(s) and faculty at PSU

Settled: 2010/2011

Summary: Complaint alleged discrimination by university against faculty and students with disabilities by using inaccessible electronic and information technology.

- Inaccessible LMS (ANGEL).
- Class assignments and materials in ANGEL.
- Inaccessible documents that are scanned on web pages and websites.
- Inaccessible library services and database materials.
- Inaccessible classroom podiums and LCD displays.
- Inaccessible banking systems (ATMs).

Definitions: Accessible, E & IT, IT

Resolutions:

- Establishment of EIT Policy, posted on website, and disseminated to University personnel, including senior academic leadership (deans and chancellors), department heads, faculty, and staff. Presentations and workshops about the policy and procedures to university senior academic leadership, department heads, and IT staff.
- Establishment of grievance procedures regarding EIT accessibility barrier to Office of Equal Opportunity and Affirmative Action.
- Establishment of Procurement procedures referencing 508 and WCAG Level 2.0 AA.
- Establishment of EIT Accessibility Training.
- Establishment of University website dedicated to accessibility.
- EIT Coordinator position.
- Student survey for students attending university from FY12-FY14 to identify any and all EIT accessibility barriers.
- EIT accessibility audit to include, but not limited to, university websites, documents posted to websites and webpages, application processes, library services, LMS, access to classroom podiums and LCD displays, course registration software, videos, clickers, and banking arrangements offered to students, faculty, staff, including website and ATMs.
- Improve accessibility of library websites and services (specifically mentions accessible search engine for library's databases and collections).
- Replace university LMS by Aug. 2014 (Angel).

[Arizona State and Case Western Reserve University](#)

Filed with ***OCR – US Dept. of Education (Enforces Sect. 504 and Title III of ADA.*** These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by

public entities. The University receives federal financial assistance from the U.S. Department of Education, is a public entity, and is, therefore, subject to the requirements of these laws.)

Filed by: NFB, ACB on behalf of current and prospective college students
student(s) who are blind
Settled: June 2009

Summary: Complaint alleged discrimination by university against students with disabilities by using inaccessible electronic and information technology. Prior to e-book readers, higher education institutions had to provide alternative formats because print materials could not be made accessible in any other kind of way. Lawsuit basically states that because the Kindle DX e-book reader can be made to be accessible to student with print disabilities. As such, colleges and universities with electronic textbook programs should not be permitted to rely on separate and unequal alternative formats as a solution. A number of factors impact the provision of alternative formats: timeliness, content format, features, costs, and availability.

- Inaccessible e-book reading devices.

Definitions: Accessible, E & IT, IT

Resolutions:

- Universities discontinued Kindle DX pilot programs at conclusion of the current system.
- Universities involved agreed that they would evaluate e-book readers that were accessible for the blind if they chose to deploy them in the future.
- Amazon worked to add text-to-speech capabilities to Kindle's navigation system.

Open Cases

[Harvard and M.I.T.](#)

Civil action filed by *NAD*

Filed: Feb 2015
Filed by: NAD on behalf of its members
Settled: Ongoing...

Summary: Complaint alleges that both universities violated antidiscrimination laws by failing to provide closed captioning in their online lectures, courses, podcasts and other educational materials.

- Videos with that no captions (or inaccurate captions) on extensive listing of free, online educational platforms like YouTube, iTunesU, Harvard@Home, and MIT OpenCourseWare.

[Miami University, Ohio](#)

Filed with *OCR – US Dept. of Education (Enforces Sect. 504 and Title II of ADA.* These laws prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities. The University receives federal financial assistance from the U.S. Department of Education, is a public entity, and is, therefore, subject to the requirements of these laws.)

Filed: Jan 2014
Filed by: NFB on behalf of blind student at Miami U., Ohio
Settled: Ongoing...

Summary: Complaint alleged discrimination by university against blind student enrolled in bachelor's degree in zoology program. Inaccessible electronic and information technology is at issue in the complaint.

