

---

## Justice Department Settlement With edX Suggests Heightened Scrutiny of Online Course Accessibility and Potential Strategies for Schools

APRIL 3, 2015

On April 2, the Department of Justice entered into a settlement agreement with edX, a major online college course provider, over alleged violations of the Americans with Disabilities Act (ADA) related to the accessibility of online courses. EdX operates a web-based service that allows members of the public to view hundreds of online courses, including courses at more than 60 universities. Following a compliance review, the Justice Department determined that edX violated the ADA by not ensuring that online courses were accessible to people with hearing, vision and manual dexterity disabilities. EdX denied any ADA violations and disputed the Justice Department's findings.

The settlement agreement is notable both for what it signals about the federal government's enforcement strategy for online accessibility in higher education and for the practical guidance it may offer institutions of higher education.

The edX settlement could portend enforcement action against other providers of online courses, including colleges and universities. The settlement agreement itself notes that "many of [edX's Content Providers] are independently covered by the ADA," and it contains an express determination by the Justice Department that edX violated Title III of the ADA.

The settlement agreement seems to anticipate that edX will set accessibility protocols that will be broadly adopted. It notes that edX's new measures "will permit Content Providers . . . the opportunity to contribute Course Content that complies with the ADA" and that because edX's code is open-source, "any modifications made under this Agreement will enable other [Massive Open Online Course] providers to enhance the accessibility of online offerings." Settlement Agreement ¶ 7. It also requires edX to develop "Accessibility Best Practices Guidance for Content Providers," to mandate that course providers review the guidance, and even to warn that the "use of authoring tools other than those provided by edX may result in inaccessible course conduct." *Id.* ¶ 27(a). The edX guidance must be issued in 90 days.

To reduce potential risk under the ADA and Section 504 of the Rehabilitation Act, online course providers could consider implementing some of the changes that edX committed to carry out as part

of the settlement agreement or undertook before entering into it. These changes include:

- Ensuring that rolling transcripts and captioning are available on course videos
- Allowing users to set their own schedule for viewing online courses
- Designating a Web Accessibility Coordinator
- Adopting a Web Accessibility Policy
- Retaining a consultant to evaluate accessibility
- Soliciting feedback from users on course accessibility
- Conducting accessibility training for employees responsible for maintaining online course content

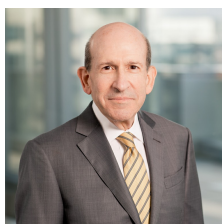
Online course providers, even if they do not utilize edX, should also review the forthcoming edX Accessibility Best Practices Guidance for Content Providers when it is released.

Federal enforcement authorities are increasingly active on the issue of disability accessibility at colleges and universities. Further developments can be expected as more government resources are dedicated to higher education enforcement. In June 2010, the Justice Department Civil Rights Division and the Department of Education Office for Civil Rights (OCR), which share ADA/Section 504 enforcement responsibility over colleges and universities, issued a joint letter identifying a "serious problem" with electronic book readers that do not offer a text-to-speech function for students with impaired vision. And in December 2014, OCR reached resolution agreements with the University of Cincinnati and Youngstown State University that required them to ensure website accessibility for users with visual and hearing disabilities. These actions followed a March 2013 resolution agreement with the South Carolina Technical College System on the same issue.

The [edX settlement agreement is available here](#). The lawyers in WilmerHale's Education Practice Group are available to discuss the implications of the edX settlement agreement and to help clients develop strategies for avoiding similar scrutiny by the Justice Department and/or OCR.

---

## Authors



**Bruce M. Berman**

**PARTNER**

General Counsel

✉ [bruce.berman@wilmerhale.com](mailto:bruce.berman@wilmerhale.com)

☎ +1 202 663 6173



**Jamie Gorelick**

**PARTNER**

Chair, Regulatory and  
Government Affairs Department

✉ [jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

☎ +1 202 663 6500