

Planning for Effective and Sustainable Digital Accessibility

Meeting the New ADA Title II Requirements with Excellence

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Agenda

- Digital Accessibility
- Health and Human Services Act Update
- Colorado HB21
- Title II Updates
 - What is and is not covered?
 - Archived, Currently Active, and Not-Yet-Released
 - Determining the timeline
- Consistent and Measurable – Tools and Solutions
- Planning for Sustainable Digital Accessibility
- Know the What, When, and How

Digital Accessibility

“Digital accessibility refers to the inclusive practice of removing barriers that prevent interaction with, or access to websites, digital tools and technologies, by people with disabilities.”
– Georgetown University, School of Law

Current US Laws

- Civil Rights Act of 1964 – added rights for PWD in 1973 – **Disability Rights are Civil Rights**
- **Rehabilitation Act 1973**
 - Section 504 – applies to all (*proposed changes*)
 - Section 508 – applies to US government entities (fully government funded)
- **Americans with Disabilities Act as Amended 1990/2008**
 - Title 1 - Employment
 - **Title 2 – Public Accommodations**
 - Title 3 – Private Accommodations
 - Title 4 – Equity in Communication

Section 504

- Applies to both public and private (employing 15 or more people) sectors
- Proposed changes to rulemaking were submitted for public comment by the Department of Justice, Office of Civil Rights in May of 2022
 - Would constitute a landmark legal update for the private sector.
 - Originally expected a legal update by August 2023
 - There have yet to be any official decisions made, rules updated, or new timelines announced
- May 1, 2024 – **U.S. Department of Health and Human Services (HHS)** finalizes a rule that takes into account the proposed changes to Section 504 as it relates to website, app, and technology accessibility (WCAG 2.1, level AA) in the health/medical field only.
 - Applies to **public and private entities** – including those that accept Medicare and/or Medicaid funding.

Colorado HB21-1110

Main tenents:

1. It is discrimination to exclude an individual with a disability from participation in or being denied the benefits of services, programs, or activities provided by any Colorado government entity.
2. It is discrimination for any Colorado government entity to fail to *develop an accessibility plan* by July 1, 2022, and to fail to fully comply with accessibility standards developed by OIT by **July 1, 2025**. (update as of 4/25/24)

HB21 Scope

Internal and External facing:

- Websites
- Apps
- Software
- Hardware
- Documents
- LMS
- Web-based systems
- Videos
- Audio Content

Applies to:

- State and local government agencies
 - Including public K12 school districts agencies receiving government funding such as a county library, law enforcement, etc.
- Higher education institutions

Newly Updated ADA Title II

April 8, 2024 - “Attorney General Merrick B. Garland [...] signed a final rule under Title II of the Americans with Disabilities Act (ADA) **to ensure the accessibility of web content and mobile applications (apps) for people with disabilities.**”

