



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Web Accessibility: Compliance Reviews, Enforcement Actions, and Private Litigation

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The absence of an ADA Title III regulation for website accessibility does not protect your web-based content from claims of disability-based discrimination. The DOJ has maintained since 1996 that Title III applies to websites of covered entities that provide goods, services, programs or activities to the public. Section 504, written well before the use of technology in academic programs, also is applied to prohibit denial of equal access to programs or activities that are web-based.

The Web Content Accessibility Guidelines (WCAG) 2.0 AA standard developed by the private international World Wide Web Consortium (W3C) for increased accessibility for individuals with a wide range of disabilities are cited in two recent ADA settlements. On November 17, 2014, following a DOJ compliance review, Peapod (the web-based grocery ordering and delivery services) agreed to make its website and mobile applications conform to the WCAG 2.0 AA standard. Peapod also agreed to require that its 3d-party vendors provide content in conformance with the WCAG standard. In March 2014, H&R Block, by a Consent Decree with DOJ and the National Federation of the Blind (NFB) made to resolve complaints of violations of the ADA, also agreed to make its website and mobile applications conform to the WCAG 2.0 AA standard and take other steps to improve accessibility.

In October 2014, NFB resolved litigation with Maricopa Community College District and Mesa Community College by an agreement to require use of accessible technology for the colleges' public and library websites, its learning management system, campus ATMs and other. In March 2013, South Carolina Technical College System, by a Resolution Agreement following a compliance review by OCR, agreed to make the content on the websites of its 16 member colleges accessible to students with visual and print-related disabilities so that the students may access information on the websites "with substantially equivalent ease of use" or to provide information in "an equally effective and equally integrated manner." These standards, introduced in a 2011 Dear Colleague Letter but not found in the ADA, have surfaced in the proposed TEACH Act that we reported on in the October Campus Counsel.

CLIENT TIP: *Recognize that web accessibility is being scrutinized by DOJ, OCR, and private advocates and that differing standards of review are developing. As a baseline, consider evaluating your web-based content and program delivery for consistency with the WCAG 2.0 standards. Add a provision in third-party contracts where a vendor is developing, providing, or hosting content or services for students to require that content is provided in a format that conforms to WCAG 2.0.*

