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# HIGHER EDUCATION LAWSUITS & VIDEO ACCESSIBILITY

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## INTRO

Disability discrimination is somewhat common in the U.S., with various higher education lawsuits popping up each year. Public and private institutions of higher education are subject to the Americans with Disabilities Act (ADA) and Section 504 and Section 508 of the Rehabilitation Act.

This eBook covers an array of investigations and lawsuits at public and private universities across the U.S. Some of the cases are still pending and others have been resolved for a few years.

Continue below to learn why cases arise and what the ultimate responsibility of universities is when litigation is pursued. After reviewing lawsuits from the past 10 years, we will explain the accessibility laws and guidelines that are referenced in the cases in more detail.



## RECENT NOTEWORTHY CASES

The following four cases come from high profile private and public universities that failed to caption course video content and implement other accessibility provisions that ensure equal access for students with disabilities.

### UC Berkeley

Year: 2016

Status: Still Pending

[DOJ Letter](#)

On August 30, 2016, the Department of Justice informed University of California, Berkeley (UC Berkeley) that large segments of UC Berkeley's free, publicly available online content was not accessible to individuals with hearing, vision, or manual disabilities. Complaints from a professor and PhD student at Gallaudet University and a faculty member at Laurent Clerc National Deaf Education Center who are both deaf, prompted the investigation by the DOJ.

The Department of Justice found Berkeley's online content to be in violation of Title II of the ADA, which prohibits discrimination against qualified individuals with disabilities by public entities. The online content in question is made up of 26 MOOCs, 30 lectures on YouTube, and 27 courses on iTunesU. Accessibility deficiencies included things as simple as videos without captions, which leaves the content completely inaccessible to people who are deaf or hard of hearing.

While UC Berkeley claimed that the expense to retrofit thousands of courses is too great, the DOJ pointed out that there is ample infrastructure at UC Berkeley to support faculty members in making online material accessible.

UC Berkeley, the university system, and edX all provide guidance in how to make courses accessible to those with disabilities. In addition, before making a course available online, faculty members are asked to sign a statement that states that they have reviewed and implemented guidelines for creating accessible content, such as:

- PDFs follow recommendations
- course website follows accessibility guidelines
- video and audio files have been submitted for captioning
- captioning is accurate

The investigation found that:

“There are policies, tools, resources, and delivery mechanisms all in place to enable accessibility for online courses, but what missing is UC Berkeley’s consistent application of its own resources and policies to ensure compliance with accessibility standards.”

Additionally, this is not the first time UC Berkeley has gotten into trouble over the accessibility of their materials. In 2013, UC Berkeley reached a settlement in a lawsuit brought by the Disability Rights Advocates (DRA). The DRA represented three Berkeley students in negotiations with Berkeley to improve access to textbooks, course readers, and library materials for students with print-related disabilities.

While the results are still pending, UC Berkeley’s official statement on the matter threatens that they “must strongly consider the unenviable option of whether to remove content from public access.”

## Harvard and MIT

Year: 2015

Status: Still Pending

[Harvard Class Action Complaint](#)

[MIT Class Action Complaint](#)

[Statement of Interest for MIT](#)

[Statement of Interest for Harvard](#)

[Report and Recommendation Regarding Defendant’s Motion to Stay or Dismiss](#)

In 2015, MIT and Harvard University were sued by the National Association of the Deaf (NAD) and four deaf and hard of hearing individuals for discriminating

against deaf and hard of hearing people by "failing to caption the vast and varied array of online content they make available to the general public, including massive open online courses (MOOCs)."

The cases, filed in U.S. District Court in Massachusetts, assert that the universities violate Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Each university moved to stay or dismiss the case until the Department of Justice issued regulations governing website accessibility. Quickly after, the Department of Justice filed statements of interest in both cases supporting the plaintiffs' position.

On February 16, 2016, Magistrate Judge Robertson recommended denial of the universities' motions in full. The universities further attempted to have the federal class action lawsuits dismissed by claiming that captioning the video content of their free online courses would cost them an unfair amount of resources.

On November 4, 2016, Judge Mark G. Mastroianni of the District Court of Massachusetts accepted Magistrate Judge Robertson's recommendation to deny Harvard and MIT's motion to dismiss the lawsuit. Judge Mastroianni noted Defendants' arguments were "inappropriate for resolution on a motion to dismiss. A motion to dismiss addresses the plausibility of a plaintiff's claims, not the strength of a defendant's affirmative defenses."

The case is set to continue and awaiting a resolution.

