

# Relevant Legislation, Legal Documents and Publications Pertaining to Web Accessibility

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## Legislation

- ***Standards for Electronic and Information Technology: An Overview*** (published December, 2000). <http://www.access-board.gov/sec508/summary.htm>  
Implements the accessibility requirement of the 1998 amendment to Section 508, Technology Access, of the Rehabilitation Act of 1973.

The 16 technical standards regarding Web-based Intranet and Internet Information and Applications that detail the technical and functional performance criteria for accessible Web pages are contained in Section 1194.22 of the abovementioned legislative document. [http://www.section508.gov/final\\_text.html#Web](http://www.section508.gov/final_text.html#Web)

- ***Assistive Technology Act of 1998***. <http://www.itpolicy.gsa.gov/cita/AT1998.htm>  
Provides financial assistance to States to maintain and strengthen a permanent comprehensive statewide program of technology-related assistance for individuals with disabilities of all ages.
- ***Telecommunications Act of 1996***, Federal Communications Commission; <http://www.access-board.gov/about/Telecomm%20Act.htm>  
Concerns accessibility, usability, and compatibility of telecommunications equipment covered by Section 255 of the Telecommunications Act of 1996.
- ***Telecommunications Act Accessibility Guidelines***, issued February 3, 1998. <http://www.access-board.gov/telecomm/about%20telecomm.htm>
- ***Americans with Disabilities Act*** (ADA). Title II requires a public college to take appropriate steps to ensure that communications with persons with disabilities “are as effective as communications with others” [28 C.F.R. ss 35.160 (a)]. Title II further states that in determining what type of auxiliary aid and service is necessary, a public college shall give primary consideration to requests of the individual with a disability. [28 C.F.R. ss 35.106 (b) (2)] 1990. [http://janweb.icdi.wvu.edu/kinder/pages/ada\\_statute.htm](http://janweb.icdi.wvu.edu/kinder/pages/ada_statute.htm)  
<http://janweb.icdi.wvu.edu/kinder/document.htm>

- ***Policy for the Provision of Services to Students with Disabilities***, California State University, 1989. A revision of this policy is currently in the final draft stages. The issuance of the new policy, which substantially revises the existing policy, is anticipated during summer 2001. Section VI of the draft policy, which deals with communications technology, auxiliary aids and services, discusses effective access to pertinent information, the curriculum and academic resources. (Copies of the existing policy are available from the office of Services for Students with Disabilities, California State University, Fresno).
- **Section 504**, of the ***Rehabilitation Act of 1973***, states that "...no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity."  
<http://www.usbr.gov/laws/rehab.html>  
<http://www4.law.cornell.edu/uscode/29/701.text.html>
- **Section 508, *Rehabilitation Act of 1973***. Guidelines added to insure electronic and information technology would be accessible to people with disabilities (guidelines previously had no enforcement mechanism) 1986.  
<http://www.access-board.gov/sec508/FAQ.htm>
- **Section 508, *Rehabilitation Act of 1973*, (1998, 2000 Amendments)**. Amended to include nearly all information technology and communication, and civil penalties. <http://www.access-board.gov/indexes/aboutindex.htm> (See "Rehabilitation Act Amendments")  
<http://www.access-board.gov/sec508/brochure.htm>
- ***Nondiscrimination Policy***, California State University, Fresno. California State University, Fresno is committed to a program of equal opportunity for all, regardless of race, color, national origin, gender, age, marital status, religion, disability, or sexual preference." General Catalog, 2001-2002, p. 484.

**Department of Education, Office of Civil Rights, Region IX, Decisions Regarding  
Complaints by Students with Disabilities**

**California State Universities:**

***Letter to Pres. Robert C. Maxson, California State University, Long Beach, April 20, 1999*** <http://www.rut.edu/~easi/law/1beach.htm>

Notes that:

