



# Minnesota eLearning Summit

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## ADA Compliance for Course Design Today and Tomorrow

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hi my name is Martin LaGrow I am an academic services consultant for solution in this role I have the opportunity to advise colleges and universities around the United States about their implementation of distance education sometimes my role as hands-on and I'm actually doing course design and working with faculty other times my role is more administrative and advisory helping colleges determine what's the best way to implement their distance education programs one concern that has come up more and more in recent times is how does a TA impact course design and especially in the online world so the focus of the presentation today is going to be to help participants identify the existing standards that apply and how those standards impact online course delivery we're also going to discuss current and past legal actions related to the Americans with Disabilities Act also known as the ADA we're going to apply a TA standards too common course design scenarios and we're also going to talk about the importance of developing an institution-wide proactive plan to address ADA requirements and issues if and when they will occur the first thing that needs to be sorted out is exactly what are the existing standards that were under and there's a lot of confusion about this because there are a lot of different things to look at there's terms like title 3 section 504 section 508 ADA and then on top of that you also have what they call WCAG or WCAG 2.0 so what really are the standards that we are supposed to be living under and holding up that's the first thing that we want to take a look at today now what the law says I'm going to take you back to nineteen ninety-eight at that time congress amended what was called the rehabilitation act of 1973 to require federal agencies to make their electronic and information technology accessible to people with disabilities that law applies to all federal agencies anytime they develop procure maintain or use electronic and information technology under Section 508 agencies must give disabled employees and members of the public access to information that is comparable to access available to others and that only makes sense the government needs to serve all people regardless of what their disability needs might be blind and deaf people need the same access to government resources as do government employees who might be blind or are deaf or have another disability so the original intention of section 508 because remember in 1998 online education was not a huge thing and that's not what this was written for section five way it was designed to give disabled federal employees comparable access to resources now that's not to be confused with section 504 section 504 prohibits federal agencies programs or activities from discriminating and requires reasonable accommodation for qualified individual Jules with disabilities so momentarily we will take a look at what's the difference between accessibility and accommodation now let's add in another piece of legislation the Americans with Disabilities Act this states that instruction provided as distance education is subject to the requirements that may be imposed by the Americans with Disabilities Act and section 508 of the Rehabilitation Act of 1973 as amended so the key point here is rather than develop their own set of standards the Americans with Disabilities Act states that section 508 and section 504 apply they are going to be the standards applied by the Americans with Disabilities Act so this goes back to the question I asked a moment ago which is what's the difference between accessibility and accommodation

I have not found an awful lot online that really explains as well and I actually came across this from a blog for disabled people about disabled it was called disability thinking and they had a what I think is a really good definition they said accessibility is what we meaning disabled people should expect to be ready for us without asking or planning ahead it can be provided by following an easy to implement set of standards and practices that make adaptation unnecessary we can benefit from accessibility without

