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New Department of Justice Rule on Title II of the Americans with Disabilities Act and Its Impact on Education Technology Companies

Government entities, including public K-12 and higher education institutions across the United States, may soon be requiring their vendors to conform to WCAG 2.1 due to a new rule from the U.S. Department of Justice.

Is your company ready?

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The U.S. Department of Justice (DOJ) recently published a final Rule^[1] under Title II of the Americans with Disabilities Act (ADA) to improve public access to government services through web content and mobile applications. Vendors providing services to state and local government entities should be ready as the compliance dates come near.

This Rule will impact a broad range of state and local government services including but not limited to schools, licensing, public health, and transit information on the web and available on mobile applications. Government entities subject to the Rule will likely require the technology products they use to meet the standards established by this rule. The DOJ adopted Web Content Accessibility Guidelines (WCAG) 2.1 as the standard for covered web content.

The adoption of the WCAG 2.1 standard intends to make content more accessible to people with disabilities. WCAG 2.1 includes 13 guidelines providing goals for making content accessible for users with different disabilities^[2]. This Rule will require all covered content to conform to the WCAG 2.1 standard.

The DOJ outlines that conformance to this Rule will come at a cost to governments and technology companies. The DOJ estimates that compliance will cost \$113.8 million to remediate existing third-party websites for school districts and \$93.6 million for higher education. Further, it will cost \$1.134 billion to remediate certain primary and secondary classroom courses and \$5.5 billion to remediate postsecondary courses.^[3]

In the final Rule, the DOJ writes that “[t]he Department believes that...public educational institutions will be in a better position to establish contracts with third-party vendors with sufficient lead time to enable the production of materials that are accessible upon being created.” With compliance deadlines fast approaching, vendors may start seeing contracts with requirements to conform to the provisions of this Rule.

[1] U.S. Department of Justice, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 89 FR 31320 (Apr. 24, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-04-24/pdf/2024-07758.pdf>.

[2] For example, under the Perceivable principle, the first guideline requires that all non-text content presented to the user has a text alternative. This guideline includes a number of sufficient techniques and failures outlined in the documentation (<https://www.w3.org/WAI/WCAG22/quickref/?versions=2.1>).

[3] 28 C.F.R. 35 (See Table 3: Initial Familiarization, Testing, and Remediation Costs (Millions))



Background

The laws that protect the civil rights and accessibility of Americans with disabilities are key foundations to equity and access for all people. These laws include the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Civil Rights Act, as well as the Americans with Disabilities Act.

In January 2017, the U.S. Access Board published new requirements for information and communication technology covered by Section 508 of the Rehabilitation Act. Section 508 requires programs funded by federal agencies to be accessible to people with disabilities. This refresh included a number of changes including requiring conformance to WCAG 2.0. The World Wide Web Consortium (W3C), the international standards body for the internet continues to update internet standards for accessibility. W3C released the [WCAG 2.1](#) standard in June 2018 (updated in September 2023) and the [WCAG 2.2](#) standard in October 2023. W3C released a [working draft of WCAG 3.0](#) in May 2024. Read more about that process at the [W3C website](#).

The New DOJ Rule

The DOJ published a Notice of Proposed Rulemaking in August 2023,^[4] and subsequently released the [final Rule](#) in April 2024.^[5] Some of the major provisions outlined in the new rule follow:

I. What are the requirements under the new rule?

State and local governments' web content and mobile apps must meet the WCAG 2.1 standard. Technology companies can expect to see these requirements listed in RFPs, contracts, and other agreements if the company offers a service to provide web content or mobile apps to state and local governments.

II. What type of “public entity” does this rule apply to?

This rule applies to “state and local government offices that provide benefits and/or social services, such as food assistance, health insurance, or employment services.” This also includes:

- Public schools, community colleges, and public universities;
- Public hospitals and public healthcare clinics;
- Public parks and recreation programs;
- Public libraries.

[4] 88 FR 51948

[5] 42 U.S.C. § 12101

III. What is the compliance date?

The date of compliance will depend on the size of the city/county/metro government population:

- April 24, 2026: Government population size of 50,000 or more persons;
- April 26, 2027: Government population Size of 0 to 49,999 persons;
- April 26, 2027: Special district governments.^[6]

IV. In determining the date of compliance, can a school or district be considered its own public entity?

No. The determining factor of the compliance dates of a public entity is based on the total population, not the population that is eligible. For example, city school districts will have their compliance date determined by the city population.^[7] The compliance date for an independent school district will have their compliance date determined by the U.S. Census Bureau's most recent Small Area and Poverty Estimates.

V. Are there any exceptions to the rule?

Yes. There are limited exceptions including archived web content and preexisting documents as long as they are not necessary to engage in the current program provided by the government entity. These are not intended to be broad exceptions but are quite limited. Please have your legal team review in full. The exceptions are:

- Archived web content;
- Preexisting conventional electronic documents, unless the documents are currently used to apply for, gain access to, or participate in the public entity's services, programs, or activities;
- Content posted by a third party, unless the third party is posting due to contractual, licensing, or other arrangements with the public entity;
- Conventional electronic documents about a specific individual, their property, or their account and that are password-protected or otherwise secured;
- Preexisting social media posts.

[6] Special district government means a public entity—other than a county, municipality, township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates. 28 C.F.R. § 35.104

[7] 28 C.F.R. § 35.104(b)

VI. Did the DOJ consider any exceptions for schools?

The DOJ considered a few exceptions to the rule for things like password-protected course content but decided to not include these in the final rule. The final Rule explicitly outlines that password-protected content in the classrooms “will be treated like any other content and public educational institutions will generally need to ensure that that content complies with WCAG 2.1 Level AA starting two or three years after the publication of the final rule, depending on whether the public educational institution is covered by § 35.200(b) (1) or (2).” Additionally, the DOJ clarifies that it considers digital textbooks, including EPUBs, to be the same as any educational course content and must comply with the rule.

Conclusion

Considerable investment in time and money will be spent in the coming years to conform to the requirements of the Rule. Stay tuned for more resources from SIIA on how best to prepare for the compliance deadlines.

Additional Resources

- DOJ Accessibility Rule: <https://www.ada.gov/assets/pdfs/web-rule.pdf>
- WCAG 2.1 Accessibility Standard: <https://www.w3.org/TR/WCAG21/>