Published in Federal Register:
April 24, 2024

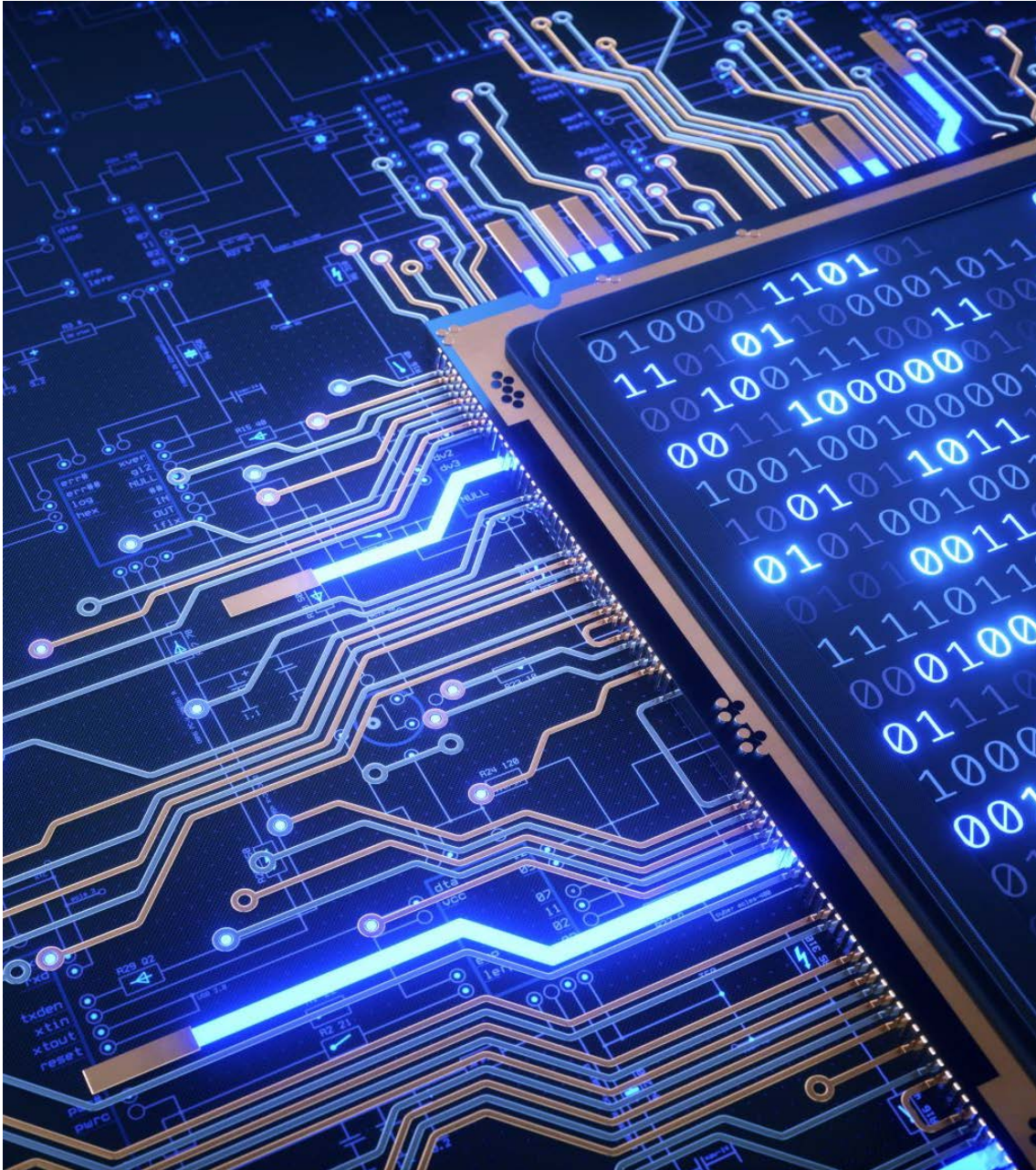
- **Applies to “Public Entities”**

- State and local government offices that provide benefits and/or social services, like food assistance, health insurance, or employment services
- Public schools, community colleges, and public universities
- State and local police departments, courts, and elections offices
- Public hospitals and public healthcare clinics
- Public parks and recreation programs
- Public libraries
- Public transit agencies (e.g. Amtrak)
- Special Purpose Districts

Title II Updates Cover

- **Active Web and App Content**
 - Information and experiences available on the web (e.g. text, images, sound, videos, and documents)
 - This *includes content within online courses*
- **Websites - main and subsidiary sites**
 - Including sites created and updated by a 3rd party on behalf of a Public Entity
- **Web-based processes**
 - Including those involving 3rd party software programs
- **Apps used by the organization**
 - Including those produced or maintained by 3rd parties

Sets a specific Technical Standard: WCAG 2.1 at the AA Level



Web Content Accessibility Guidelines (WCAG) 2.2

4 Basic Principles

- **Perceivable:** Available to the senses (vision and hearing primarily) either through the browser or through assistive technologies (e.g. screen readers, screen enlargers, etc.)
- **Operable:** Users can interact with all controls and interactive elements using either the mouse, keyboard, or an assistive device.
- **Understandable:** Content is clear and limits confusion and ambiguity.
- **Robust:** A wide range of technologies (including old and new user agents and assistive technologies) can access the content.