announcing or explaining our disabilities contrast that with accommodation accommodation is for adaptations that can't be anticipated or standardized they are different for each individual although we should expect there to be a great willingness to accommodate us wherever we go we can't expect actual specific accommodations unless and until we ask for them we do have to announce and may have to explain our disabilities a bit in order to get accommodations so let's talk about what that means realistically if someone is in a wheelchair is that a matter of accessibility if they want to go to the library or is that a matter of accommodation well if you look at the definition of accessibility that's what we should expect to be ready for us without asking or planning ahead in other words a person in a wheelchair should realistically expect that there'll be some type of wheelchair available access to enter and travel through the library that nothing be inaccessible to them that is accessible to anyone else because you can reasonably anticipate that someone in a wheelchair may want to have access i would not categorize that as an accommodation because of what I said previously this is something that can be anticipated it's not a highly unusual need or situation what if we put that into the context of an online course now let's say you're designing an online course in this course is going to have an instructional video where the teacher is talking and maybe there are some charts or graphs that are being displayed on the screen is it reasonable to say that a blind person or a person with limited vision may want to have the same access and to be able to have the information communicated to them that was on those charts and graphs or if you have a student who is hard of hearing is it reasonable to assume that there be another way that that information can be accessed by that student so when we're talking about those two scenarios we're talking about accessibility and that is what they should expect to be ready for them without asking for planning ahead a deaf student should not have to make a special request to be able to access any learning materials that are presented in a audio manner only the alternative should also be accessi:00 same thing for the student who has limited vision those are situations that can be anticipated and should be planned for now the reason I really want to drive that point home is that in my experience a lot of institutions confuse accommodation with accessibility and when I start talking to them about making sure that they're content in their online courses is accessibility they say oh not to worry we have an accommodations office and when a student has a special need they go to the accommodations office and the accommodations office will take care of whatever it is to help that student be able to learn in the way that suits their particular disability but often they don't understand that accessibility is the standard that should be applied in the design and instructional process and it should not have to go to the accommodations office unless you have a student with very particular and unique means that could not be readily anticipated now when we start to look at section 508 what we will find is that it's currently under revision the proposed rule and revision includes very significant changes because this is a very out of date piece of legislation these changes would incorporate the w keg to . o which we'll talk about shortly and apply associated success criteria to websites as well as to offline electronic documents and software so think pdfs it would require real-time text functionality and that means like text that's transmitted character by character as it is being typed so not like Facebook messenger or texting that doesn't send text character by character that sends it in a block when you hit sent RTT is a true real time texting and that is for products providing real time to a voice communication so think a phone call that type of functionality would have to be used in any type of a to a phone call so this is not something that's really going to be a design consideration it also specifies the type of non-public facing electronic content

covered and further details the required compatibility of covered technologies gets into depth on operating systems software development tool kits and software applications with assistive technology so the one that's going to be the most important of all of this for online course design standards really is going to be the WCAG 2.0 so what exactly is WCAG 2.0 and why does it matter well just a little bit of background an organization called the world wide web consortium is an international community where member organizations a full-time staff and the public all work together to develop a consistent web standards w3c developed the web content accessibility guidelines and revise them actually to version two point O in December of 2008 now until now or until the very near future these guidelines were just that they were just guidelines they were best practices for making online web content accessible now the new implementation of section 508 that's presently under review for future legislation would make those standards presumably enforceable now I had the opportunity to speak recently - Timothy Creagan he's the senior accessibility specialist with the U.S. Access Board we had a very lengthy conversation about where this revision is in the process and what's the best advice to give to colleges and universities right now in the absence of a real clear legislation to stipulate what standards they have to live up to in a nutshell his advice was until any clearer guidelines for education are accepted and established WCAG 2.0 is the best set of guidelines to follow because they're the most thorough and they're also presumably going to be widely adopted for application and education as well as it is it already is as a guideline for all web design so bear with me as we go down the rabbit hole here the ad a adopted section 508 as its standard section five oh wait its adopting WCAG 2.0 as its standard so do I follow a TA requirements do I follow section 508 requirements or do I follow WCAG 2.0 or requirements and of course the answer is yes so what's the timeline for the revisions to section 5 wait to become enforced ah that's pretty great it I spoke with Creagan about where exactly is this in the process and what can we expect the last public information that was given i believe it was around February of 2015 where the U.S. Access Board stated that public hearings to give feedback to the proposed legislation are over now that that has happened a whole lot of approvals have to be obtained and he gave me a few acronyms like the OMB the office of management and budgeting has to approve it then it has to go to another board and then they have to propose any changes and figure out where the funds would come and then it would get kicked back to the access board to implement any necessary changes and then a final iteration would eventually be accepted what I got out of that conversation is that the process is lengthy and is mired in red tape and no clear date of implementation is imminent it is coming but it's going through the bureaucratic process if you will so what other standards apply I've already mentioned section 504 which is often referred to along with section 508 and if i have a weight covers accessibility 504 covers accommodations the reason that I'm focusing more on 508 is because that is the one that is often overlooked I don't think it happens very often that an institution is sued over accommodations because every institution has an accommodations office and no institution would deny a reasonable accommodation however not every institution is in tune with the need to provide accessible information without it being asked for and that's where the problems arise now for those of the author that might be a quality matters school you might be wondering if meeting quality matters covers the standards in an acceptable way quality matters standards a . 3 briefly address accessibility it says the course provides alternative means of access to course materials and formats that meet the needs of diverse learners now although the QM rubric provides this general guideline that annotation is far too narrow in scope to ensure that if you've met that you've met full legal compliance so

