

Chalkboard



An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold

2018 Issue 1

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Making School Websites Accessible for Those with Disabilities

by Cheryl A. Dixon and Haley A. Drusen

It is well known that Title II of the American's with Disabilities Act (the "ADA") and Section 504 of the Rehabilitation Act ("Section 504") require school districts to provide students with disabilities equal access to educational benefits. That includes benefits afforded by technology, such as books on tape, electronic book readers, software programs, online instructional material, and other technology. To achieve compliance with the ADA and Section 504, school districts must either ensure that technology is accessible to students with disabilities or provide them an alternative way of receiving the same benefits. What may not be as well known,

however, is that the ADA also requires school districts to take appropriate steps to ensure that communications with applicants, patrons, members of the public, and companions with disabilities are as effective as communications with able-bodied individuals. Therefore, school districts must ensure that their websites are accessible, not just to students, but also to district personnel, parents, and other patrons.

In recent years, the U.S. Department of Education's Office of Civil Rights ("OCR") has received numerous complaints against school districts in almost every state alleging that the school districts' websites are

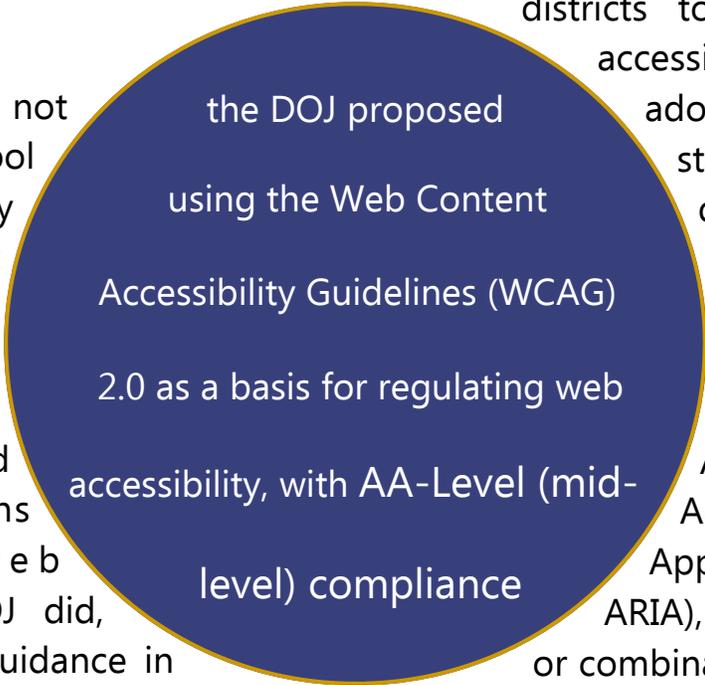
SAVE THE DATE:
2018 Spring School Law Conference
When: Wednesday, February 21, 2018
Where: Metro Tech, OKC

inaccessible to individuals with disabilities and, therefore, violate the ADA and Section 504. According to the OCR, the obligation to provide accessible websites applies to all web content created by a school district and its school sites, whether external or internal, which is part of the operations of the school district.

Federal law does not require local school districts to follow any particular web content accessibility standard. Additionally, the Department of Justice (DOJ) has not yet issued specific regulations concerning web accessibility. The DOJ did, however, issue some guidance in 2016 in the form of a Supplemental Advanced Notice of a Proposed Rulemaking. In this document, the DOJ proposed using the Web Content Accessibility Guidelines (WCAG) 2.0 as a basis for regulating web accessibility, with AA-Level (mid-level) compliance being required for state or local governmental entities like school districts. This proposed regulation was placed on the "inactive list" of regulatory processes in July 2017—meaning that the DOJ Administration is not pursuing it at this time, though it may be recalled in the future. Although the DOJ's rulemaking appears to be put on hold for now, school districts should begin the process of making their websites accessible given the fact that OCR is actively pursuing

complaints against school districts for discrimination based on Title II of the ADA.