## **Miami University of Ohio**

Year: 2016

Status: Resolved

[Complaint Against MU](#)

[NFB Complaint Press Release](#)

[US Motion to Intervene](#)

[DOJ Motion to Intervene Press Release](#)

[DOJ Consent Decree Press Release](#)

[Consent Decree](#)

[DRO Agreement](#)

On January 10, 2014, A Miami University student who is blind filed a complaint against Miami University and its former President, Dr. David C. Hodge for violating Title II of the ADA and Section 504 of the Rehabilitation Act.

She alleged that Miami University and Dr. Hodge excluded her from participation in and the benefit of Miami's services, programs, and activities; discriminated against her on the basis of disability; and failed to take appropriate steps to ensure equally effective communication with her.

On May 12, 2015, the United States submitted a motion to intervene in the case. The United States complaint alleged that Miami University (1) uses technologies that are inaccessible to qualified individuals with disabilities; and (2) has failed to ensure that qualified individuals with disabilities can access Miami's curricular and co-curricular materials on an equal basis with individuals who do not have disabilities.

A consent decree was reached on October 17, 2016 with the United States Department of Justice and Miami University. As per the decree, Miami University will change its practices for obtaining and utilizing technology, including requirements to make its website accessible, to ensure Learning Management Software is accessible, and to educate faculty and staff about the importance of accessibility and how to achieve this. These practices include:

- Ensuring that web content and learning management systems conform with Web Content Accessibility Guidelines 2.0 AA standards
- Meeting with every student who has a disability for which they require assistive technologies or curricular materials in alternate formats, and their instructors, every semester to develop an accessibility plan
- Procuring web technology or software that best meets various accessibility standards

Additionally, the university agreed to pay \$25,000.

A separate agreement between Aleeha Dudley and Miami University was reached as well, which requires Miami University of Ohio to contribute \$108,000 to help Dudley pay for her education at the university of her choosing. It will also repay \$50,000 in student loans she and her parents took out for her education at Miami, in addition to paying \$102,000 as compensation for the pain and suffering she experienced as a result of the discrimination.



## University of Cincinnati

Year: 2014

Status: Resolved

### [Resolution Agreement](#)

In 2014, the Office for Civil Rights completed a compliance review of University of Cincinnati in which they assessed the accessibility of the university's websites.

The OCR determined that the university was not in compliance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act because portions of the school's websites were not readily accessible to persons with disabilities. The OCR also found that the university failed to post notices of non-discrimination in relevant documents.

On December 18, 2014, the University of Cincinnati entered into a resolution agreement to ensure that content on its sites is accessible to individuals with disabilities and that it is providing an equal opportunity for individuals with disabilities to participate in and benefit from its online learning environment.

Under terms of the agreement, the university will:

- Designate one or more persons to coordinate its efforts to comply with Section 504 and Title II and identify that person(s) in its notice of non-discrimination.
- Develop and publish an appropriate notice of non-discrimination.



- Develop, adopt, and provide notice of a web accessibility policy and an implementation and remediation plan to ensure adherence to the policy.
- Provide training to staff responsible for web page and content development, including faculty, as appropriate.
- Review its website and e-learning platform(s) to identify and fix any accessibility problems, as well as to put in place mechanisms to ensure that the sites continue to be accessible.
- Provide certification from a third-party web accessibility consultant or an employee of the university with sufficient knowledge, skill, and experience that the school's electronic and information technologies meet the technical standard(s) adopted by the institution. And,
- Provide OCR with reports describing its efforts for multiple subsequent school years to comply with its web accessibility policy and plan, including information documenting

## CASES BY YEAR

Below are all of the web accessibility cases over the past ten years.

### Atlantic Cape Community College, 2015

[Consent Decree](#)  
[NFB Press Release](#)

Two students and the National Federation of the Blind accused ACCC of violating Title II of the ADA and Section 504 of the Rehabilitation Act. ACCC denies the allegations of discrimination and has admitted no wrongdoing. The agreement requires ACCC to work with a third-party consultant and the National Federation of the Blind to take steps to improve the educational experience of students with disabilities and to prevent discrimination against these students.

### University of Phoenix, 2015

[Settlement Agreement](#)  
[OCR Letter](#)

On December 15, 2014, the OCR received a complaint alleging the University of Phoenix discriminated against the complainant and other students on the basis of disability when it switched to a new online learning platform. The courses provided on the new platform were not accessible to those who use assistive technology.

In the resolution agreement, Phoenix agreed to audit existing content and functionality, train faculty and staff on accessibility technology, designate IT disability coordinators, among other accessibility fixes. In addition, the university agreed to issue a written offer to the Complainant inviting her to rejoin the University and to waive all fees and tuition for the courses necessary for her to complete the degree she is currently pursuing.