Content that Must Be Accessible

(not an exhaustive list)

- Videos (YouTube captions are not enough)
- Webpage and App Content and Navigation
- Online Documents
- Images/Graphs/Charts
- Audio-only/Visual-only Content
- Online Exams/Quizzes
- Forms
- Hyperlinks
- Online Learning Management Systems
- New Social Media Posts

1st Exception – Archived Web Content

Must meet *all* of the following:

1. Was created *before* that public entity's required compliance date or reproduces paper documents or other physical media created *before* the required compliance date.
2. Is retained exclusively for reference, research, or recordkeeping.
3. Is not altered or updated after being archived. (*very minor* updates may be ok)
4. Is organized and stored in a dedicated area(s) clearly identified as 'archived'.

(ADAAA Title II, § 35.104)

2nd Exception – Preexisting Conventional Electronic Documents

Must meet both of the following:

1. The documents are word processing, presentation, PDF, or spreadsheet files; **AND**
2. Were available on the entity's website or mobile app **before** their respective compliance date

Unless such documents are currently used to apply for, gain access to, or participate in the public entity's services, programs or activities. Such as:

- Preexisting documents within active online classes
- Preexisting documents providing actively used contact information, procedures, or processes

(ADAAA Title II, § 35.104)

3rd Exception – Content Posted by A 3rd Party

Content posted by a Third Party where the Third Party is not posting due to contractual, licensing, or other arrangements with a public entity.

- 3rd Parties are members of the public or others who are not controlled by or acting for state or local government entities
 - E.g. A message that a member of the public posts on a town’s online message board.

*3rd Party Content **NOT covered by this exception** includes:*

- 3rd Party content posted by the public entity
- Content posted by a public entity’s contractor or vendor
- Tools and platforms that allow 3rd Parties to post content
 - E.g. If a public entity has a message board platform on their website the platform itself **would** need to comply with WCAG 2.1, level AA but the posts by 3rd parties on the platform likely **would not** need to comply.

4th Exception – Individualized Documents that are Password Protected

Must meet ALL of the following:

1. Documents are word processing, presentation, PDF, or spreadsheet files
2. Documents are about a specific person, property, or account
3. Documents are password-protected or otherwise secured

Examples:

- If a PDF version of a student's tuition bill is available in their secure, password-protected account on the public college's website the document likely **would not** be held to the new standard.
 - Note: If a student with a visual impairment asks for an accessible version of their protected PDF – to provide effective communication – the college must provide an accessible version.
- If a student's tuition bill is available in HTML content in their secure, password-protected account on the public college's website the content **would** need to meet the updated WCAG 2.1, level AA standard.

(ADAAA Title II, § 35.104)

5th Exception – Preexisting Social Media Posts

Any social media post made *before* that public entity's required compliance date **does not** need to be made retroactively accessible. Posts made *on and after* the required compliance date **do** need to meet the WCAG 2.1, level AA standard.

Note: If a person who is blind requests an accessible version of an image posted to a public entity's social media site in 2023, the entity should provide an accessible version – a description of the image or other reasonable alternative accessible content.

(ADAAA Title II, § 35.104)

Safe Harbor

A public entity that is not in full compliance with the requirements of § 35.200(b) will be deemed to have met the requirements of § 35.200 in the limited circumstance in which the public entity can **demonstrate that the noncompliance has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app** to do any of the following in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use:

1. Access the same information as individuals without disabilities.
2. Engage in the same interactions as individuals without disabilities.
3. Conduct the same transactions as individuals without disabilities; and
4. Otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities.

Title II Regulations (28 CFR § 35.205)


Understanding the Timeline

- Public entity serving **more than 50,000 people** based on the most recent decennial Census gets 2 years (April 24, 2026)
- Public entity serving **less than 50,000 people** based on the most recent decennial Census gets 3 years (April 26, 2027)
- Special district governments have 3 years (April 26, 2027)
- School Districts base their timeline on the population of the area they serve as noted in the last decennial Census:
 - A city school district uses the population of the city
 - A county school district uses the population of the county
 - An Independent school district uses the population estimate in the most recent Small Area Income and Poverty Estimates.
- Smaller parts of government that do not have a population listed in the decennial Census (e.g. City, state, or town police department or library) use the population of the larger government they are part of.