- Selection of software programs that exclude student from integrated access into university's programs and activities.
- Failure to provide timely access to braille textbooks, useful tactile graphics, timely course materials in accessible formats including handouts, assignments, PPTs, class notes, and trained assistants.
- Students seeking monetary damages...

Maricopa CC and Mesa CC

Civil action by *NFB*

Filed: May 2012
Filed by: NFB on behalf of blind student at Maricopa CC
Settled: Ongoing...

Summary: Complaint alleged discrimination by university against blind student who was unable to access many of the institutions EIT resources.

- Inaccessible websites, impacting independent registration and access to student email, portal systems.
- Inaccessible computer interface at financial aid office.
- Inaccessible LMS
- Inaccessible course content (i.e., MyMathLab, online tool in Spanish courses, iClickers, videos without AD)
- Google apps (includes student calendaring system)
- Timely access to course textbooks in accessible formats
- Students seeking monetary damages...

Summary Of Issues/Areas Raised In All Cases...

CLASSROOM (24)

- **LMS and Supplemental Applications (12)**
 - Class assignments and materials in Moodle (LMS).
 - Inaccessible live chat and discussion board in Moodle.
 - Internet-based application (MyOMLab)
 - There were instances in which content in course management systems was missing captions, alternative texts, and other features required for accessibility.
 - *eGrade* application is inaccessible to screen reader users.
 - Inaccessible LMS (ANGEL).
 - Class assignments and materials in ANGEL.
 - Inaccessible LMS
 - Google apps (includes student calendaring system)
 - Inaccessible course content (i.e., MyMathLab, online tool in Spanish courses, iClickers, videos without AD)
 - Inaccessible classroom clickers.
 - Selection of software programs that exclude student from integrated access into university's programs and activities.

- **Alternative Text/Document Accessibility (7)**
 - Inaccessible documents that are scanned on web pages and websites.
 - Inaccessible, hard copy course materials (accessibility delegated to another student)
 - OCR found portable document format (PDF) files missing tagging, alternative text for graphics, identification on column headers, specified reading order, and tags on critical information such as watermarks and headings.
 - University relied upon human readers as primary accommodation for access to math materials.
 - Inaccessible e-book reading devices.
 - Inaccessible documents that are scanned on web pages and websites.
 - Failure to provide timely access to braille textbooks, useful tactile graphics, timely course materials in accessible formats including handouts, assignments, PPTs, class notes, and trained assistants.
 - Timely access to course textbooks in accessible formats

- **Video Accessibility (2)**
 - Inaccessible videos, and videos in Flash format that are not captioned.
 - Some videos were without proper labeling, keyboard control, or captioning.

- **Library Resources (2)**

- Inaccessible library database materials.
- Inaccessible library services and database materials.
- **Additional Classroom Resources (1)**
 - Inaccessible classroom podiums and LCD displays.

GENERAL CAMPUS ACCESS (9)

- **University Websites (7)**
 - There were several times **alternative attributes were insufficient or missing and fields** that required filling out were missing labels to enable a screen reader user to fill them in.
 - **Tables were missing headings** for a screen reader to fully access them.
 - OCR found several different areas where a **keyboard-only** user would not be able to access information or use drop down menus.
 - Inaccessible **course registration** through website, *CyberBear*.
 - **Campus calendars** were not fully accessible to a screen reader.
 - Inaccessible websites, impacting independent registration and access to student email, portal systems.
 - Selection of software programs that exclude student from integrated access into university's programs and activities.
- **Additional Campus Resources (2)**
 - Inaccessible banking systems (ATMs).
 - Inaccessible computer interface at financial aid office.

Resolutions from Settled Cases....