## **Mt. Hood Community College, 2014**

[OCR Letter](#)

[Resolution Agreement](#)

A student complaint alleged that the college discriminated against him on the basis of disability when he was unable to register through the college's website for a summer 2014 online class. The online registration process was inaccessible to him as a screen reader user and he was not offered an alternative way to register for the class. Mt. Hood agreed to draft policies and procedures to ensure that all online programs, services, and activities are accessible to people with disabilities.



## Youngstown State University, 2014

[Resolution Agreement](#)

[OCR Press Release](#)

In 2014, the Office for Civil Rights completed a compliance review of Youngstown State University in which they assessed the accessibility of the university's websites.

The OCR determined that the university was not in compliance with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act because portions of the school's websites were not readily accessible to persons with disabilities. The OCR also found that the university failed to post notices of non-discrimination in relevant documents.

On December 18, 2014, the Youngstown State University entered into a resolution agreement to ensure that content on its sites is accessible to individuals with disabilities and that it is providing an equal opportunity for individuals with disabilities to participate in and benefit from its online learning environment.

## University of Montana, 2014

[Resolution Agreement](#)

[UM Press Release](#)

The OCR received a complaint of disability discrimination against the University of Montana on May 4, 2012. The student's complaint alleged that UM used online tools such as web pages, library databases, live chats, videos and a course-registration site that were inaccessible. The University agreed to take specific steps outlined in the consent decree to ensure that EIT used in University programs and activities is accessible to individuals with disabilities.

## Maricopa Community College District (MCCD), 2014

[NFB Press Release](#)

[Settlement Agreement](#)

The NFB and a blind student who had recently graduated from Mesa Community College filed a lawsuit alleging discrimination against the student and other blind students. The lawsuit alleged that third-party websites and software applications used for coursework did not work with screen reading software and that clickers were used that are not accessible to blind students.

In the settlement, MCCD agreed to take a series of steps that will result in the procurement and deployment of electronic and information technology that is accessible to all students, including those who are blind. Specific technologies covered by the settlement are consistent with those covered in past OCR resolutions, including Penn State University and University of Montana.

## South Carolina Technical College System (SCTCS), 2013

[OCR Press Release](#)  
[Resolution Agreement](#)

The OCR assessed the accessibility of websites operated by SCTCS and two of its colleges to people with visual disabilities. OCR found that the sites were not readily accessible to persons who are blind, have low vision, or have other print-related disabilities. The office determined that the sites were not in compliance with two federal laws, Section 504 and Title II of the ADA.

In response to this finding, SCTCS and its governing board, the State Board of Technical and Comprehensive Education (SBTCE), entered into a voluntary resolution agreement to ensure that all content on the websites will be accessible to students with visual and other print-related disabilities.

Under the terms of the agreement, SCTCS and its board will:

- Develop a resource guide that provides information about web accessibility requirements;
- Direct that the SCTCS website and the websites of all the member colleges be accessible to students with disabilities; and
- Annually review the system's and colleges' websites and monitor steps taken to correct any accessibility problems identified.

## Louisiana Tech University, 2013

[Resolution Agreement](#)  
[DOJ Press Release](#)

The DOJ investigated Louisiana Tech University after a blind student was unable to access an online learning product which rendered him unable to continue the course. The investigation also looked at allegations from the same student in a later class in which he was not provided accessible course materials for in-class discussions and exam preparation in a timely manner.

In the settlement agreement, the university adopted a number of disability-related policies, including the requirement to deploy learning technology, web pages, and course content that is accessible in accordance with the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA.

The agreement also required the university to train its instructors and administrators on the requirements of the ADA and secured a total of \$23,543 in damages for the student from the university and the Board.

## University of Kentucky, 2012

[Complaint](#)

[Associated Press Story](#)

Charles Mitchell filed a lawsuit against the University of Kentucky for failing to provide auxiliary aids and services such as captioning at football games. This lack of captioning violated Title II of the ADA by denying individuals who are deaf or hard of hearing the same opportunities as hearing patrons to enjoy football games.

The university agreed to display captions of public address announcements, including play-by-play and player introductions, on the scoreboard, ribbon boards, and on televisions in the concourse areas.

## Florida State University, 2012

[Settlement Agreement](#)

[DOJ Press Release](#)

[NFB Press Release](#)

In 2012, two blind students and the National Federation of the Blind sued Florida State University and its Board of Trustees for discrimination. The students were unable to complete a mathematics course because it used an inaccessible e-learning system as well as inaccessible clickers.

