The Surf-By Lawsuit Has Officially Found Its Way To The School Industry

Insights
11.30.18

Earlier this year, we published an article warning that websites have become the new hotbed of litigation brought under the Americans with Disabilities Act (ADA), and that schools across the country should take note ("Your School Could Be One Click Away From A Lawsuit"). It appears our warning was a timely one. A recent lawsuit filed against a vocational school in New York marks what we believe will serve as just the beginning of an onslaught of website accessibility complaints targeting public and private school websites.

Schools Are Targeted For Lawsuits

In the case of *Dominguez vs. Christine Valmy International School, Inc.*, filed in a New York federal court on October 24, the plaintiff claims that the school's publicly available website is inaccessible to users with disabilities. The complaint alleges that this inaccessibly creates a significant disadvantage for individuals with disabilities in a modern society that is largely driven by an electronic marketplace.

Websites that do not accommodate assistive technology can create unnecessary barriers for users with disabilities, and help fuel website accessibility claims. How can websites be inaccessible? Many people with disabilities use "assistive technology" to enable them to use computers and access the internet. For example, individuals who are blind or have low vision may use screen readers—devices that speak the text on a monitor—to assist them in accessing a website's content. However, such users cannot fully access a site unless it is designed to work with the screen-reading software.

Another example of an accessibility barrier that needs to be addressed is ensuring individual website pages are coded so that users can navigate by means of a keyboard or single-switch access device alone without need of a mouse. Users who cannot use a mouse with precision could find websites unnavigable without this design.

School websites can be particularly vulnerable to these types of lawsuits since content is often continuously updated by multiple different individuals. Therefore, even if you hired a vendor to build an accessible website, maintaining that accessibility can be a challenge in the school setting.

What Does The ADA Require?

Title III of the ADA prohibits disability discrimination by places of public accommodation. This category of businesses includes private entities whose operations affect commerce and that fall into

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category of businesses includes private entities whose operations affect commerce and that fall into one of 12 categories listed in the ADA. The list specifically includes "a nursery, elementary, secondary, undergraduate, or post-graduate private school, or other place of education," among other business types.

When Congress enacted the ADA in 1990, the existence of the internet and the pervasiveness it holds in today's society was all but unfathomable. As such, the ADA does not specifically address website accessibility. However, as Congress expressly stated when passing the ADA, "the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times" and technological advances "may require public accommodations to provide auxiliary aids and services in the future which today would not be required."

How Can You Make Your Website More Accessible?
In preparation for the Department of Justice's long-awaited regulations on this topic, all schools should begin making their websites accessible to individuals with disabilities through features that facilitate easier navigation and are compatible with assistive technologies. The DOJ has emphasized its interest in adopting the Web Content Accessibility Guidelines (WCAG) 2.0, a set of international standards outlining methods to make websites more accessible for individuals with disabilities, which many plaintiffs' lawyers also rely on in their lawsuits. You should therefore review WCAG 2.0 for guidance on making your website accessible for a variety of ADA-covered disabilities.

Conclusion
Schools should anticipate receiving increased ADA scrutiny and challenges to the accessibility of their websites. By taking some steps to ensure compliance with the WCAG, you can decrease your risks of facing a future lawsuit.

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