

## **Increased Focus for School Website Accessibility**

**By Stephanie Olivera**

Recently, website accessibility has become a hot topic for schools across the country. Over the last year, the United States Department of Education, Office of Civil Rights (OCR), has escalated the legal expectation that school websites be accessible to people with disabilities. This trend has not only led to an increase in investigations and complaints, it has also resulted in a number of complex web accessibility resolution agreements with the agency.

There are multiple federal laws governing web accessibility to ensure individuals with disabilities have equal access to public school education and educational programs and activities. In that regard, the OCR is responsible for enforcing Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. This alert will discuss the applicability of these laws in detail, along with a review of Section 508 of the Rehabilitation Act and the Individuals with Disabilities Education Act (IDEA).

### **Americans with Disabilities Act (ADA)**

Title II of the ADA and its implementing regulations, which apply to state and local governments including public schools, prohibits discrimination in programs, services, and activities. In so doing, Title II requires these entities to accommodate someone with a disability so that they may participate in any service, program, or activity available to those without disabilities and make accommodations whenever feasible. Additionally, Title II requires public entities to take steps to ensure that communications with people with disabilities are as effective as communications with others, subject to the fundamental alteration and undue burden defenses.

### **Rehabilitation Act**

The Rehabilitation Act is an anti-discrimination law that requires federally funded programs to provide certain accommodations to people with disabilities.

Under this law, any organization that receives federal funding, including public and private schools, is required to comply with the web accessibility provisions in Section 504 of the Rehabilitation Act. Under Section 504, “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that either receives federal financial assistance or is conducted by any Executive agency. To be protected under Section 504, a student must be found to have either a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or be regarded as having such an impairment. Major life activities include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating, and the operation of major bodily functions. The regulations implementing Section 504 require a school district to provide a “free appropriate public education (FAPE) to each qualified student with a disability who is in the school district’s jurisdiction, regardless of the nature or severity of the disability.” Section 504, together with the Individuals with Disabilities Education Act (IDEA), prohibits schools from denying special education, related services and supports or extracurricular activity participation because of a child’s disability.

On the other hand, Section 508 establishes technical requirements for electronic and information technology developed, maintained, procured, or used by the Federal government to ensure that all electronic and information technology is accessible to people with disabilities. While Section 508 would not typically apply to public or private schools, the recent updates to Section 508 may be instructive to the future of school web accessibility. In January 2017, the United States Access Board published a final rule updating accessibility requirements for information and communication technology covered by Section 508. Of note, the final rule incorporates by reference the Web Content Accessibility Guidelines 2.0 (WCAG 2.0). In particular, Section 508 applies Level A and Level AA Success Criteria and Conformance Requirements to websites, as well as to non-web electronic documents and software. WCAG 2.0 is a globally recognized, technology-neutral standard for web content, which was developed by the World Wide Web Consortium (W3C) as a part of its Web Accessibility Initiative (WAI). Importantly, Ohio has established a Web Site

Accessibility Policy, which requires compliance with Section 508 and follows WCAG 2.0 requiring a minimum compliance to Level A and Level AA standards. However, the Policy only applies to public-facing State of Ohio websites, which is defined as a website developed and maintained by Ohio agencies, or under contract administered by Ohio agencies.

### **Individuals with Disabilities Education Act (IDEA)**

While IDEA does not speak directly to web accessibility, IDEA was passed to ensure that every child receives access to an appropriate education. The principles outlined in the IDEA are in line with the goals of web accessibility under Title II and the Rehabilitation Act.

### **Accessibility Requirements**

Currently, there is no technical standard that defines a compliant website. However, with Title II and the Rehabilitation Act in mind, the OCR and schools have utilized the WCAG 2.0 guidelines as a standard for web accessibility. Some predict that because the Access Board has adopted these guidelines for the purposes of Section 508, that it is only a matter of time before these guidelines are adopted to both public and private entities. WCAG 2.0 is comprised of 12 guidelines that are organized into four principles including perceivable, operable, understandable, and robust. For each guideline there are testable Success Criteria. These criteria are classified by three levels of conformance: Level A provides for basic accessibility, Level AA provides for a more comprehensive level of accessibility, and Level AAA provides for maximum accessibility. All Success Criteria describe specifically what must be achieved in order to conform to this standard. Each criterion is written as a statement that will be either true or false when specific web content is tested against it. This testing process involves a combination of automated testing and human evaluation.

The following is a paraphrased summary of WCAG 2.0:

#### Perceivable

- Provide text alternative for non-text content
- Provide captions and other alternatives for multimedia
- Create content that can be presented in different ways, including by assistive technologies, without losing meaning
- Make it easier for users to see and hear content

#### Operable

- Make all functionality available from a keyboard
- Give users enough time to read and use content
- Do not use content that causes seizures
- Help users navigate and find content

#### Understandable

- Make text readable and understandable
- Make content appear and operate in predictable ways
- Help users avoid and correct mistakes

#### Robust

- Maximize compatibility with current and future user tools

While the WCAG 2.0 applies specifically to web content, the WAI has released guidance on applying WCAG 2.0 standards to non-web based information and communication technology. In addition, WCAG 2.1 is currently in development and is scheduled for publication as a standard in 2018.

Some schools have utilized Web Accessibility Initiative-Accessible Rich Internet Application Suite (WAI-ARIA), which defines a way to make web content and web applications more accessible to people with disabilities. WAI-ARIA is

particularly relevant to dynamic content and advanced user interface controls developed with Ajax, HTML, JavaScript, and related technologies.

As complaints and investigations have been on the rise, it is important for school districts to ensure their sites are in compliance with these laws and guidelines. Also stay tuned for any updates regarding the official implementation of WCAG 2.0 in the education realm. For additional information or assistance in your school's web accessibility, please contact any of the listed Roetzel attorneys.

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