



# WCAG May Not Just be a Guideline Anymore

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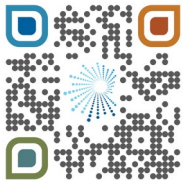
# MEET YOUR FACILITATOR



## Judith Risch

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Judy is one of the nation's foremost experts on digital accessibility and as a twenty-year veteran of the Office for Civil Rights (OCR), has extensive experience in all aspect of civil rights enforcement and compliance. At OCR's National Digital Accessibility Team, Judy oversaw a national team of attorneys and investigators spread across twelve regional offices that enforced digital accessibility policies and advised educational institutions on compliance with federal disability discrimination laws. Judy has advised senior leadership in state and local educational systems to ensure compliance and provide them with forward looking guidance. Additionally, Judy was involved with the new ADA Title II amendments that cover digital accessibility.







THIS IS NOT LEGAL  
ADVICE

# AGENDA

● | ADA/Section 504

● | Accessibility Standards

● | Whom the New Regulations Apply to and When

● | Scope of Coverage

● | Legal Challenges

● | The Future

● | Resources

● | Conclusion

# AMERICANS WITH DISABILITIES ACT AND SECTION 504

## ADA

"...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

*Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (1990).*

## SECTION 504

"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

*Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.) Code of Federal Regulations, title 28 (2002):516-544*



Nothing in the constitution can block making sure people with disabilities are provided access.



# WHO IS A PERSON WITH A DISABILITY?

- Has a physical or mental impairment which substantially limits one or more major life activities, or
- Has a record of such impairment, or
- Is regarded as having such impairment.



# WHAT ARE “PROGRAMS, SERVICES, AND ACTIVITIES?”

Almost everything a covered entity does is a “program, service, or activity” under Title II of the ADA or Section 504. It’s a very broad phrase.

- Ex: A cafeteria menu
- Ex: Course registration
- Ex: Physics lectures



# EQUAL ACCESS – DIGITAL ACCESSIBILITY

- Must receive all the educational benefits provided by the technology in an equally effective and equally integrated manner, as compared to people without disabilities.
- Must be able to:
  - Acquire the same information,
  - Engage in the same interactions, and
  - Enjoy the same benefits and services
  - With substantially equivalent ease of use.

# EQUALLY EFFECTIVE ALTERNATIVE ACCESS

- An institution that may be in the process of updating website content to become accessible, or that identifies inaccessible content and functionality to be made accessible in an expedient manner, may in the short term need to identify an effective alternate access;
- Providing equally effective alternative access affords persons with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

# UNDUE BURDEN / FUNDAMENTAL ALTERATION EXCEPTIONS TO CIVIL RIGHTS REQUIREMENTS

- Covered entities are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue financial or administrative burden on the entity.
- The entity bears the burden of demonstrating that compliance would result in such alterations or burdens after considering all resources available for use in the funding and operation of the service, program, or activity.
- The entity must still take any other action that would not result in such alteration or burden but would ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the entity.

**ACCESSIBILITY  
STANDARDS –  
PRESENTLY  
NOTHING IS  
REQUIRED**





# ACCESSIBILITY STANDARDS

Web Content  
Accessibility  
Guidelines  
(WCAG) Version  
2.0/2.1/2.2 Levels A  
and AA

Section 508

WCAG 3.0

# WHOM THE NEW REGULATIONS APPLY TO AND WHEN



# TITLE II

| Size                         | Date           |
|------------------------------|----------------|
| 0 to 49,999 persons          | April 26, 2027 |
| Special district governments | April 26, 2027 |
| 50,000 or more persons       | April 24, 2026 |

Applies to all Public Entities

To find size the [Census Bureau](#)

# SECTION 504 HHS

| Size                 | Date         |
|----------------------|--------------|
| Under 15 employees   | May 10, 2027 |
| 15 or more employees | May 11, 2026 |

*Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

[USA Spending](#) to find out if you are a recipient and Medicare and Medicaid money will trigger too.



# Civil Rights Restoration Act of 1987 (102 stat. 28)

Civil Rights Restoration Act of 1987 - Amends Title IX (Prohibition of Sex Discrimination) of the Education Amendments of 1972 to define the phrase "program or activity" and the term "program" to mean **all of the operations** of the following entities, any part of which is extended Federal financial assistance:... (3) a college, university, or other postsecondary institution, or public system of higher education; (4) a local educational agency, system of vocational education, or other school system; and (5) a corporation, partnership, or other private organization. States that such terms do not include any operation of an entity which is controlled by a religious organization.

Amends the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Civil Rights Act of 1964 to define the phrase "program or activity" to mean all of the activities of the aforementioned entities.

