



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

October 17, 2017

**To:** Superintendents, Member School Districts (K-12)  
**From:** Ellie R. Austin *ERA*  
Schools Legal Counsel  
**Subject:** FAQs on Website Accessibility  
Memo No. 27-2017

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In response to Legal Update 06-2017 regarding website accessibility, our office has received a number of follow up questions about how an educational entity can ensure its website is accessible to individuals with disabilities. Specifically, our office has received questions on the following issues:

- Whether a local educational agency is required to maintain a website
- All required elements of a local educational agency website
- Accessibility notice requirements
- Website accessibility policies
- Corrective action plans
- Regulations on the horizon

These issues will be addressed in turn below.

As in initial matter, the term local educational agency (“LEA”) will be used throughout this Legal Update to refer specifically to school districts and county offices of education (“COE”).

### 1. Is a local educational agency required to have a website?

Yes. Despite the absence of an explicit statutory provision, this office interprets the Education Code sections relative to online posting requirements to require an LEA to maintain a website.

For example, Education Code section 35258 requires every school district that is connected to the internet to:

...make the information contained in the School Accountability Report Card...accessible on the Internet.



(Cal. Educ. Code § 35258(a).)

Other Education Code sections likewise strongly imply that maintenance of a website is required to comply with the statute. For instance, Education Code section 48301, relative to school districts of choice, provides:

A school district shall post application information on its Internet Web site.

(Cal. Educ. Code § 48301(d); emphasis added.)

Education Code section 54029, relative to economic impact funding, provides:

As a condition of the receipt of economic aid funding, a school district shall post in an easily accessible location on its Internet Web site data relative to economic impact funding...

(Cal. Educ. Code § 54029; emphasis added.)

COEs must also maintain a website in order to comply with certain Education Code sections. For instance, Education Code section 51224.7 requires that a COE post its mathematics placement policy on its Internet website. (This section also applies to school districts and charter schools.) Additionally, COEs must post any local control and accountability plan (“LCAP”) approved by the county board of education, as well as all LCAPs submitted by school districts (or links to those LCAPs), on their websites. (Cal. Educ. Code § 52065.)

A number of other statutory provisions provide that certain content is required to be posted on the website of a school district<sup>1</sup> or county office of education.<sup>2</sup> Therefore, this office recommends that to ensure compliance with relevant statutory authority and to provide an easy avenue for students, families, community members, and employees to access important information, each LEA maintain a website.

## **2. What elements are required if an LEA has a website?**

Our office has developed a table that reflects a number of online posting requirements contained in the Education Code and the Government Code. Please note that the table is not necessarily exhaustive of all postings required for LEAs in California. In addition, LEAs should check their board policies and procedures for any additional posting requirements. We encourage you to contact our office to obtain the table and discuss implications with legal counsel.

## **3. Is an LEA required to have an accessibility notice on its website?**

It does not appear that an accessibility notice is legally required at this time. However, this is a rapidly evolving area of the law, and in various settlement agreements with educational entities, both the Office for Civil Rights (“OCR”) and the Department of Justice (“DOJ”) have mandated such accessibility notices.

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<sup>1</sup> See, specifically, Educ. Code §§ 15280(b); 35258; 51224.7(d); and 52065.

<sup>2</sup> See, specifically, Educ. Code § 1240(c)(2)(K)(ii).



Should an LEA choose to post an accessibility notice on its website, we recommend that it contain, at a minimum, the following elements:

- A statement that the agency is committed to ensuring that its website content and functionality are accessible to individuals with disabilities.
- The contact information (including a phone number and email address) for an individual at the LEA who will be responsible for providing the inaccessible content to individuals with disabilities in an alternative format. The LEA may also provide a “contact us” link that directs the individual to a contact form they can submit via the website.
- A statement that the LEA welcomes feedback regarding how it can improve the accessibility of its website content and functionality.

Below is a sample posting that, at this time, appears to address the concerns of OCR and DOJ with regard to website accessibility.

**Accessibility Notice:** [LEA] is committed to ensuring that its website is accessible to individuals with disabilities, and that individuals with disabilities have equal opportunity to use and benefit from its online content and functionality. If you experience difficulty accessing any online content or functionality on [LEA] website, please contact [position, name] at [email address] or [phone number] to request the information in an alternative format, or to provide feedback on how [LEA] can improve its website accessibility.

DOJ recommends that the telephone number provided be a toll-free number.

An LEA may add a note to its accessibility notice that it is working on making its website more accessible. However, it is not recommended that an LEA add this information if it is not currently doing so.

