

# Web Accessibility Claims Put Institutions of Higher Learning at Risk

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From kindergarten through law school, there was always something to stress me out. Homework, tests, in-school assignments – along with the pressure to do well and the need to complete a project in an allotted time – could be paralyzing. To individuals with disabilities, the stress is often worse. Not only do they have similar concerns, but the thought that the materials may not be accessible in the format in which they can best learn or be tested is frustrating, and can be terrifying. In response, lawyers have figured out a way to make educators and educational institutions aware of the issue – through the looming threat of a class action lawsuit.

While many institutions of higher education believe they are accommodating and inclusive, the barriers presented by non-accessible websites and materials pose significant risk to these institutions and concern for their leaders. Institutions for education are common targets for web accessibility claims and will remain so for the foreseeable future. The constantly rotating mix of students who apply to and attend school each year presents institutions with a bevy of new potential plaintiffs with different disabilities and unique experiences. As such, a school must continually monitor its compliance and strive to be accessible.

Agricultural scientist and inventor George Washington Carver said, “Education is the key that unlocks the golden door to freedom.” When the ability to obtain an education is hampered by barriers to access, the system fails and the students’ opportunities can be lost. In response, the government has instituted safeguards and laws to protect the rights of students in both the public and private sectors.

## The Laws Protecting People with Disabilities

Former U.N. Secretary General Kofi Annan recognized that “Knowledge is power. Information is liberating. Education is the premise of progress in every society, in every family.” Similarly, decades ago, the United States government recognized the need to provide proper protections for people with disabilities from disability-based discrimination and to move toward a more inclusive society. Through the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, the federal government took steps to provide reasonable accommodations so that people with disabilities do not become the disenfranchised.

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Title II of the Americans with Disabilities Act (ADA) provides in section 35.130 that:

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Similarly, in Title III of the ADA (section 36.201), the statute provides:

(a) *Prohibition of discrimination.* No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.

By definition, a place of public accommodation “means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories ... (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education.”

As such, regardless whether a school is a public or private institution, the ADA prohibits discrimination against an individual with a disability.

Individuals with disabilities also are protected against inaccessible school websites under sections 504 and 508 of the Rehabilitation Act of 1973. Section 504 (29 USC 794(a)) of the Act provides:

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency ...

Further, section 508 of the Rehabilitation Act of 1973 (29 USC 794d) requires federal agencies and organizations receiving federal funds to make electronic information and information technology accessible for people with disabilities. Specifically, the law requires:

(1) Accessibility

(A) Development, procurement, maintenance, or use of electronic and information technology  
When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency, including the United States Postal Service, shall ensure, unless an undue burden would be imposed on the department or agency, that the electronic and information technology allows, regardless of the type of medium of the technology,

(i) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

Institutions of learning, whether public or private, are therefore required to provide accommodations to people with disabilities when providing them with educational materials or other electronic information.

To ensure accessibility, the World Wide Web Consortium (W3C) has issued the Web Content

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Accessibility Guidelines (WCAG) international standard, including WCAG 2.0, WCAG 2.1 and WCAG 2.2, which explain how to make web content more accessible to people with disabilities. These are highly technical guidelines that might not be readily understood by risk managers or educators, but rather are routinely addressed by technology professionals. However, most complaints address a few major areas of concern, and website operators need to be cognizant of the following:

- Alt Text for Images – alternative text that allows a vision-impaired individual the ability to understand the presence, function and content of images on a site
- Link Text – text that allows a user to navigate a website and links to other webpages, documents and content
- Form Labels – text that allows a user to understand forms on webpages
- Keyboard Navigability – functionality that allows a user to navigate a website using a keyboard instead of a mouse
- Captions – for all audio and video content
- Proper Headers, Lists and Tables – functionality and formatting to allow a user to understand the ordering of content
- No Flashing Graphics – graphics that flash have been known to inadvertently cause seizures in certain individuals.

## **Lack of Compliance Leads to Litigation**

Despite the requirement that educational institutions comply with accessibility standards, most institutions do not comply. While schools have learned how to assist students with disabilities through physical and structural accommodations (such as ramps, automatic door openers and close parking spots), a lag in compliance with digital access still exists. Institutions of higher education often place the onus of communicating the necessary accommodations on students, and educational institutions often leave the communications with students to teachers and others who may not be as familiar with the accessibility rules as needed. With the growth in the importance of digital education, especially since COVID-19 pushed a greater proportion of learning online, the divide in digital compliance has become even deeper.

