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In our last [alert](#) on the growing interaction between ed tech and disability law, we noted that the Department of Justice ("DOJ") appears to be moving to extend the provisions of the Americans with Disabilities Act ("ADA") to reach entities *other than* schools that provide online educational programs and services. Another recent DOJ enforcement effort in the education space serves as an important reminder to schools and colleges that they must carefully consider their obligations under the ADA when adopting new learning technologies.

In May, DOJ moved to intervene in a private lawsuit brought by a blind former student alleging that her university failed to provide her with accessible textbooks and technologies and failed to timely provide appropriate accommodations. Not only is DOJ seeking to intervene, but it is attempting to significantly broaden the scope of the student's complaint to include the institution's alleged use of inaccessible technology across *other* curricular and co-curricular programs, as well as to technologies that it asserts are inaccessible to students with *other* disabilities, such as those affecting hearing and learning. Despite several months of negotiations, the parties have failed to reach a settlement, and on August 25, the case has been returned to the U.S. District Court for the Southern District of Ohio for litigation. Although the court has not yet acted on DOJ's motion to intervene, the motion and complaint highlights DOJ's position regarding how far schools must go to ensure that students have equal access to educational services.

While the initial complaint was relatively narrow, by using both its Title II enforcement authority to seek to intervene in the case and at the same time launching its own compliance review, DOJ has cited additional violations that center on the university's use of "inaccessible technology" developed by a long list of third-party software and content providers. These violations include using web-streaming services that either lacked or contained inaccurate captioning, as well as using several systems for learning management and collaborative work that DOJ alleges did not support screen readers and contained features that were incompatible with assistive technologies. [Read the full complaint.](#)

With its latest action, it is clear that schools, colleges, and other "place[s] of education" continue to be at the center of DOJ's enforcement efforts, particularly with respect to how schools implement technology in the context of ADA accommodation. Indeed, in its motion to intervene, DOJ said that one reason it was pursuing the enforcement action is because the use of inaccessible technologies in higher education is an area of "great public importance."

However, there is a benefit to the government's action: In highlighting specific issues, the DOJ complaint serves as an important roadmap to help institutions, other education providers and ed tech companies identify areas of concern in managing ADA compliance. As more information is digitized and technology becomes more fundamental to student learning, there are more points at which technology enters curricular and extracurricular programs and services. Although the ADA is intended to give institutions considerable discretion as to how they accommodate students once they declare a disability, the very benefits that the educational technologies provide make it difficult for schools to identify, acquire, and quickly put in place effective alternatives once a student declares that the technology is not accessible. Thus, schools must focus on adopting technology that *already* contains appropriate accessibility features. Institutional compliance with the ADA requires careful and consistent monitoring, procurement controls, employee training and buy-in, and strong policies to ensure that all of an institution's many constituents remain compliant with the institution's ADA responsibilities.

DOJ's new focus on the implications of technology on ADA compliance puts pressure on technology providers to incorporate into their designs robust accessibility features. The fact that the government has increased pressure on institutions to ensure that their

technology systems must be accessible creates both an obligation and an opportunity for the education technology industry to accelerate the incorporation of accessibility features into the design of products intended for use in schools and colleges, including ensuring they are compatible with common assistive technologies.

If you have questions about DOJ's position in this and similar cases, or if you are facing a similar inquiry, require assistance developing an institutional compliance plan, or need guidance on what constitutes an "accessible" technology product, please do not hesitate to contact us.

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