Further guidance on this issue can also be found in school districts' voluntary resolution agreements with the OCR. These agreements typically require school districts to develop a website accessibility policy that adopts a specific technical standard the school district will use to determine whether online content is accessible, such as the WCAG 2.0, Web Accessibility Initiative - Accessible Rich Internet Applications Suite (WAI-ARIA), or another standard or combination of standards that will render online content accessible. Here is a brief description of some of the accessibility requirements for different forms of online media (these are described in much more detail in the WGCA 2.0):



A. General Website Requirements: Generally, websites that are accessible have accessible headings and tables of content that allow disabled individuals to easily navigate between different webpages. Accessible websites are also able to be controlled solely by keyboard functions, allow users to change color, size, and contrast of the font, and avoid animation that flashes or does not automatically pause.

B. Documents: All documents being newly posted to websites should be posted in a format that allows individuals with disabilities to access them. This could include “tagged” pdfs, certain rich-textual documents, or other formats that meet WCAG 2.0 standards. Color-coded documents have to be explained textually or made otherwise accessible.

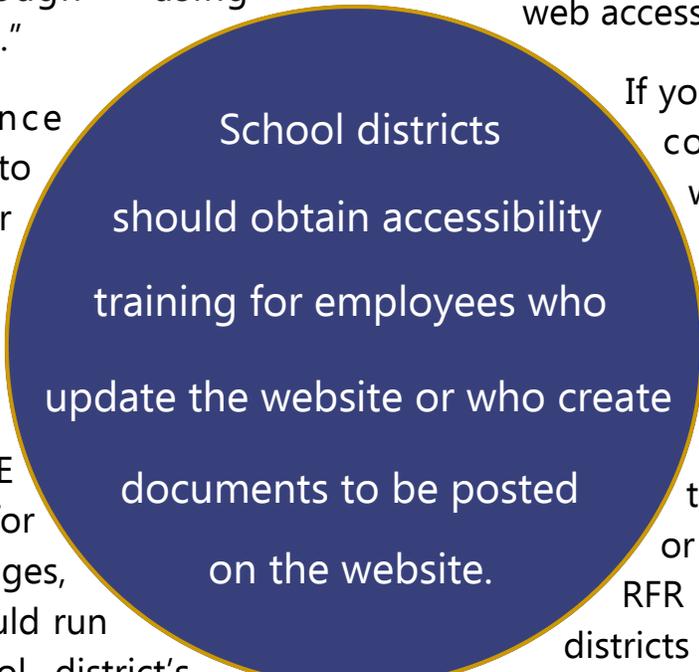
C. Video: Accessible videos include closed captions and a sound bar that can be controlled independently of the system.

D. Images or Non-Text Content: Accessible images and non-text content must allow a disabled user to see a description of non-textual content rather than a blank file. For example, when a user scrolls over a picture, a caption would describe that picture. This is typically accomplished through using “alternative text format.”

Online compliance checkers are available to determine if your school district’s websites have any accessibility errors. For an inexpensive option, WebAIM WAVE produces free reports for individual web pages, meaning that you should run reports on the school district’s public website to see where there may be accessibility errors, although some errors must be confirmed manually. This process

would have to be repeated for each web page. There is also an option for in-depth reports on site-wide compliance available for a fee.

After determining if your school district’s website has any compliance issues, the next step is to determine what problems the school district can fix and what problems require contact with a software vendor or developer. School districts should obtain accessibility training for employees who update the website or who create documents to be posted on the website. Finally, the school district should create a web accessibility policy if one isn’t already in place. This will not only help streamline the discussion if the district receives a complaint from OCR, but it will also help the district set goals and designate points of contact regarding web accessibility.



If you have any questions or concerns regarding whether your school district’s website content is fully accessible, please contact your school district’s information technology professional or your district’s attorney. RFR is guiding a number of districts through the process of making their websites more accessible for all and can also help you create a web accessibility policy to suit your needs.

FERPA and the Creation of Student Education Records via School District Video Surveillance Footage

by N. Roxane Mock

The Family Educational Rights and Privacy Act ("FERPA") is a federal law that protects the privacy of students' education records and the Personally Identifiable Information ("PII") contained therein. FERPA provides the federal regulatory scheme allowing school districts to release and/or disclose students' education records. The term "education records" means, with certain exceptions, those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. FERPA affords parents and eligible students the right to have access to their education records, the right to seek to have their education records amended, and the right to have some control over the disclosure of PII from their education records. An "eligible student" is a student who has turned eighteen (18) years of age or is attending an institution of postsecondary education at any age. Under FERPA, an educational agency or institution is prohibited from disclosing student education records or the PII contained therein without prior written consent from the parent or eligible students, unless the disclosure meets an exception to FERPA's general consent requirement.