for that for the QM schools for copyright reasons I can't share a lot of quality matters documentation but I would point you to your QM rubric for more details on that topic now one landmark piece of legislation at least I see it that way was the Harvard-MIT lawsuit that took place a few years ago so we want to take a look at what led up to that lawsuit and what the implications are for online learning how to give you a little bit of back story before this lawsuit even came out in 2010 the Justice Department's civil rights division and the education department's office for civil rights so two similar offices different departments started to anticipate that there were some problems with accessibility in academic delivery so they sent a joint letter to university and college presidents in which they said federal disability laws required that individuals with disabilities must be provided with AIDS benefits or services that provide an equal opportunity to achieve the same result or the same level of achievement as others now just as a note the letter itself actually referenced section 504 meaning the provision of accommodations six times never once did it specifically mentioned section 508 the providing of accessibility and actually the topic that promoted the letter at the time plus electronic book readers so think like you know that the kindle fire or a similar type device where a sighted person would easily be able to see it and navigate it but those type of devices at least at the time did not have any type of way for a blind person to use some kind of a screen reader or something in order to be able to receive the same knowledge and information fast forward five years February 2015 the plaintiff was the National Association for the Deaf the defendant was Harvard and MIT and the laws cited in the complaint was the a DA and the rehabilitation act so the blanket act that covers 5045 away all other standards that need to be met now here was there specific complaint the complaint against Harvard cited that YouTube videos podcasts and other types of visual information and audio information in particular MOOCs for those of you that don't know those are massively open online courses and are typically free so these were available through the online learning platform known as EDX and these were cited as examples of thousands of videos and audio tracks publicly available and free to anyone so EDX offers courses that are free and open to the public but without captions according to the complaint and it wasn't necessarily even that they were completely without captions because a lot of the videos used YouTube's Auto captioning feature for those of you that have never used or seen the results of YouTube's audio captioning you should know that it is highly inaccurate and very often will you lose the meaning if the person did not speak perfectly distinctly or if they used unfamiliar words or jargon or acronyms or if they have a slight accent or a muffled microphone YouTube's auto captions are a nice convenience but they are not highly reliable the complaint further states that the university has largely denied access to this content to be approximately 48 million nearly one out of five Americans who are deaf or hard of hearing according to the complaint a significant amount of Harvard's online content does not provide proper captioning and is thus in accessible to individuals with hearing impairments in talking about this with Timothy Creagan from the U.S. Access Board I may just kind of an offhanded comment that no good deed goes unpunished Harvard and MIT set out to put free information out there and as a result this is what they had to deal with and he rightfully reminded me kind of put me in my place and he said yes but when you don't make that information accessible to all it's the same thing as saying hey here's free information and free education for anyone except people with blue eyes or accept people with blonde hair it's discriminatory so when you exclude a portion of the population and what you offer for free it really just isn't fair now since this original lawsuit there has been a partial resolution EDX entered into a settlement agreement with the Department of Justice in April and where and stated that they would address alleged

