

US Department of Justice and Department of Education Warn Educational Institutions That ‘Accessibility Cannot Be an Afterthought’

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> ***"Online accessibility for people with disabilities cannot be an afterthought," the letter says.***

Accessibility in higher education has never been more in the spotlight than it is now. During the COVID pandemic, colleges and universities did everything in their power to hastily transition to remote, hybrid, and hyflex learning models to teach. But now, post-pandemic, it's time for institutions to ensure their entire digital programs and services are accessible to all learners, including those with disabilities.

On May 19, 2023, the U.S. Department of Justice and Department of Education sent a joint Dear Colleague Letter[1] to postsecondary institutions outlining the importance of addressing barriers that prevent people with disabilities from participating in online services, programs and activities offered.

The letter covers accessibility challenges, legal framework, enforcement actions, and guidance and regulations, as well as highlights valuable resources for obtaining guidance.

It also sends a strong message that accessibility is a priority at the federal level and that the government will use its authority to ensure institutions are meeting accessibility standards.

In this whitepaper, we'll highlight the importance of digital accessibility, along with each of the sections of the letter and what they mean for higher education today.

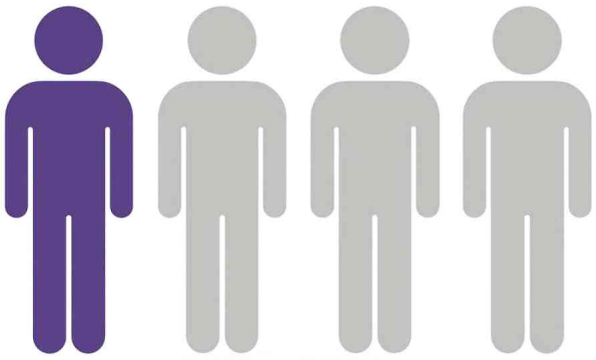
- The Importance of Digital Accessibility
- Challenges to Online Accessibility
- The Equal Opportunity Legal Framework
- Enforcement Authority and How It's Being Used
- Resources to Guide Institutions on Digital Accessibility

[1] Joint Dear Colleague Letter from the DOJ and DOE, www.justice.gov/crt/case-document/file/1584491/download. Accessed 28 May 2023.

Importance of Digital Accessibility in Higher Education

Digital accessibility is the practice of creating digital content that everyone, regardless of their abilities, can access and use in a way that works for them. In higher education, this applies to everything from websites to applications, documents, presentations, videos, learning management systems, and learning materials available to students digitally, including materials on third-party platforms.

In the United States, one in four adults live with some type of disability, according to the CDC.[2]



1 in 4 Adults in the U.S. Have a Disability

Further, many people will have to adjust in the way they use online content because of low hearing, low vision, or impaired mobility, the Bureau of Internet Accessibility notes.

It's critical that colleges, universities, and other post-secondary institutions provide accessible content to promote inclusion and diversity, and to ensure people with disabilities aren't excluded from educational services and opportunities.

[2]"Disability Impacts All of Us Infographic." Centers for Disease Control and Prevention, 15 May 2023, www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html.

Technology Barriers for Students with Disabilities in Online Learning

> ***"Many colleges, universities, and other postsecondary institutions increasingly rely on their websites and third-party online platforms to provide services, programs, and activities to members of the public... but much of it is often inaccessible to individuals with disabilities," the letter says.***



Growing research shows that those with disabilities face greater challenges in higher education, whether it's the accessibility of materials or the ability to use tools that help them throughout their education.

Students with disabilities often rely on assistive technology to help them learn. For instance, people who are deaf may use closed captioning for videos while those with visual impairments may use screen readers, or devices that voice on-screen text.

If content is not easily accessible, students who rely on these technologies are unable to fully participate in their educational programs.

The Equal Opportunity Legal Framework

There are two federal laws that require postsecondary institutions to provide equal opportunities to those with disabilities.

The Americans with Disabilities Act (ADA): Two Titles within the ADA are mentioned in the letter. Title II prohibits postsecondary institutions from "denying qualified individuals with disabilities the opportunity to participate in or benefit from their aids, benefits, or services, including online programming and services." Title III has the same language for private institutions.

postsecondary institutions must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, including providing appropriate auxiliary aids and services,[3]" which include interpreters, open and closed captioning, and accessible electronic and information technology, among other methods.[4]



Section 504: Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 ensure that students with disabilities are given access to services and are eligible for accommodations to meet their needs. Section 504 works in tandem with the Americans With Disabilities Act (ADA) to protect those with dis-abilities from exclusion and discrimination in educational settings, the workforce and even in their communities. Because most public and private higher-education institutions receive federal financial assistance, they fall within the purview of Section 504.

The letter reminds institutions that not only do these regulations apply to programs offered to students, but also to those offered to the public.

[3] 3 42 U.S.C. § 12132; 28 C.F.R. § 35.160; 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.
[4] 28 C.F.R. § 35.104; 28 C.F.R. § 36.303(b).



Enforcing Accessibility Practices in Higher Education

The Department of Justice and Department of Education, who share responsibility for enforcing the ADA and Section 504, will “address inaccessible online services, programs, and activities provided by colleges, universities, and other postsecondary institutions.”

The letter highlights a recent consent decree with a well-known California University, which was required to make its website and online platforms, as well as content on third-party platforms, accessible to those with disabilities. The institution also was required to “revise policies, train relevant personnel, designate a web accessibility coordinator, conduct accessibility testing of its online content, and hire an independent auditor to evaluate the accessibility of its online content.”

In addition, the Education Department’s Office for Civil Rights (OCR) has resolved and monitored over 1,000 digital accessibility cases that started with complaints lodged by the public. In less than a year, the OCR launched 100 accessibility compliance reviews and resolved half.

Accessibility Support and Resources

The letter reminds institutions not to wait to address barriers that prevent people with disabilities from fully participating in programs. To help guide institutions on their accessibility journey, the Justice Department has a host of resources available.



ADA Information Line

Specialists are available to answer questions by calling 800- 514-0301 (1-833-610-1264 TTY).



Technical Assistance

Colleges, universities, students with disabilities, and others can receive technical assistance by emailing OCRWebAccessTA@ed.gov.



Video Series

OCR provides a video series covering a wide variety of topics related to digital access in education. The series is available at adata.org/ocr-videos.



Websites

- For information on the ADA, visit ADA.gov
- To learn more about the Justice Department's Civil Rights Division, Disability Rights Section, visit justice.gov/crt/disability-rights-section
- For more information about OCR, visit ed.gov/ocr.