Without admitting liability or wrongdoing, the university agreed to pay each of the students \$75,000 in settlement of their claims and to continue its efforts to make courses accessible to all students. This included examining technology-

based instructional materials currently in use for accessibility compliance and ensuring accessibility in future software and hardware procurements.

## **New York University & Northwestern University, 2011**

[NYU Complaint Letter](#)

[Northwestern Complaint Letter](#)

In March 2011, the National Federation of the Blind filed a complaint with the Department of Justice, Civil Rights Division, against New York University and Northwestern University for using Google Apps for Education even though the application package was inaccessible to students with print disabilities

The NFB requested that NYU & Northwestern halt the use of Google Apps until it is accessible. The DOJ did not proceed with an investigation into the NFB's complaint. While Google works on its accessibility, students with vision disabilities have to use alternates such as using Microsoft Word to open and edit Google Docs and syncing Google calendars to a calendar program they're comfortable.

## **Universities using KindleDX vs. NFB, 2010**

[Arizona Agreement](#)

[Case Western Agreement](#)

[Pace University Agreement](#)

[Reed University Agreement](#)

[University of Virginia Darden School Of Business](#)

[Princeton University](#)

National Federation of the Blind and the American Council of the Blind filed a complaint to the DOJ regarding a six universities' participation in a pilot program using the KindleDX. The complaint alleged that the university violated Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by using the Kindle DX, an inaccessible electronic reader, in a classroom setting.

In the agreement, the University agreed to not require, recommend, or promote use of the Kindle DX or any other dedicated electronic book reader by students in classes, curricula, or other programs unless or until the device is fully accessible to students with visual impairments or the university provides a reasonable modification for this type of technology.



## Ohio State University, 2010

### [Consent Decree](#)

Vincent Sabino, an OSU sports fan who is deaf, sued OSU for violating Title II of the ADA and Section 504. Sabino was unable to follow what was happening at the sports games because the announcements were not captioned.

The lawsuit asked the court to order OSU to display captions for all announcements made over the public-address system at its venues, including the Ohio Stadium, the Schottenstein Center and St. John's Arena.

In the agreement, OSU agreed to caption all public-address announcements, emergency information, music, and other auditory information at the Ohio Stadium during football games.

## Pennsylvania State University, 2010

### [NFB Press Release](#) [Resolution Agreement](#)

A complaint was filed by National Federation of the Blind (NFB) with the OCR because a variety of computer and technology-based websites were inaccessible to blind students and faculty. In the agreement, the University agreed to complete a technology accessibility audit and to:

- Develop a corrective action strategy based on the audit findings
- Develop a policy and accompanying procedures; institute procurement procedures and include a requirement in its RFP process that bidders must meet WCAG 2.0 Level AA for web-based technology and Section 508 standards for other technology
- Bring all university websites up to WCAG 2.0 Level AA compliance, specifically including the Library website
- Replace their learning management system (ANGEL) with one that meets Section 508 guidelines
- Implement accessibility solutions for classroom technologies including podiums and displays, as well as clickers
- Request accessibility of websites and ATMs of banks that have a contractual relationship with the university

## More Lawsuits

Lawsuit	Year	Link
National Association of the Deaf v. University of Maryland	2016	<a href="#">Press Release</a>
Disability Rights Advocates v. UC Berkeley	2013	<a href="#">Settlement</a>
National Federation of the Blind v. Law School Admission Council	2010	<a href="#">Settlement Agreement</a>
Jackson, et al. v. California State University	2007	<a href="#">Resolution Agreement</a>
Gustafson v. UC Berkeley	2005	<a href="#">Settlement Agreement</a>





## ACCESSIBILITY LAWS & GUIDELINES

### **Americans with Disabilities Act**

The Americans with Disabilities Act (ADA), signed into law in 1990, is the most comprehensive of the nation's disability laws. It prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation.

There are five titles to the ADA:

- Title I - Employment
- Title II - State and Local Government
- Title III - Public Accommodations
- Title IV - Telecommunications
- Title V - Miscellaneous Provisions

Title II applies to all services, programs, and activities provided to the public by state and local governments. This includes publicly-funded universities, community colleges, and vocational schools.

Title III of the ADA applies to places of public accommodation which include “private entities that offer certain examinations and courses related to educational and occupational certification,” or simply, private universities.

In regards to communication, the ADA requires that:

“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others”

Entities subject to Title II are required to provide equally effective communication, regardless of the medium chosen for their communication. Communication by educational institutions includes the transfer of information and encompasses information conveyed through computer-related applications and online learning environments.