- “...sole reliance upon a single centralized location (when not limited to adaptive technology training, but instead used for instructing disabled students in course subject matter) may run counter to the strong philosophy embodied in Title II and Section 504 regarding the importance of fully integrating students with disabilities into the mainstream educational program, unless such services cannot be otherwise effectively provided [see 34 C.F.R. 104.4 9b) (iv); 28 C.F.R. 35.130 (b) (iv)]. Thus OCR assumes in most cases computer access will be effectively provided to the student with the disability in an educational setting with his or her nondisabled peers and classmates at the various computer laboratory sites scattered throughout the campus.”
- Notes agreement of the university to:
  - 1) Develop and implement a written procedure describing which campus units are responsible for installing and maintaining adaptive workstations situated in college and central computer laboratories.
  - 2) Develop and implement a systematic method for ensuring that the issue of accessibility to persons with disabilities, particularly blind persons, is taken into account when colleges purchase computer technology (software and hardware).
  - 3) Develop and implement a systematic method for informing campus employees who design/select web pages for use by students to make sure the web pages are in accordance with principles known to maximize accessibility to users with disabilities, including visual impairments.

***Letter to Pres. James Rosser, California State University, Los Angeles, April 7, 1997***

<http://www.rit.edu/~easi/law/csula.htm>

- OCR has repeatedly held that the term “communication” *in this context* means the transfer of information, including (but not limited to) the verbal presentation of a lecture, the printed text of a book, and the resources of the Internet.
- Three basic components of effective communication are: timeliness of delivery, accuracy of the translation, and provision in a manner and medium appropriate to the significance of the message and the abilities of the individual with the disability.
- The courts have held that a public entity violates its obligations under the Americans with Disabilities Act when it simply responds to individual requests for accommodation on an ad-hoc basis. A public entity has an affirmative duty to establish a comprehensive policy in compliance with Title II in advance of any

request for auxiliary aids or services [see *Tyler v. City of Manhattan*, 857 F. Supp. 800 (D. Kan. 1994)]

- ...from the date of the enactment of Title II onwards, when making purchases and when designing its resources, a public entity is expected to take into account its legal obligation to provide communication to persons with disabilities that is “as effective as” communication provided to nondisabled persons. At a minimum, a public entity has a duty to solve barriers to information access that the public entity’s purchasing choices create, particularly with regard to materials that with minimal thought and cost may be acquired in a manner facilitating provision in alternative formats. When a public institution selects software programs and/or hardware equipment that are not adaptable for access by persons with disabilities, the subsequent substantial expense of providing access is not generally regarded as an undue burden when such cost could have been significantly reduced by considering the issue of accessibility at the time of the initial selection.

***Letter to Pres. Robert Caret, San Jose State University, January 25, 1996***

<http://www.rit.edu/~easi/law/sjsu.htm>

- OCR notes that Title II also strongly affirms the important role that computer technology is expected to play as an auxiliary aid by which communication is made effective for persons with disabilities.
- OCR notes that the “information superhighway” is fast becoming a fundamental tool in post-secondary research. Rather than implementing adaptive software, some institutions have attempted to utilize personal reader attendants as the exclusive or primary way of making this form of computer information accessible to persons with visual impairments. In most cases, this approach should be reconsidered. One of the most important aims in choosing the appropriate auxiliary aid has been to foster independence and autonomy in the person with a disability. When reasonably priced technology is available that will enable the visually impaired computer user to access the computer, including the World Wide Web, during approximately the same number of hours with the same spontaneous flexibility that is enjoyed by other non-disabled computer users, there are many reasons why the objectives of Title II will most effectively and less expensively be achieved by obtaining the appropriate software programs.
- OCR has learned from experts in adaptive technology that those with serious visual impairments have encountered a stumbling block in the form of the “graphic window.” Whereas information stored in text-format (ascii-based) documents is retrievable through speech output devices, graphic images (e.g., those commonly used on the “home page” of the World Wide Web) are not yet subject to meaningful auditory translation by even the most sophisticated software programs (unless the image has been encoded with an ascii-description).

Although there may be limited circumstances when a personal reader is appropriate to bridge the gap in accessibility provided by adaptive software programs, this gap is continually being narrowed and post-secondary institutions are expected to stay apprised of recent advances.

### **California Community Colleges:**

*Letter to Thomas J. Nussbaum, Chancellor California Community Colleges, January 22, 1998*      <http://www.rit.edu/~easi/law/ocrsurltr.html>

OCR undertook college onsite visits specifically to examine whether students with visual impairments, particularly blind students, are accorded an equal educational opportunity by California Community Colleges, or whether they are being discriminated against on the basis of their disability....