As a safety measure and disciplinary tool, many school districts have installed cameras on school buses, in hallways, and in other areas with high student traffic and/or frequent safety concerns that need to be closely monitored. However, when a school district uses video cameras, it may be creating an "education record" that is subject to the requirements and regulations of FERPA. In Oklahoma, when classified as an education record, the release of school district surveillance video footage is subject to the requirements of the Oklahoma Open Records Act, Oklahoma Children's Code as well as FERPA. Oklahoma law and FERPA prohibit school districts from releasing PII, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions unless authorized by the student's parent.

FERPA provides that when education records contain information on more than one student, the parent may inspect and review or "be informed of" only the specific information about his or her own child, unless the information about the other student or students can be segregated and redacted without destroying its meaning. As mentioned previously, school districts often use school video surveillance footage for purposes of monitoring safety concerns and/or student conduct. School districts' video surveillance footage almost always contains the PII of multiple students.

When school districts review and use school video surveillance footage to investigate an accident or incident involving a student and/or to discipline a student, the school district has likely created a student education record that involves more than one student and is subject to the requirements of FERPA.

In a December 2017 letter providing guidance to a Pennsylvania school district, the United States Department of Education set out that school video surveillance footage was considered an education record governed by FERPA as (1) the school district maintained the video footage in the involved students' disciplinary files; (2) the video footage was directly related to the incident requiring investigation and discipline and the group of students involved in the incident; and (3) the school district had used the video footage to discipline the students for their conduct associated with the incident. The Department of Education also noted that the video footage was to be considered an education record of the victims of the incident. The Department of Education further opined that the parents of the alleged perpetrators to whom the video footage was directly related had a right under FERPA to inspect and review

information in the video even though the video footage also contained information that was directly related to other students so long as the information in the video footage could not be segregated and redacted without destroying its meaning. The Department of Education's letter advised that if it was possible for the school district to disclose only a portion of the video in a way that would fully depict a student's involvement in the hazing incident, then such segregation of information about other students was required.

In summary, parents of students that are depicted in school district video surveillance footage have a right under FERPA to view the video footage if it is part of their children's education record. When multiple students are depicted in the video footage and the video footage cannot be redacted or segregated without destroying the meaning of the footage, permission need not be obtained from the parents of the other students depicted in the video footage as the students are directly related to one another as a result of the event captured by the video footage. However, school districts may not give a copy of such video footage to any of the parents without written consent from all of the involved students' parents. *If you have any*

when a school district uses video cameras, it may be creating an "education record" that is subject to the requirements and regulations of FERPA.

questions about FERPA and its regulations regarding student education records, please contact your school district's attorney.

Copyright Law and Curriculum Materials for Technology Centers

by Adam S. Breipohl

Technology center school districts often enter into agreements with independent contractors, who may also be adjunct instructors for the district, to develop curriculum materials for use in the technology center's classes. Districts should be careful to avoid certain legal pitfalls related to these agreements that could lead to inadvertent copyright infringement and a possible risk of liability for the district.

First, technology centers must ensure that their contracts with curriculum writers give the district ownership over the materials developed pursuant to the contract. As a general rule (subject to certain exceptions) the copyright to a work rests with the author who originally created the work giving the author the exclusive right to reproduce or distribute the work. If ownership of the work is not clearly established, the author may be able to assert a claim against the school district that the district infringed the copyright to curriculum materials owned by the author by reproducing/distributing/selling those materials without permission. To prevent this, a contract or memorandum of

understanding must include certain specific language definitively establishing that the work is owned by the school district.