# Regulatory Scoping

ED 504 (1980) and HHS original 504 (1977 and 2005) 34 C.F.R. § 104.2 Application.


HHS 504 (2024) 45 C.F.R § 84.2

This part applies to each recipient of Federal financial assistance from the [AGENCY] and to the program or activity that receives such assistance.

Application. (a) This part applies to each recipient of Federal financial assistance from the Department and to the recipient's programs or activities that involve individuals with disabilities in the United States. This part does not apply to the recipient's programs or activities outside the United States that do not involve individuals with disabilities in the United States. (b) The requirements of this part do not apply to the ultimate beneficiaries of any program or activity operated by a recipient of Federal financial assistance. (c) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

**SCOPE OF WHAT  
DIGITAL IS  
COVERED—  
EVERYTHING**





# REGULATORY LANGUAGE

- ...shall ensure that the web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.



From both HHS Section 504 (45 CFR § 84.84) and Title II Regulations (28 CFR § 35.200)



# EVERYTHING



Websites



Mobile applications

# Kiosks and Section 504 HHS



# EXEMPTIONS

Archived web content

Preexisting conventional electronic documents

Third party content posted by third party not posting due to contractual, licensing, or other arrangements with public entity

Password protected – individualized documents (such as bills)

Preexisting social media posts

# ARCHIVED WEB CONTENT





# PREEXISTING CONVENTIONAL ELECTRONIC DOCUMENTS



**THIRD PARTY CONTENT  
POSTED BY THIRD PARTY  
NOT POSTING DUE TO  
CONTRACTUAL,  
LICENSING, OR OTHER  
ARRANGEMENTS WITH  
PUBLIC ENTITY**



**PASSWORD  
PROTECTED –  
INDIVIDUALIZED  
DOCUMENTS (SUCH  
AS BILLS)**





# PREEXISTING SOCIAL MEDIA POSTS





# REGULATORY LANGUAGE: SAFE HARBOR

35.205: A public entity that is not in full compliance with the requirements of § 35.200(b) will be deemed to have met the requirements of § 35.200 in the limited circumstance in which the public entity can demonstrate that the noncompliance has such a minimal impact on access that it would not affect the ability of individuals with disabilities to use the public entity's web content or mobile app to do any of the following in a manner that provides substantially equivalent timeliness, privacy, independence, and ease of use:

- (a) Access the same information as individuals without disabilities.
- (b) Engage in the same interactions as individuals without disabilities.
- (c) Conduct the same transactions as individuals without disabilities; and
- (d) Otherwise participate in or benefit from the same services, programs, and activities as individuals without disabilities.



Title II Regulations (28 CFR § 35.205)



# Vendors/Contracts



- When are they up for renewal?
- Which contracts won't be renewed or rebid before the effective date for the new requirements?
- What language is in your current contracts that addresses compliance with Federal law?
- How specific is the language in your contracts? Does it specifically call out WCAG 2.1, Level AA, or stronger?
- What happens if you notice a problem or have a concern? What specifics are written into your contracts to say how the vendor is expected to respond? Will you have to pay for it to be fixed?

# Legal Challenges



# HHS section 504 challenge

- Texas v. Becerra – Now Texas v. Kennedy
- Filed September 26, 2024
- Lead by Texas – with 16 additional states
- The basics:
  1. The regulations exceeds the statutory authority because it has the term “gender dysphoria” under the term disability. The ADA and Rehab Act do not include gender identify disorders not resulting from physical impairments.
  2. The final rule is arbitrary and capricious.
  3. Section 504 is unconstitutional.
  4. The final rule is unconstitutional.

[Brief Filed in US District Court Norther District of Texas Lubbock Division](#)

[Filing History](#)

# UPDATE – FILING FEBRUARY 19, 2025

- The case is on a state they need to update the court on the 21 of each month going forward.
- The first issue regarding “gender dysphoria” is being reevaluated by the plaintiffs based on the Executive Order.
- Best line: "Plaintiffs clarify that they have never moved—and do not plan to move—the Court to declare or enjoin Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as unconstitutional on its face. Plaintiffs have not sought and do not seek to enjoin the disbursement of funds from the Department on the basis that the statute is unconstitutional. “

[Joint Status Report](#)

# THE FUTURE





# RESOURCES

Department of Health and Human Services -  
Section 504 of the Rehabilitation Act :

- [Section 504 Press Release](#)
- [Section 504 Regulations](#)
- [Section 504 Fact Sheet](#)

Department of Justice – Americans with  
Disabilities Act Title II:

- [Title II Regulations](#)
- [Title II Fact Sheet](#)
- [Title II Small Entities Compliance Guide](#)
- [Title II State and Local Governments: First Steps Toward Complying](#)





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## CONNECT WITH US