The letter lists 9 strategies by which the Chancellor's Office could address areas of OCR concern. Strategy III reads as follows:

#### **III. Access Guidelines for Distance Learning and Campus Web Pages**

California Community Colleges, individually and collectively as part of the California Virtual University, are rapidly developing their capacity to deliver educational programs to offsite students through technology. Little attention is being given to ensure that these distance learning programs are accessible to students with disabilities, especially students with visual impairments. Moreover, colleges are placing more and more information on the Internet and campus LAN, yet the Web pages through which this information is to be accessed have not been designed to facilitate access by persons with visual impairments.

If guidelines to ensure access are made available to colleges now, such information on how to structure distance learning programs and campus Web pages will not only ensure that colleges meet their legal obligations but will also enable colleges to save significant expense over the later cost of "retrofitting" these programs after substantial investment has been made in inaccessible structures. The Chancellor's Office may wish to draw on distance education and Web page access guidelines developed by others.

### **Higher Education Legal Opinions**

*California Community Colleges Chancellor's Office, Legal Opinion M 01-17, June 11, 2001*

The General Counsel for the California Community Colleges Chancellor's Office, Ralph Black, issued the memo entitled, "New Federal Regulations Implementing section 508 of the Rehabilitation Act of 1973, Legal Opinion M 10-17," on June 11, 2001 to the college

districts. The memo advises the community college districts on the impact of section 508 of the Rehabilitation Act of 1973.

As noted in the memo:

- “The section 508 regulations (36 C.F.R. ss 1194.23 et seq.) require that electronic and information technology purchased or used by federal agencies must be accessible for use by persons with disabilities.”
- “These regulations are applicable to the states by virtue of the Assistive Technology Act of 1998 (29 U.S.C. ss3002). As a result, the Chancellor’s Office has taken certain steps to comply with these regulations. All Chancellor’s Office contracts and grants commencing after the new regulations become effective on June 21, 2001, will contain a provision requiring the contractor or grantee to comply with the section 508 regulations. In addition, each district will be asked to certify that it complies with section 508 as a condition of receiving funds for 2001-02 under the Technology and Telecommunications Infrastructure Program (TTIP).”

### **Publications/Presentations**

- *A CSU Guide to Federal Disability Law in Student Programs and Activities*, Office of the General Counsel, The California State University, September, 1998.
- *Accessible Web Design*, ERIC Digest, the Educational Resources Information Center, 1999 [http://www.ed.gov/databases/ERIC\\_Digests/ed435384.html](http://www.ed.gov/databases/ERIC_Digests/ed435384.html)
- *Distance Education: Access Guidelines for Students with Disabilities*, Chancellor’s Office, California Community Colleges, August 1999. [www.htctu.fhda.edu/dlguidelines/final%20dl%20guidelines.htm](http://www.htctu.fhda.edu/dlguidelines/final%20dl%20guidelines.htm)  
Section on Legal Requirements presents a good summary of legal history and opinions of Department of Education, Office of Civil Rights.
- *The Power of the Internet for Learning: Moving from Promise to Practice*, Report of the Web-based Education Commission to the President and Congress of the United States, The Web-based Education Commission. <http://interact.hpcnet.org/webcommission/index.htm>  
Contains section on “Making the Web Accessible for Students with Disabilities.”
- *Applying the ADA to the Internet: A Web Accessibility Standard*, Waddell, Cynthia D., JD, presented June 17, 1998, American Bar Association. <http://www.rit.edu/~easi/law/weblaw1.htm> Cites a U.S. Department of Justice Policy Ruling, 9/9/96: ADA Accessibility Requirements Apply to Internet Web Pages 10 NDLR 240; and two settlement letters from the U.S. Department of

Education, Office of Civil Rights, Docket Number 09-95-2206 (1996 Letter) and 09-97-2002 (1997 Letter).

### **Personal Communications**

*Email message to Candace Egan, Web Manager, California State University, Fresno, from Carol Cohen, U.S. Department of Education, April 25, 2001*

In an email message to the U.S. Department of Education on April 24, 2001, the question was asked, “Is California a recipient of the Tech Act and would Section 508 apply to a California State university?” The response received from Carol Cohen:

“Subject: RE: Tech Act and State Compliance with Section 508

...California is a recipient of Assistive Tech funds and if the University you refer to is part of the State, than [sic] yes, they would be obliged to comply with Section 508 and the standards as published by the Access Board.”