Another major consideration is making expectations regarding copyright law clear with curriculum writers. There is always a possibility that contractors who develop curriculum materials could incorporate existing works owned by third parties into the materials developed under the contract in a way that infringes on copyrights (whether due to a misunderstanding of the law or intentional wrongdoing), which could create legal exposure for a technology center. To avoid this, technology centers should consider providing appropriate training materials on copyright law to curriculum writers, hopefully reducing the likelihood that inadvertent infringement occurs. Districts may also consider adding provisions to curriculum development contracts that will ensure that any liability resulting from a contractor's infringement of others' intellectual property rights is to be assumed by the contractor, not the district, making it clear that responsibility for complying with copyright law rests with the author and offering some protection in the event that infringement does occur.

Finally, districts should take steps to ensure that their employees who oversee curriculum developments have a strong working knowledge of copyright law and that employees with this knowledge

Reminder:

Oklahoma school districts are required to implement the Federal Uniform Grant Guidance ("UGG") with respect to their management of programs supported by Federal awards. The UGG is a comprehensive set of updated guidelines for management of Federal grants encompassing areas such as financial management, audit requirements, and procurement methods, and is poised to go into full effect for the 2018-2019 school year. RFR offers a Federal Programs Policy that will assist school districts in their implementation of and compliance with the UGG. If your district is interested in this policy, please contact your RFR attorney for further information.

review all curriculum materials to check for possible copyright infringement before the materials are used by the school district. Although it is not always possible as a practical matter for a district to identify infringing materials, especially when they infringe on proprietary materials that are not publicly available, the best practice is still for employees to review the materials and follow up on any aspects that seem suspect, e.g. photographs used in handouts or lecture slides that are not accompanied by attribution, etc.

Overall, technology center school districts should carefully examine the contracts or other related documents they use for curriculum development, especially with regard to adjunct instructors, to ensure the district is protected from liability. Districts that have questions regarding intellectual property laws should consider contacting their legal counsel.

**Adam Breipohl is available to speak at your school district to provide training and guidance regarding compliance with copyright law. He can be reached at adamb@rfrlaw.com.*

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ATTORNEYS & COUNSELORS AT LAW

Chalkboard is a Rosenstien, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published monthly through the school year and is sent without charge to all education clients of Rosenstien, Fist & Ringold and all other persons who are interested in education law issues. We invite you to share *Chalkboard* with your friends and colleagues. We think you will find *Chalkboard* to be informative and helpful with the difficult task of operating our educational institutions.

Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstien, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

2018 Spring Conference

PROGRAM AT A GLANCE

8:00 a.m. to 9:00 a.m.	Registration and Refreshments
9:00 a.m. to 9:45 a.m.	School District Support Foundations — Jerry L. Zimmerman
9:45 a.m. to 10:30 a.m.	Compensation Packages and Considerations for Superintendents — Jerry L. Zimmerman
10:30 a.m. to 10:45 a.m.	Break
10:45 a.m. to 11:30 a.m.	Competitive Bidding Act and Construction Management — Eric P. Nelson
11:30 a.m. to 12:00 p.m.	Legislative/Policy Update — Haley A. Drusen

Sponsored By



ROSENSTEIN FIST & RINGOLD

Date: Wednesday, February 21, 2018

Where: Metro Technology Centers

Business Conference Center, Oklahoma City

**Cost: Free to all Administrators & Board
Members of RFR Clients—Public School Districts
and Career Technology Centers**

**Metro Technology Center Conference Center is located
at 1900 Springlake Drive, Oklahoma City, OK
Business Conference Center — Auditorium
Intersection of Martin Luther King Ave. & Springlake Dr.
between N.E. 36th and N.E. 50th (South of OKC Zoo)**

2018 SPRING CONFERENCE

**PLEASE REGISTER THE FOLLOWING FOR THIS SEMINAR:
(Please Print Legibly)**

Name School District Employed By/Position/Board Member

E-Mail Address

Name School District Employed By/Position/Board Member

E-Mail Address

Name School District Employed By/Position/Board Member

E-Mail Address

**Fax Form To: 918-583-5617,
E-Mail Form OR Above Information To:
jstreet@rfrlaw.com**

RFR will submit an application to the State Department of Education and the Oklahoma Department of Career and Technical Education for board member credit for Legal Issues Impacting Local School Districts or Continuing Education

*RFR clients are invited to attend this free seminar.
Non-clients are welcome to attend at a charge of \$125.00 per person.*