- **Establishment/Update of EIT Policy**
 - Establishment of EIT Policy, **posted on website, and disseminated to University personnel, including senior academic leadership (deans and chancellors), department heads, faculty, and staff. Presentations and workshops about the policy and procedures to university senior academic leadership, department heads, and IT staff.**
 - Establishment of policy requiring deployment of accessible technology and course content ([Exhibit 1](#)). Covers the following:
 - Procurement
 - Accessibility language in contracts
 - Web pages, including legacy websites
 - Instructional materials
 - Other technology for effective communication
 - Technical Assistance, Exceptions, and Monitoring...
 - *“An appropriate office will provide resources, information and assistance to programs on plan development and implementation, as well as on achieving accessibility of web pages, instructional materials, and other technology.”*
 - Establishment of EIT Policy, posted on website, and disseminated to University personnel, including senior academic leadership (deans and chancellors), department heads, faculty, and staff. Presentations and workshops about the policy and procedures to university senior academic leadership, department heads, and IT staff.
 - FSU will explore campus-wide policy for procurement of accessible instructional technology and instructional content.
 -
- **Establish/Update EIT Grievance Process**
 - Establishment of grievance procedures regarding EIT accessibility barrier to Office of Equal Opportunity and Affirmative Action.
 - Establishment of grievance procedures regarding ADA complaints.
 - Establishment of grievance procedures regarding EIT accessibility barrier to Office of Equal Opportunity and Affirmative Action.
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- **Establish/Update Procedures for Procurement**
 - Establishment of Procurement procedures.
 - Establishment of Procurement procedures referencing 508 and WCAG Level 2.0 AA.
 -
- **Training**
 - Establishment of EIT Accessibility Training.

- **Presentations and workshops about the policy and procedures to university senior academic leadership, department heads, and IT staff.**
- Mandatory annual ADA Training for all individuals who provide course-related instruction to students and all university administrators (according to La Tech Org Chart). Disability services office and university ADA coordinator would provide this training jointly...to cover reasonable accommodations.
- Establishment of EIT Accessibility Training.

- **Establish Accessibility Website**
 - Establishment of University website dedicated to accessibility.
 - Establishment of University website dedicated to accessibility.

- **Hire/Update EIT Staffing**
 - EIT Coordinator position.
 - EIT Coordinator position.

- **Establish Process for Learning/Monitoring EIT Issues**
 - Student survey for students attending university from FY12-FY14 to identify any and all EIT accessibility barriers.
 - Student survey for students attending university from FY12-FY14 to identify any and all EIT accessibility barriers.

- **EIT Accessibility Audit**
 - EIT accessibility audit to include, but not limited to, university websites, documents posted to websites and webpages, application processes, library services, LMS, access to classroom podiums and LCD displays, course registration software, videos, clickers, and banking arrangements offered to students, faculty, staff, including website and ATMs.
 - EIT accessibility audit to include, but not limited to, university websites, documents posted to websites and webpages, application processes, library services, LMS, access to classroom podiums and LCD displays, course registration software, videos, clickers, and banking arrangements offered to students, faculty, staff, including website and ATMs.

- **Institution-Specific Resolutions**
 - Revision of policies in disability services office (accommodation letters, faculty communications).
 - Monetary Compensation to Students
 - Relief to student in amount of \$23k
 - \$75k settlement to each defendant.
 - Waiver of tuition and fees for retaking of specific courses in future semesters.

- SCTCS entered into review voluntarily...as such, findings provide guidance on what needs to be done to resolve issues.
 - **Websites will be brought into compliance with Section 508 and WCAG 2.0.**
 - **SCTCS will develop resource guide regarding accessibility requirements, standards, and links to reference materials.**
 - **Review and monitor college's websites.**
- Procurement of **accessible digital technology and digital instructional materials by Dept. of Mathematics.**
- University agrees to **ensure equivalent access to STEM courses** in following semesters for two blind students.
- Removal of bad grades from failed courses.
- Improve *accessibility of library websites and services* (specifically mentions **accessible search engine for library's databases and collections**).