violations of the Americans with Disabilities Act the private lawsuit from the NAD remains unresolved I've been tracking and following the news and have not been able to find any update that anything new has happened with that Billy a lawyer for the National Association for the Deaf said I think it's a clear indication from the Department of Justice which does have the duty of enforcing the ADA that it believes online content is subject to the ADA and that is a powerful take away the settlement will require EDX to make significant modifications to its website mobile applications and content management system the settlement also will require EDX to make its website fully accessible within 18 months this will entail providing accurate captioning for the deaf oral navigation signals for the blind and programming changes so those with dexterity disabilities can navigate content without struggling with a hand-operated mouse according to the release now this underscores a common theme that I have seen in the lawsuits that occur as a result of failure to provide accessibility now notice what the original lawsuit was about it was about captions for the Deaf look at the outcome of what's happening to EDX of all the things that they're going to have to fix and improve in order to appease the Department of Justice they are going to look at everything I have looked at other examples of lawsuits where a similar infraction occurred the captions were not appropriately provided and when you got the NAD involved in the Department of Justice coming in to investigate they will investigate everything they will look at all of your online content and make sure it means every every aspect of accessibility standards they will come and measure your wheelchair ramps and make sure that they are the correct slope and that all buildings are accessible they will go into your sports stadium and make sure that if you have some sort of a scoreboard that has maybe a scrolling tracker that provides visual information that that same information is also broadcast in some kind of an audio fashion they are going to turn over every stone it is not a small deal so what are the implications further of the outcome of this lawsuit the implications are that section 504 and 508 are enforceable for private institutions of higher education although the lawsuit is around free and open content and massively open online courses the next logical step would be a lawsuit against a distance education provider who does not make their content appropriately accessible also any institution that receives any kind of federal funds whatsoever is add additional risk for exposure if the National Association for the Deaf wins the suit it's highly likely that similar suits will follow and standards cover all types of disabilities not just hearing the potential ramifications for this clearly go far beyond just making sure that you provide captions another example of this would be an Atlantic Cape community college and 2015 to blind students alleged that acc had content that did not adequately provide accessibility for their individual needs and that's all it takes to blind students who then invoke the National Federation of the blind and gets their interest and they bring in their lawyers and then it goes to the Department of Justice now as a result a lot of things had to change for this College some of the specifics are they had to hire an outside consultant to come in and evaluate their disability support services they had to revise all their disability policies they had to provide live training for all of their employees they also had to develop a TA student training and they also had to complete a full technology audit of all technology and the campus and then submit a corrective plan to show what they were going to do in order to bring everything up to accountability standards and yet one more example the University of Montana and 2012 was accused and again it just took a couple of students of having inaccessible class assignments and materials on in their case it was Moodle inaccessible chat and discussion board functions in accessible documents that are scanned images on web pages and websites so think maybe a PDF that was like a scanned article that a screen

reader could not interpret inaccessible videos and videos and flash format that are not caption  
inaccessible library database materials inaccessible course registration through a website and also and  
the shows you the level of detail that they will take if you're under an investigation inaccessible classroom  
clickers these are just a few there are many many examples just a few highlights or lowlights if you will  
2009 Arizona State University sued for the use of the amazon kindle which as mentioned earlier did not  
provide an alternative means of accessing material Florida state university sued for inaccessible  
technology Mesa Community College sued by a blind student for needlessly inaccessible technology  
Miami university of Ohio sued by the NFB for failure to make necessary modifications and multiple  
lawsuits I found in 2011 / google apps in accessibility now let's take a look at some of the specific  
standards and how they are applied here's a high-level overview of the first bullet point is that there's a  
text equivalent for every non-text element so if you're using images for example you would have to have  
some kind of an alt tag some other sort of description for the student that is blind or visually impaired  
equivalent alternatives for any multimedia presentation shall be synchronized with the presentation so in  
other words if you have a video and that video conveys meaning to the students a transcript does not  
really fit the bill because the transcript is not synchronized with the presentation now we can discuss that  
maybe in a little bit more detail and how that can be determined web pages shall be designed so that all  
information conveyed with color is also available without color this is one that you have to be careful of if  
you tell students to read a paragraph and pay particular attention to the words that are in red that is  
inaccessible documents should be organized so they are readable without requiring an associated style  
sheet and a text-only page with equivalent information or functionality shall be provided to make a  
website comply with the provisions of this part when compliance cannot be accomplished in any other  
way the content of the text only page shall be updated whenever the primary page changes so a last-  
ditch alternative is if you have no other way to convey something that's in a chart or a diagram or a graph  
or a video a text-only page that contains that information as long as it's kept up to date is an acceptable  
alternative let's hold some of these applications up to the various standards ok let's say you've got a pre-  
recorded podcast and it's built into the course audio content quality matters would say a text transcript is  
acceptable section 508 would say a text transcript is accessible and so at WK egg and the reason for this  
is there's really nothing to synchronize the audio with it doesn't match up with the video or anything audio  
simply needs to have the alternative means of communication provided what is live audio content like a  
webinar quality matters would ignore that because Bobby matters focuses on the design of course not the  
delivery of a course section 508 does not apply into it only would apply to an artifact that would be saved  
in the course and the same with WCAG 2.0 it's not a web design consideration now that being said if you  
have a live webinar for your students and at the end of the webinar you are kind of it and you save it and  
you post it in the online course that then needs to be accessible if it was a live discussion between  
teacher and students then there needs to be some sort of captioning in order to make it accessible what  
about a YouTube video that has audio quality matters would say captioning is ok if the audio corresponds  
with video content in other words if certain words have to occur at certain times in the video in order for it  
to make sense you need to caption it if there's nothing that really needs to be synchronized a transcript is  
ok section 508 says within it that all training and informational video and multimedia productions contain  
speech or other audio information necessary for comprehension should be open or closed captioned and  
that also would be similar for what the web content accessibility guidelines say and that would even add

