

Is your website really accessible?

By the New York State Association of School Attorneys

Many school districts believe that establishing a strong online presence creates a better connection with their community. Did you know that school district websites must meet your district's legal obligations to individuals with disabilities? If a school district fails to comply with these obligations, the district may find itself being investigated by the U.S. Department of Education's Office for Civil Rights (OCR).

OCR responds to complaints. According to *Education Week*, one Michigan advocate has filed about 500 web accessibility complaints with the OCR.

The Obama administration was responsive to complainants about website accessibility. It remains to be seen how aggressive the Trump administration will be in pursuing such complaints.

This article seeks to inform school districts of the OCR's investigative and enforcement process, as well as the measures districts should take to prevent the filing of a complaint.

Process begins with a complaint

At this time, the OCR is not randomly auditing school district websites or initiating investigations without a complaint. Rather, they are reacting to complainants filed against districts by third parties.

If a review by the OCR indicates accessibility issues, the OCR informs the district that its website does not comply with Section 504/508 of the Rehabilitation Act and Title II of the American Disabilities Act of 1990 (ADA). Under these statutes, a district must provide individuals with disabilities equal access to all features contained on its website.

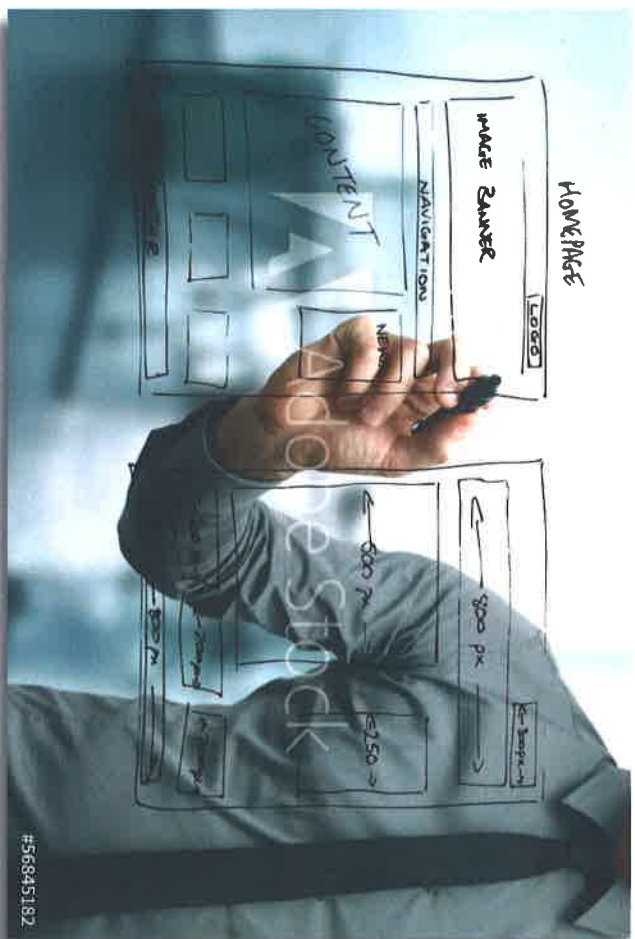
Most complainants focus on accessibility issues for individuals with hearing and visual impairments. However, districts should be aware that barriers may also exist for individuals with other physical or cognitive disabilities. According to the OCR, the most common issues are that:

- Some important website content can only be accessed using a computer mouse, which means that content is not available to those who are blind, many who have low-vision, and those with disabilities affecting fine motor control.

- Parts of the website use color combinations that make text difficult or impossible for people with low vision to see.
- Videos are not accurately captioned, so they were inaccessible to people who are deaf.

OCR's investigation powers

Under the ADA and Section 504, the OCR has jurisdiction to investigate discrimination complaints. If the OCR



determines that it has legal authority to investigate the complaint, it will inform the district that it has initiated an investigation.

This is usually done through a letter sent to the district's superintendent announcing that an investigation has been opened. (A sample letter is on OCR's website at goo.gl/OYSPrx.)

