



OCR Issues FAQ to Address Technology and Accessibility

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On May 26, 2011, the Department of Education's Office for Civil Rights (OCR) issued an **online FAQ** document discussing how OCR believes the "equal access" requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1964 (Section 504) apply to the use of emerging technology such as electronic book readers, online application processes, and websites in higher education. The FAQ offers valuable insight into the enforcement priorities of OCR and the Department of Justice (DOJ) in this area of disability law and may be helpful to institutions grappling with the challenges of technological accessibility.

The FAQ is only the latest in a series of agency actions—some inspired by complaints and court proceedings—that focus on the issue of technological accessibility. The FAQ elaborates on issues addressed in a June 29, 2010 "Dear Colleague" Letter, which was jointly issued by OCR and by the Civil Rights Division of the DOJ. As we reported in a previous **FR Alert**, the 2010 "Dear Colleague" Letter discussed the increasing reliance within higher education upon electronic book readers—some of which are not accessible by individuals who are blind or have low vision. The letter asked institutions to refrain from requiring students to use inaccessible electronic book readers. Disputes about inaccessible technology have continued to afflict higher education, however. Indeed, during 2010 and 2011, the federal government received (and, in some cases, resolved) a number of highly publicized complaints by the National Federation of the Blind challenging allegedly inaccessible online application processes, e-mail platforms, and electronic book readers. (Some of these complaints and resolutions are posted or noted on the DOJ Disability Section's website, at www.ada.gov). In addition, during late 2010, the DOJ issued an **Advance Notice of Proposed Rulemaking** (ANPR) soliciting comments regarding, among other things, proposed regulations regarding accessibility of websites and web-based technology. In the ANPR, the DOJ acknowledged the complexity of these issues, noting that Section 504 and the ADA were passed before internet use was widespread.

The recently published FAQ was issued against this backdrop of intense rulemaking and enforcement activity. The basic message is that OCR considers "equal access" principles to apply not only to electronic book readers but also to other forms of emerging technology, such as online application systems and "Blackboard." While the FAQ indicates that the 2010 "Dear Colleague" Letter was never intended to discourage innovative use of technology within education, OCR also stresses that the letter was issued in order to remind institutions that all students continue to enjoy rights to equal access once such tools are put into place. The FAQ warns that equal access principles apply to *all* school programs and activities "whether in a 'brick and mortar,' online, or other 'virtual' context." Moreover, these principles constrain *all* decisions made on campus, not just those made by the School's Section 504 or disability services coordinator. In OCR's view, a university can be found responsible under the ADA or Section 504 if a professor assigns inaccessible course content in a manner that denies a student equal access, even if that decision was not condoned by the University administration.



Whether OCR'S full position would ultimately be validated by courts remains to be seen, but the issuance of this FAQ does underscore the importance of educating all staff and faculty members about the need to consider accessibility factors when procuring or using technology for educational purposes.

The FAQ also includes recommended questions that an institution should ask before procuring or using technology, to evaluate whether particular technology is accessible or can be made accessible to students with different ranges of disabilities. It includes prototype questions to be asked when an institution is considering offering modifications or accommodations because accessible technology cannot be made available. OCR recommends that institutions focus on whether the contemplated accommodations or modifications may permit disabled students to receive all of the educational benefits provided by the inaccessible technology in an equally effective and integrated manner. OCR reiterates, however, that identical forms of emerging technology need not always be provided to blind and non-blind students alike and, further, that requests by disabled students for particular technology or accommodations need not necessarily be granted. Traditional alternative media, such as books on tape, can still be used as accommodations under appropriate circumstances, as long as those alternatives are able to replicate the educational opportunities and benefits of the particular, emerging technology.

Finally, the FAQ reminds institutions that the ADA and Section 504 "equal access" requirements, as amplified in the 2010 "Dear Colleague" Letter, protect not only students with vision difficulties but also students with other disabilities affecting their ability to access printed materials. The FAQ concludes by listing additional resources and offering links to additional federal government guidance regarding technological accessibility.

More Information

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