

Avoiding Common Legal Issues at Coding Schools (and Other Edtech Companies): Accessibility and the Americans with Disabilities Act

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Given recent high-profile lawsuits and investigations by the federal Department of Justice (DOJ) and an increasing number of private lawsuits, understanding your obligations under the ADA is critically important to avoiding costly lawsuits, as well as significant reputational damage.

The ADA broadly prohibits discrimination on the basis of disability in offering educational programs. Purely online, non-traditional educational providers (captured under Title III of the ADA as “places of education”) and all types of on-the-ground or hybrid schools cannot exclude qualified individuals who claim a disability from any program or activity or deny such individuals the benefits of any program or activity. More significantly, they must provide such individuals with “auxiliary aids and services” as are reasonable to allow the students to benefit from the educational program. As a general principle, students with disabilities must be able to obtain the educational opportunities and benefits of a program or activity in a timely, equally effective and equally integrated manner. In addition to the federal requirements, many states have state-level disability discrimination and accommodation laws that may be an additional source of liability.

In practical terms, this means that both an educational provider’s online content and public-facing websites must be accessible to individuals with disabilities. DOJ and the US Department of Education (ED) have long taken the position that the requirements of the ADA apply to the websites of covered institutions as representing an integral part of their services. However, there are still no federal standards governing accessibility of web content under the ADA, and the DOJ has repeatedly delayed issuing regulations to establish those standards. In the absence of established regulations, the voluntary, non-governmental [Web Content Accessibility Guidelines](#) (WCAG) 2.0 standards are generally considered descriptive of the minimum required for web content and software compliance. Indeed, WCAG has been used to benchmark accessibility by the DOJ in recent settlement agreements.

Accessibility of online content and software is at the center of government enforcement actions and the subject of frequent private lawsuits against both traditional and non-traditional educational providers. In 2015, DOJ found numerous accessibility barriers in edX’s online courses and platform operated by edX, originally a joint venture of MIT and Harvard and now expanded to include other first-tier institutions. The government [required edX](#) to take extensive remedial steps under a multi-year settlement agreement. Note that edX, although jointly owned by institutions, is a private company not itself an accredited institution of higher education.

Taking a different tack, the University of California at Berkeley recently made [headlines](#) when, in response to a similar DOJ investigation, it simply elected to take down all its free online instructional content on BerkeleyX and its iTunes U platform rather than make that content accessible, claiming that adding accessibility features to its entire catalog of free public content would be prohibitively costly.

Berkeley and edX, although opposite in outcome, stand for the same two fundamental propositions:

- First, education providers must incorporate accessibility features consistent with WCAG 2.0 into the design of their online content. Ensuring that courseware and supportive services are ADA compliant at the front end of product design is far less expensive and disruptive than having to redesign it later or, worse, fending off a lawsuit or DOJ complaint.
- Second, providers must craft policies and procedures for responding quickly and accurately to requests for accommodation and even simply inquiries as to whether their services are accessible. Note that a request does not have to come from a student or even a prospective student; several proceedings have been brought by public-interest organizations that identified apparent ADA violations. A user-friendly, responsive process to field complaints may prevent users from filing complaints or seeking restitution through federal and state agencies or the courts.

If your systems, offerings and procedures have not been examined for ADA compliance, you may be at risk. We can

provide guidance and assistance in finding the least burdensome compliance options and crafting a structure that can head off costly litigation.

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