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Here We Go Again (On Our Own): School District Website Accessibility and OCR Enforcement

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Disclaimer

The information provided in this document is for informative purposes only and should not be used in place of legal advice.



BACKGROUND AND BASIC REQUIREMENTS OF WEBSITE ACCESSIBILITY

What is Website Accessibility?

“Website accessibility” means that people with disabilities can perceive, understand, navigate, and interact with the website to the same extent as persons without disabilities can.



Persons Who Are Impacted

- **Blind Users** (using screen reader software)
 - Cannot access website images without proper embedded descriptions
 - Cannot navigate by mouse
- **Low Vision Users**
 - Color contrast issues, non-adjustable font or screen size

Persons Who Are Impacted

- **Limited Manual Dexterity**
 - Need speech recognition and/or keyboard alternatives
 - Cannot navigate by mouse
- **Deaf or Hard of Hearing**
 - Non-transcribed audio features

Accessibility Standards

- The widely accepted standard for accessibility is the Web Content Accessibility Guidelines 2.0 (WCAG) Level AA
- Section 508 of the Rehabilitation Act also contains accepted standards for website accessibility



Compliance Based Upon Anti-Discrimination Laws

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35

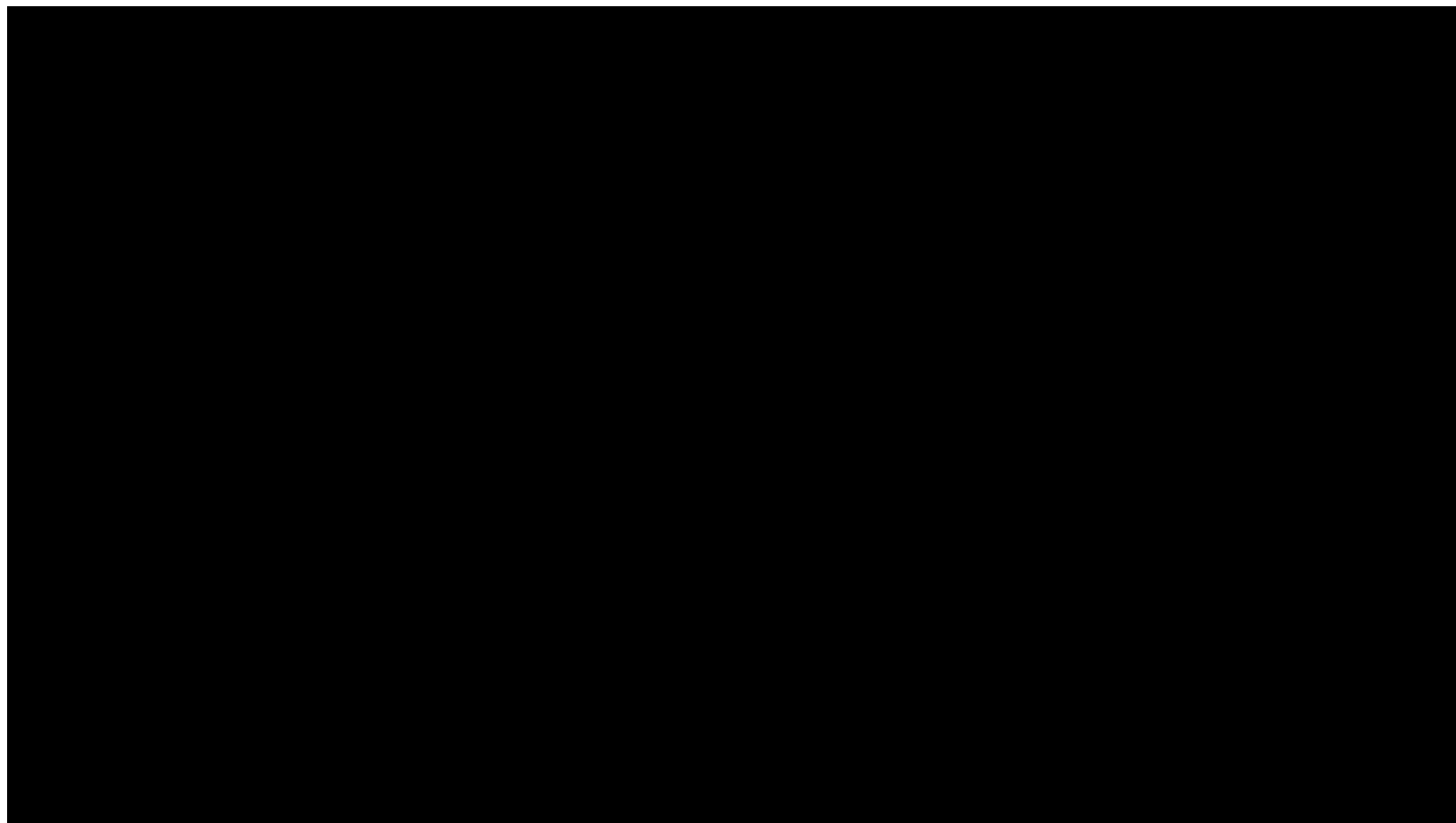


Do the Discrimination Laws Mention Website Accessibility?