further that if there are significant actions they need to be explained with in the captioning so maybe if one character slams the door in the video and that's significant - what is being communicated there would have to be a little blurb in the captioning that says slams door and another common one a picture is placed in the text of a Content page quality matters says alt tag a long description caption or audio description section 5 away includes that thought has to have equivalent alternative text and the web content accessibility guidelines also all non-text content has to have a text alternative with some exceptions ok now what if there is a PDF of an article posted in the course quality matters specifies the PDFs that contain text are not merely image scans any text contained in the PDF has got to be selectable and searchable section 508 goes it's way way too many details to mention here but it at the very minimum concurs with what quality matters says the web content accessibility guidelines don't really address that because that's not a web thing necessarily a PowerPoint is posted in the course and it relies heavily on graphics and smart and all the other fun cool things you can put into a PowerPoint quality matters would say that you have to have alt tags for all objects tables are set up with headings for columns and rows fonts are all from the style gallery which we can explain and talk about more if you like and that colors alone are not relied on to convey meaning of section five away I found a document that has so much detail about what you couldn't do that it really just amounted to finally saying forget just don't even do it PowerPoints are extremely difficult to make accessible and again the web content accessibility guidelines says well it's not really web content the best advice that I could give to any college or university is to sit down and while but the college to sit down but you get what I mean it take a hard look at where you are with accessibility and develop a proactive institution-wide plan to not only get yourself to the point of near accessibility because it's very very hard to obtain perfect accessibility but at least to be able to stay on top of it to monitor it and to keep up to date with the standards as they change a few steps that I recommend in order to get into that . first establish a compliance committee that encompasses all departments of the College the University including of course the legal department develop a statement of your institutions commitment to both accommodations and accessibility and adhered to that statement there should be an open commitment to providing an accessible website there should be an outline of key guidelines and standards the website files there should be any known exceptions to the intended level of web accessibility and not only that there should be contact information for reporting difficulties with the website now this is talking about our website this could be a learning management system this could be everything that's accessible to the students through online or even just through technology in general but somewhere you need to publicly state that you are committed to providing an accessible experience and give them every opportunity to bring issues directly to you if they find otherwise meeting students finally do it internally conduct and accessibility audit if you have students or staff who have disabilities have them assist familiarize yourself with the tools that can be used website checkers such as the wave plugin screen readers try downloading a screen reader app and navigating your own web site materials and seek outside assistance if necessary it's a good idea to involve student government that was one thing that the University of Montana did and they did right when they were called on a carpet as it were for the issues that they had they united with the on-campus Alliance for disability and students make them your ally not your adversary it's what's best for your students develop an employee training plan especially for anyone who might be putting content online online instructors need to be trained in what they can and cannot put online include something about accommodations and accessibility training in Student



Orientation students need to be told if you have accommodations that's the accommodations office I think we're really good at telling them that if you are finding material inaccessible alert this person send an email to this place call this office do this do that give them the first avenue to approach so that they don't need to take it outside of the institution finally and very importantly of course is develop accessible course design policies and practices because really course design is where the rubber meets the road with this and your instructional designers need to be your first line of defense in knowing what they can and cannot do in online delivery