Reasons Not to Panic

- 3 types of content:
 - Archived Content
 - Active Content
 - Content that has not yet been released
- You do not have to be in full compliance tomorrow – we have time to create a plan.
 - The average person within a public entity will only be responsible for the content they create.
- Resources are available.
- You are not alone.



Moving from Understanding to Action

Building A Strategic Digital Accessibility Plan

Strengths

- Following the updated rule ensures alignment with Federal regulations
- 1 out of every 6 people worldwide have a disability – 16% of the population or 1.3 billion people.
- Adopting a strategic digital accessibility approach:
 - Produces an **immediate return on investment**
 - Instantaneously impacts **retention** and **acquisition** of current and future clients
 - Removes **systemic barriers**
 - **Reduces** ableism
 - Supports **Civil and Human Rights**
- People with Disabilities represent **\$8 Trillion** of *disposable income*, including their friends and families this number increases to **\$13 Trillion**.

Weaknesses

- Accessibility principles, if applied, are often done unequally and in **silos** causing significant **gaps in digital access**.
- **Inconsistent awareness** of digital accessibility standards and requirements across departments.
- Key technical staff who **need training** in digital content editing and testing.
- Existing **software and vendor policies** that do not contain requirements for digital accessibility of 3rd-party content being made available to customers with disabilities.

Opportunities

- Become poised to make **strategic changes**, garner high-level buy-in, and immediately **decrease legal risk** through the creation of a **strategic digital accessibility plan**.
- **Become a model** of digital accessibility in the field.
- Digital Accessibility improves **access** and increases **usability** for **everyone**.
 - Needing clear instructions
 - Inconsistent internet connections
 - Older/outdated technology
 - When someone's first language is *not* English
 - Less tech-savvy
 - Individuals with Disabilities
- **31.1%** of the World's population uses Assistive Technology

Threats

- Public entities have between 2-3 years to reach legal compliance.
- Users with disabilities have identified specific **access issues** with interactive **online systems, web-based content**, mobile **apps**, and when accessing their personal and confidential data.
 - This causes a direct barrier to access for individuals with disabilities and puts the organization in a **position of liability**.
 - Risk for **reputational damage** resulting from potential discrimination claims.
 - Realized **revenue loss** as potential customers/students with disabilities are going elsewhere due to lack of digital accessibility.
 - Risk of **additional revenue and sponsorship loss**.
- **Billions** of potentially inaccessible reports, documents, and essential communications are created nationwide and sent directly to individuals with disabilities everyday.



How to get the right people to the table

Know Your Stakeholders

Compliance & Risk

Chief General Counsel
Office of Risk Management
President/CEO's Office
Compliance Lead
ADA Compliance Officer

Scope & Work

CIO/CTO
CFO
Online Learning/Experience Lead
Chair of Faculty Senate

Diversity & Equity

Diversity, Equity, Inclusion Lead
Board of Trustees
Disability Director
Employees and Stakeholders with Disabilities

What resources do you already have?



- IT and Online Learning/Experience Teams – they have the best understanding of the digital footprint.
- Disability Professionals
 - What have they done for reactive digital accessibility accommodations in the past?
 - Note: Compliance with Title II is the responsibility of the whole entity.
- Customers/Employees with disabilities who can give feedback and test usability
- Do you already use digital accessibility editing/remediation software?
 - **Beware of overlays!**
- Who are your champions?



