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Safe and Responsible Use of the Internet: A Guide for Educators

Nancy E. Willard, M.S., J.D.

Part III. Legal Issues – Internet Use in School

10. Disability Information Technology Access

Serving All

An issue that can be guaranteed to emerge in the near future is the issue of disability information technology (IT) access to the district, school, and classroom web sites, distance education programs, and any other technology-related programs[1]. As these web sites, distance education programs, and other technology programs are becoming an important vehicles for the provision

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[1] As the author of this Guide is not a disabilities law expert, the following information presented in this document relied heavily on materials graciously provided by Tim Spofford, Civil Rights Attorney and OCR Internet Coordinator, Office for Civil Rights, US Department of Education, Seattle, Washington. The presentation materials addressing this issue are online at: URL: http://uwctds.washington.edu/ocr_slides/index.htm.

of information and educational services to students, parents, and the community, the ability of *all* students, parents, and community members to be able to access information and participate in communications will become essential.

Responsibility Reasons

An estimated twenty percent of the population in the U.S. has some kind of a disability and ten percent has a severe disability. Individuals with disabilities frequently find that they are unable to access and use the information and communication resources on the Internet. This is unfortunate, because there are technologies and techniques that can be used to make these Internet resources fully available.

Schools should be on the vanguard of ensuring access to individuals with disabilities. The exchange of information is fundamental to education. Schools serve important constituencies, including students, their parents, and the community. If any individuals are cut off of access to vital information and participation in online exchange, this will reflect poorly on the entire school community.

Schools also should be preparing students with the knowledge and skills to develop web pages that incorporate disability IT access design principles. Students should not merely learn how to design web pages. They should learn the importance of and how to design accessible web pages.

Legal Standards

Several statutes address the rights of those with disabilities related to educational services. The Office for Civil Rights U.S. Department of Education indicated that, as of the date of the preparation of this Guide, there had been no complaints filed against K-12 public schools related to disability access to technology[2]. Complaints and cases are emerging at the higher education level. It is considered only a matter of time before the issue emerges within K-12.

The following are the statutory provisions that address disability access to technology.

Section 504 of the Rehabilitation Act of 1973

Section 504 prohibits discrimination against people with disabilities by recipients of federal financial assistance. This includes virtually all public and private colleges and universities, all public schools.

Pertinent 504 Requirements
- Entities providing any aid, benefit or service may not afford a qualified person with a disability an opportunity to participate that is not as effective as the opportunities provided to others[3].

- Qualified students may not be excluded from a program or given different benefits or services in a program on the basis of disability[4].

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[2] Personal communication with Tim Spofford, August 2002.
[3] 34 CFR 104.4(b)(1).

- Schools must make "academic adjustments" necessary to afford people with disabilities access to programs unless it would fundamentally alter an essential element of the program[5].

- Academic adjustments include "auxiliary aids" necessary to provide access by those with sensory impairments[6].

- "Methods of administration" of programs and activities may not have the effect of discriminating against people with disabilities[7].

Title II of the Americans with Disabilities Act of 1990

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities by public entities. The definitions in ADA are the same as 504, but ADA contains some definitions not found in Section 504, such as "communication." The requirements of ADA are similar to Section 504.

Pertinent ADA Requirements
- Same requirements as Section 504 relative to different opportunities, different benefits, and different services for people with disabilities[8].

- Recognizes the special importance of communications: "A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others[9]."

- Recognizes the importance of "customer preferences" regarding methods of communication for people with disabilities: "In determining what type of auxiliary aid and services is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities[10]."

- Customer preferences related to communications need not be honored if the public entity can demonstrate that:
  - Another effective means of communication exists, or
  - The preference would result in a fundamental alteration of the program, or
  - The preference would result in undue financial and administrative burdens[11].

- A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities[12]. "Integration is

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[4] 34 CFR 104.4(b)(1).
[5] 34 CFR 104.44(a).
[6] 34 CFR 104.44(d)
[7] 34 C.F.R. section 104.4(b)(4) & 28 C.F.R. § 35.130(a)
[8] 28 CFR 35.130(b).
[9] 28 CFR 35.160(a).
[10] 28 CFR 35.160(b)(2)
[11] 28 CFR 35.160(b)(2).
[12] 28CFR 35.130(d), see also 34 CFR 104.4(b)(2).

fundamental to the purposes of the Americans with Disabilities Act. Provision of segregated accommodations and services relegates persons with disabilities to second-class status[13]."