- No mention of websites in Section 504 or the ADA
- No Section 504 ADA website accessibility regulations
- No case law that provides what a website must include in order to be compliant with Section 504 or the ADA



Demonstration: Use of AT Devices





DEALING WITH THE OFFICE FOR CIVIL RIGHTS IN TODAYS CLIMATE

Enforcement

- The Office for Civil Rights (OCR) is tasked with enforcing both Section 504 and Title II of the ADA
- As of 2016, OCR had investigated over 300 schools nationwide for website accessibility violations
- In Arizona, there have been numerous complaints against charter schools, school districts and community colleges since 2013

Background

- **March 2018** – OCR revised its Case Processing Manual (CPM) and dismissed any complaint that was a “continuation of a pattern of complaints previously filed by an individual. . .” that placed a burden on OCR resources
- **November 2018** – OCR revised the CPM again and removed the previous provision to dismiss complaints because they placed a burden on OCRs resources

Previous Response – OCR Resolution Agreement

Most of the OCR Resolution Agreements issued in the past have contained the same general requirements:

- Development of Policies and Procedures
- Perform an audit of website
- Development of a Corrective Action Plan
- Notice
- Training (at least annually)
- 6-month reporting requirement

Current Response – Directed Investigations

- Section 402 of the current CPM allows for “directed investigations”
- Not based on a specific complaint
- Opening all previously closed matters into directed investigation that were not previously investigated and/or resolved

Process for Directed Investigation

Each directed investigation will occur in the same manner for every district:

1.If OCR determines that the errors found can be addressed quickly are not pervasive, then they may offer to recommend closure if identified barriers can be corrected in 10 days

2.If find noncompliance is found to be pervasive on website, will offer Rapid Resolution through issuing a 302 Resolution Agreement

“New” 302 Resolution Agreements

- The proposed resolution agreements are now a lot simpler and developed for more efficient monitoring to close within a 1-year period
- Include:
 1. Develop a plan and strategy to address noncompliance with accessibility standards
 2. Develop and maintain a process to alert district to accessibility problems
 3. Undue Burden and Fundamental Alteration clause
 4. Technical assistance from OCR, if needed
 5. Report at end of 1-year period (or sooner if appropriate)



**SO, WHAT IF I RECEIVE NOTICE THAT
MY DISTRICT IS UNDER DIRECTED
INVESTIGATION?**

Steps If Already Under Directed Investigation . . .

- Ask OCR for a 303a letter → if the District can correct identified errors in 10 days can OCR recommend closure of the matter?
- Ensure District has a plan to address accessibility and can communicate the plan
- Contact legal counsel for further advise

Steps BEFORE Receiving Notice of Directed Investigation

- Have IT check the website's most frequently visited pages for compliance
- Check that PDFs are accessible using Adobe DC Pro Checker (tagged, editable, not scanned, etc.)
- Ensure videos have closed captioning – even if linked to or housed on a site outside of district/school website
- Develop and implement a plan for accessibility

General Tips for Ensuring Accessibility

- Provide regular training to all staff responsible for uploading content to the website on how to make content accessible
- Proactively build in website accessibility (aim for WCAG 2.0 AA compliance) when putting out RFPs/bids for website
- Develop policies for maintaining accessibility before a complaint occurs

General Tips for Ensuring Accessibility

- Perform a thorough audit of the district website at least once a school year to identify the barriers that may be present
- Perform ongoing periodic (at least one per quarter) self-audits of District's websites
- Pay close attention to videos and PDFs

Presenter Bio – Kimberly Davis

Ms. Kimberly Davis is a Partner with Udall Shumway in the Education Law Section. Kim worked as a school psychologist for 12 years prior to becoming an attorney. Kim provides legal advice and representation to the firm's education clients on a broad range of matters, including but not limited to, disabilities law (special education, Section 504, ADA), student discipline, FERPA compliance, personnel matters, and other federal and state compliance matters. Kim also regularly defend clients against claims filed with the Office for Civil Rights (OCR) and the Arizona Department of Education (State Complaints and Special Education Due Process Complaints).