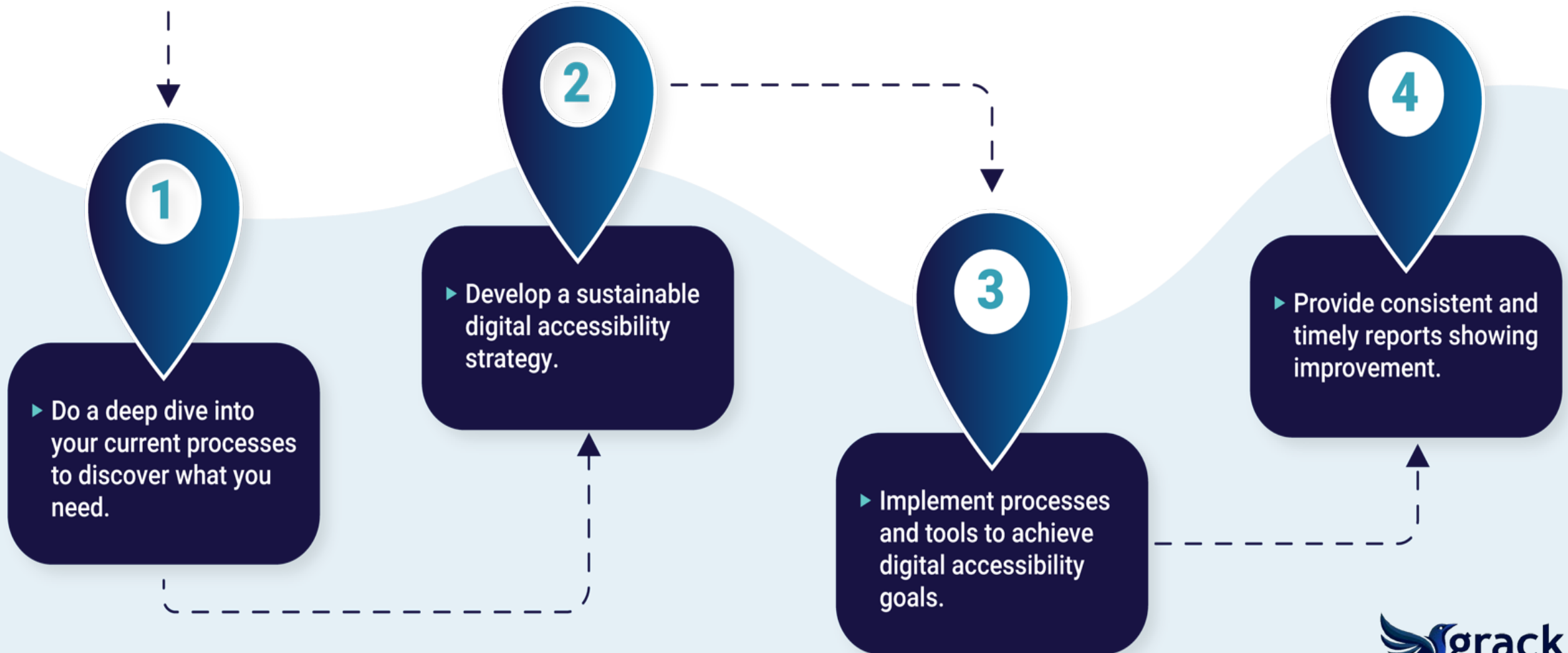
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**Digital accessibility is a
marathon, not a sprint.**

**It needs to be a
sustainable journey.**



Strategically Planning for Digital Access



Creating The Plan

- Alignment with the Institution's current Mission, Vision, and Strategic Plan is key
- Where is training needed?
- Do you have the resources (financial and human) to accomplish an access plan internally? Would a collaborative partnership with an outside company be more cost-effective?
- What existing **policies and processes** should consider digital access?

Consider bringing in a **Digital Accessibility Consultant or Company** with expert knowledge in the legal standard and its application to complex business systems, large organizations, strategic access planning, and communication.

Understanding Where You Are

The importance of Auditing

- Websites
- Mobile Apps
- Software
- 3rd Party Content

Audit data can help prioritize your access goals and creates a basis for **assessment**

Human Auditing is **always** superior

- Auditing software – even software that is AI-driven – without a human component is not accurate.

Processes and Tools

Areas where training is essential:

- Web/App content creators
- Online course content creators
- Marketing & Communications
- Procurement
- Human Resources
- Staff/Faculty – based on role

Where is training available?

Where will the heavy lifting happen?

- Internal remediation processes?
- External remediation processes?
- Combination of both?

Considerations for Implementation

A Communications Plan is essential.

Digital Accessibility 101: Creating organization-wide buy-in.

How and when will you assess progress?

- A Strategic Plan is a living document!

Remember there are categories of digital content: archived, currently active, and not-yet-released.

Create a Roadmap!

**Educate. Execute.
Assess. Repeat.**

Things to Remember

The first step is
the most
important step

You do not have
to have all the
answers right
now.

You do not have
to be fully
accessible
tomorrow.

There are
resources
available.

Having a plan is
an immediate risk
reducer.



For more information



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