Please note that the DOJ has expressed reservations regarding whether providing the information in an alternative format “provide[s] an equal degree of access in terms of hours of operation and the range of options and programs available,” as required under Title II of the ADA.<sup>3</sup>

#### **4. Is an LEA required to have a website accessibility policy?**

Not at this time. Again, this is a rapidly developing area of the law, and our recommendation could change based on action by OCR, DOJ, and/or an applicable court ruling. Furthermore, as explained in Section (3) above, in various settlement agreements with educational entities OCR and DOJ have mandated that the agency adopt a website accessibility policy.

LEAs interested in adopting a website accessibility policy may proceed in a number of ways. An LEA may incorporate a policy on website accessibility into its existing nondiscrimination, social media, or internet access policy(ies). Alternatively, an LEA may develop a separate policy

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<sup>3</sup> The effective communication regulations provide, in pertinent part: “A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.” (28 C.F.R. § 35.160(a)(1).)



dedicated to website accessibility. This office recommends consulting with legal counsel prior to drafting and adopting a website accessibility policy.

## 5. What are corrective or voluntary action plans?

In a number of resolution agreements with educational entities, OCR has included a provision requiring the entity to develop a “corrective action plan,” which prioritizes the removal of online barriers to accessibility over a 12-24 month time period. OCR has also emphasized the need for “appropriate personnel” to receive website accessibility training, although it has not specified what such training must entail.

In the past, OCR has approved corrective action plans containing the following elements:

- Known barriers to website accessibility
- A remediation plan, including a timeline for fixing the most serious to the least serious barriers
- Long-term solutions, including timelines for regular auditing of the website for accessibility issues and training of key staff

Similarly, DOJ has described what it terms “voluntary action plans” for agencies whose websites are not currently fully accessible. DOJ recommends that any such plan contain the following elements:

- A website accessibility policy with a process for implementation
- A statement ensuring that all new and newly modified webpages and content are accessible
- A plan to making existing web content more accessible
- A training plan for personnel responsible for website accessibility
- A notice allowing individuals with disabilities to request inaccessible web content
- Periodic consultation with disability groups to test website accessibility

DOJ has also emphasized a training component in its settlement agreements, providing that such training should include instruction in how to conform the agency’s website, mobile applications, and platform<sup>4</sup> to specific website accessibility standards.<sup>5</sup>

Please note that at this time, neither a corrective action plan nor a voluntary action plan is legally required. However, it may serve as valuable evidence of the LEA’s intention to ensure its web content is accessible to individuals with disabilities should the LEA become the subject of an investigation by OCR and/or DOJ.

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<sup>4</sup> In this context, a platform is the service that delivers the content to the user; for instance, the method by which a student would access an online course. Not only would the student need to be able to find course content online, but the content and the functionality of the online course would need to be accessible. In other words, the accessibility requirement would also extend to aspects of the course such as being able to sign up for classes online.

<sup>5</sup> In its settlement agreements, DOJ mandates conformance to the Web Content Accessibility Guidelines 2.0 AA accessibility standards. More information on the WCAG 2.0 AA standards can be found at <https://www.w3.org/WAI/intro/wcag>.



## 6. When will DOJ promulgate regulations clarifying educational entities' website accessibility obligations?

In April 2016, DOJ invited public comment on 123 questions related to website accessibility.<sup>6</sup> The comment period closed a few months later, after which rulemaking was expected to take place. However, in July 2017 the Trump Administration placed rulemaking on website accessibility on the list of "2017 Inactive Actions." In light of this action, there is no expectation that DOJ will provide new guidance with regard to website accessibility in the near future.

However, be advised that, despite clear guidance on this issue, individuals and organizations continue to file complaints against public agencies with regard to website accessibility.

In addition, courts have held that the California Unruh Civil Rights Act,<sup>7</sup> a state law analogous to Title III of the ADA, and the California Disabled Persons Act,<sup>8</sup> a state law analogous to Title II and Title III of the ADA, apply to the issue of website accessibility.<sup>9</sup> Thus, notwithstanding DOJ's failure to promulgate clear regulations on the issue, California law also requires public entities to ensure that individuals with disabilities can access the online content and functionality of their Internet websites.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>6</sup> The questions posed by DOJ can be accessed at <https://www.ada.gov/regs2016/sanprm.html> (Apr. 2016).

<sup>7</sup> Cal. Civ. Code § 51.

<sup>8</sup> Cal. Civ. Code § 54.

<sup>9</sup> See, e.g., *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 957 (N.D. Cal. 2006); see also *Lentini v. California Ctr. for the Arts, Escondido*, 370 F.3d 837, 847 (9th Cir. 2004) for the proposition that a violation of the ADA is a *per se* violation of the Unruh Act.