When COVID-19 first took hold and forced the migration of learning from an in-person classroom to an online experience, not everyone was prepared. A teacher who had accommodations set up in a classroom, might not know how to adjust them to the online environment. The use of vendors in assisting with the educational forum has taken on greater importance. With the outsourcing of certain aspects of learning comes a lack of control in ensuring that students with disabilities are provided with proper accommodations.

The description of an assignment online in a PDF format, or through instructions given on a website or module provided by a software vendor, now requires thought as to whether the accommodations agreed to in a written plan with the school are being addressed. These and many other questions have arisen due to the rapid increase in online learning:

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- Do the contracts that the schools entered into with the vendors provide for ADA accommodations?
  - Do the vendors have the ability to deliver compliance?
  - Are the institutions indemnified?
  - Do the teachers/professors or their administrative aides have the understanding and skills to recognize and deliver the accommodations?

Many schools and universities have been subjected to ADA web accessibility claims. It has been [reported](#) that Marcie Lipsett, founder and co-chair of the Michigan Alliance for Special Education, filed more than 2,400 web accessibility complaints against schools and districts under Title II, with more than 1,000 resulting in resolution agreements with the Office of Civil Rights.

In November 2018, Jason Camacho, a blind resident of Brooklyn, New York, commenced suit against 50 colleges and universities over the lack of accessibility of their websites. Mr. Camacho had allegedly attended a career fair where these schools were present, and claimed that when he attempted to obtain more information online, accessibility barriers prevented access. Mr. Camacho claimed that when he attempted to use a screen reader, which allows visually impaired individuals to receive the text and description of images on the screen through audible messages or braille, he was unable to access the schools' website information with the assistive device. Although at least one school challenged jurisdiction and lost; settlements followed quickly.

Even the hallowed Harvard University could not escape suit. In 2015, a class action lawsuit was filed against Harvard alleging that many of its videos and audio recordings lacked captions or used inaccurate captions, despite the fact that Harvard promoted its online resources as being available to "learners throughout the world." Harvard reached a settlement that was followed by an announcement from the National Association of the Deaf that Harvard would institute a series of new guidelines to make the school's website and online resources accessible to those who are deaf or hearing impaired.

These lawsuits continue. In July 2021, a prospective student filed suit against Syracuse University alleging that the site was inaccessible and that he, along with other individuals who are blind or vision-impaired, faced "significant barriers" in applying to the school.

These lawsuits will likely continue until schools and universities pay more attention to the issues confronting students with disabilities.

## **AAATraq Releases Study Showing Continuing Problem**

Despite the surge in lawsuits and the increasing awareness of the risk, most websites still fail to achieve the technological standards followed to judge accessibility. AAATraq, a compliance identification and management system vendor, analyzed the home pages of more than 2,000 [higher education institutions](#) and found that 96 percent of them failed to be inclusive. The study looked at the three most often cited vulnerabilities of sites:

- Missing, inadequate or incorrect alternative text (Alt text) used to interpret images on a webpage

- Missing, inadequate or inaccurate link text (which is used to describe a link that allows one to navigate a website or connects to another webpage, document, video or other linked content)
- Missing, inadequate or improperly described form labels (form field labels allow a user with disabilities to understand the information being requested to be input).

AAAtraq found that 13 percent of the institutions of higher education had a *very high* risk of being targeted due to the extent of failures on their home page, with another 48 percent of the institutions being classified as *high* risk. While 4 percent of the institutions were classified as *low* risk, AAAtraq noted that the results were based on an audit of the homepage of the institution's primary website. With a "more in-depth audit," AAAtraq believes that "it's highly likely that failures could be identified on every website."

The time is now for schools and universities to pay attention and start the process of making their digital presence inclusive to reduce the potential for being sued and enhance the ability to muster a defense if sued. In addition it will make such institutions more inclusive to an important demographic. American broadcast journalist Walter Cronkite once said "Whatever the cost of our libraries, the price is cheap compared to that of an ignorant nation." Similarly, while there is a cost of compliance, the cost of failing to comply is much greater.

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