Such a letter typically is accompanied by OCR's guidance document entitled, "OCR Complaint Processing Procedures." The procedures inform the district that during the investigation, the OCR shall act as a neutral fact-finder. This requires the OCR to employ various fact-finding techniques that may include reviewing documentary evidence, conducting interviews and/or site visits.

The OCR has the authority under law to demand from any agency that receives federal funding the information necessary to determine whether such agency is in compliance with the anti-discrimination regulations. Therefore, the investigation letter will likely require the district to respond to specific questions and disclose all documentary evidence relevant to its website's accessibility. This may include information/documentation relating to the district's policies and procedures, the software and design specifications used and the vendors responsible for the maintenance of the district's website.

After reviewing all relevant information, the OCR will issue a letter of findings which informs the district whether or not there is sufficient evidence to conclude that the district failed to comply with the law. However, a district may have the option to resolve the complaint prior to the OCR's conclusion.

Resolving complaints by mutual agreement

One option for districts is to engage in the "Early Complaint Resolution" process. The "OCR Complaint Processing Procedures" states that "Early Complaint Resolution allows the parties . . . an opportunity to resolve the complaint

allegations quickly; generally, soon after the complaint has been opened for investigation."

By efficiently resolving the complaint, a district may avoid the negative press associated with an open discrimination investigation, as well as the penalties, in the case of an adverse determination after a multi-stage process including additional opportunities to resolve the complaint (i.e. loss of federal funding or referral of the case to the Department of Justice). Furthermore, the agreement typically does not require the district to admit to the complaint's allegations. Resolution agreements frequently include:

- **Benchmarks for measuring accessibility.** The agreement will likely incorporate by reference, and seek compliance with, two widely recognized international standards. First, the World Wide Web Consortium's (W3C's) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA seek to explain the ways in which agencies can ensure their web content is accessible to individuals with disabilities. The other set of standards is the Web Accessibility Initiative Accessible Rich Internet Applications Suite (www.w3.org/WAI/Intro/aria), which provides agencies with the tools necessary to ensure the accessibility of complex web interfaces (i.e. "dynamic content and advanced user interface controls developed with Ajax, HTML, and JavaScript, and related technologies").
- **Auditing.** The district may be required to designate an auditor that will be responsible for auditing all aspects of the website's content and functionality. In conducting the audit, the auditor will likely be required to use the "Benchmarks for Measuring Accessibility." Furthermore, the district may be required to reach out to individuals with disabilities and seek input regarding its website's accessibility.
- **Policy and procedure changes.** The agreement may also include a timeline in which the district must submit its proposed policies and procedures.

Such policies and procedures must ensure that all online content is accessible to individuals with disabilities and conforms to the aforementioned "Benchmarks for Measuring Accessibility." They must also include a system of testing and accountability that ensures that the website is accessible on an ongoing basis. Additionally, the policies and procedures will usually be subject to the OCR's approval.

Once approved, the district may be required to submit evidence to the OCR relating to the adoption, distribution and implementation of their new policies and procedures.

- **A corrective action plan.** The district may also be required to submit a Corrective Action Plan which addresses all of the inaccessibility issues raised during its audit. The Corrective Action Plan must set forth a detailed timeline for addressing the problems raised. The failure to do so could constitute a violation of the agreement, which would permit the OCR to initiate judicial proceedings or administrative enforcement of the agreement.

A sample resolution agreement can be viewed at goo.gl/TSDoXE.

How to avoid an OCR investigation

Existing resolution agreements shed light on how to prevent an OCR investigation. First, districts should assess whether everything contained on its website is currently accessible to individuals with disabilities. This should be done using the "Benchmarks for Measuring Accessibility" standards. If the district cannot make such determination on its own, it should consider enlisting the help of an outside vendor or auditor.

A district may also consider asking members of the community about accessibility issues. Community outreach may address specific accessibility problems or identify issues the district has yet to even consider (i.e., a specific cognitive disability which affects the way in which such individual processes the website's content). After the district is aware of all accessibility issues, it should revise its policies and procedures to remedy any problems. This may include the training of appropriate personnel and ongoing testing of the website's accessibility. Taking such proactive measures may prevent your district's name from appearing in the latest U.S. Department of Education press release.

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