Section 508 of the Rehabilitation Act of 1973

In 1998, Congress amended Section 508 of the Rehabilitation Act, strengthening the provisions covering access to information provided by Federal programs[14].

Pertinent Section 508 Requirements
- The amendments require access to the Federal Government's electronic and information technology. Federal agencies must ensure that the technology is accessible to all employees and the public -- to the extent that it does not pose an "undue burden[15]."

- Covers all types of electronic and information technology in the Federal sector and applies to all Federal agencies when they develop, procure, maintain, or use such technologies[16].

- The law directed the Access Board to develop access standards for the technology that will be come part of the Federal Procurement regulations. These standards were developed and approved by the Access Board[17]. The standards are useful guidelines for schools in addressing access.

- Section 508 of the Rehabilitation Act applies to Federal agencies. However, states receiving assistance under the Assistive Technology Act State Grant are required to comply with Section 508. The U.S. Department of Education is developing guidelines for how the Section 508 standards apply to states under the Assistive Technology Act.

Basic Civil Rights Objectives of Section 504, the ADA, and Section 508
- End isolation of persons with disabilities.

- Secure equal opportunity.
  - Not necessarily identical treatment.
  - Equivalent treatment (comparative).
  - Remove unnecessary barriers through academic adjustments and auxiliary aids.

- Foster independence.

- Prevent a hostile environment.

Summary of Information Technology Access Principles

The following summary of principles should guide a school district's efforts to achieve disability IT access:

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[13] Analysis of the Final Title II Regulation, 28 CFR Part 35.
[14] Section 508 of the Rehabilitation Act Amendments of 1998 (29 USC 794d)
[15] *Id*. at Subpart A § 1194.1.
[16] *Id*. at Subpart A § 1194.2.
[17] 36 CFR Part 1194.

- Students must be provided equally effective access to educational programs.

- Every "program" and "activity" is covered, including:
  - On-site programs and off-site programs.
  - Programs receiving "significant assistance."
  - Non-academic programs.

- The goal is "equally effective … communication"- a comparative standard for access to information.

- Law contemplates increased independence for people with disabilities through accessible technology.

- The preferences of consumers with disabilities need to be seriously considered.

- Failure to plan for technology access and ad hoc approach may result in denial of access.

- Institutions' responsibilities aren't without limits. Modifications and auxiliary aids and services not required if they would fundamentally alter the program or conflict with essential program requirements.

- The following considerations should be addressed related to the "communications … as effective as" requirement of the ADA:
  - Timeliness and accuracy.
  - Provision in a manner and medium appropriate to the significance of the message.
  - Comparable burden.
  - Audience for web content will have a variety of needs that must be addressed.

Policies and Procedures to Help Ensure Disability IT Access

- School district policies should address disability IT access in all technology-related programs, including:
  - Standards for ensuring accessibility.
  - Guidelines to ensure technology procurement considers access.
  - Determination of what components are responsible for costs of access.
  - Publication of effective procedures for delivery of needed AT.

- With respect to accessibility to district, school, and class web sites and distance education programs, the district should
  - Adopt an unambiguous policy requiring accessible web sites and educational programs.
  - Publicize the policy.
  - Adopt a plan for compliance.

- Newly published content and classes should meet accessibility standards.

- Plan for access to existing content:
    - Core content (home pages, student services pages, catalog, registration, site map, what's new, etc.) should be made accessible within short, specified, period of time.
    - Existing active course content should be made accessible within short, specified, period of time.
    - Include a plan for retrofitting active secondary content.
    - Historical (inactive) content should be provided in accessible format when a request is received.

Online Guidelines and Resources for Accessible Web Design

The following web sites have excellent standards and information resources for disability IT access:

- Web Accessibility Initiative/ World Wide Web Consortium (W3C/WIA) Web Content Accessibility Guidelines 1.0[18].

- Section 508 Standards of the Access Board[19] and Free GSA courses: "508 Universe[20]".

- AccessIT: The National Center on Accessible Information Technology in Education at the University of Washington[21]

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[18] URL: http://www.w3.org/WAI.
[19] URL: http://www.access-board.gov/sec508/508standards.htm.
[20] URL: http://www.section508.gov/508/.
[21] URL: http://www.washington.edu/accessit/index.php.