This requirement for effective communication is what many of the lawsuits discussed above are over. When a university does not provide equal access to information, such as by having inaccessible websites, using inaccessible technologies, failing to provide alternatives such as braille textbooks, or failing to caption videos, they are violating federal law.

If universities want to ensure they are providing an equal experience for their students with disabilities as well as prevent any investigations or litigation, they should become compliant with WCAG 2.0 Level AA.

WCAG 2.0 Level AA is the international accessibility standard designed to ensure baseline accessibility for people with disabilities. As such, Section 508 is taken from WCAG 2.0 Level A and AA and the Department of Justice holds public and private universities to WCAG 2.0 Level AA conformance.



## Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors.

It specifically states that

“No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.”

This discrimination includes

- Denying a person with a disability the opportunity to participate in or benefit from any aid, benefit, or service

- Giving a person with a disability an unequal opportunity to participate in or benefit from any aid, benefit, or service compares to others
- Providing a person with a disability with an aid, benefit, or service that is not as effective as that provided to others
- Providing different or separate aid, benefits, or services to people with disabilities unless such action is necessary to provide them with aid, benefits, or services that are as effective as those provided to others
- Otherwise limiting a person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Any college or university that receives federal financial assistance is subject to Section 504.

Additionally, Section 504 states that no qualified student with a disability shall, on the basis of disability, "be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any...postsecondary program or activity...."



## Section 508 of the Rehabilitation Act

Section 508 of the Rehabilitation Act establishes requirements for electronic and information technology (EIT) developed, maintained, procured, or used by the Federal government. The standards are based off of the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines.

According to Section 508, federal agencies must make electronic and information technology accessible to people with disabilities. In doing so, they must ensure that the ease of use for people with disabilities is equal to that of people without disabilities.

Unless the agency or department can prove undue hardship, those with disabilities need to have the same quality of access to electronic and information technology.

Section 508 was originally published in 2000 using WCAG 1.0. In 2008, the W3C updated WCAG 1.0 and replaced it with WCAG 2.0. While this new standard has been around for some time, the United States Access Board only recently updated Section 508 to reflect WCAG 2.0.

This update was approved in a final rule by the U.S. Access Board on January 9, 2017. The new Section 508 standards, or Information and Communication Technology (ICT) Final Standards and Guidelines, contain the exact Level A and AA Success Criteria found in WCAG 2.0, along with some further clarifications.

All federally funded organizations will have until January 18, 2018 to bring their websites and online content up to code with WCAG 2.0 Level A and AA requirements.



## WCAG 2.0

The World Wide Web Consortium (W3C) is an international standards organization that develops standards for the Web. Its mission is to lead the World Wide Web to its full potential by developing protocols and guidelines that ensure the long-term growth of the web.

In 1999, the W3C created the Web Accessibility Initiative to develop strategies, guidelines, and resources to help make the web accessible to people with disabilities. The product of this was the Web Content Accessibility Guidelines, or WCAG.

In 2008, W3C released an updated version of the Web Content Accessibility Guidelines to keep up with the changes in technology. These new guidelines are referred to as WCAG 2.0, and the original guidelines are WCAG 1.0.

WCAG 2.0 is organized around four principles: Perceivable, Operable, Understandable, and Robust.

These are further broken into 12 guidelines that each have testable Success Criteria. Those criteria are each assigned a conformance level, either A, AA or AAA. Conformance with all of the Level A and AA Success Criteria is regarded as the baseline standard for ensuring accessibility.

Many of the lawsuits discussed above were over a lack of video captioning. Success Criteria Factors 1.2.2 (Level A) and 1.2.4 (Level AA) require synchronized closed captioning for all media, including prerecorded and live video and audio.

The complete Web Content Accessibility Guidelines 2.0 [can be viewed here](#) and an [overview can be view here](#).

## SUMMARY

As you can see, there are numerous federal laws that require accessibility at public and private universities. When universities don't implement university-wide accessibility, they fail to best serve their students and make themselves vulnerable to disability discrimination lawsuits.

Compliance with WCAG 2.0 level AA standards is the best action that universities can take to ensure accessibility for all students and prevent violation of federal law. Additionally, schools should consult with individuals who have disabilities to test the accessibility of their courses, materials, and websites.

The following articles and eBooks can help you get this process started:

- [How to Implement Universal Design](#)
- [How to Put a Captioning Procedure in Place](#)
- [Best Practices to Develop Accessible Distance & Online Education Programs](#)
- [2017 State & Federal Accessibility Guidelines and Laws for Education](#)