

Managing Digital Accessibility Risk in a New Era

Title II compliance, undue burden, and fundamental alteration — practical strategies for defensible, inclusive decisions

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Bree Callahan



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A recognized leader in the field of disability access and inclusion, Bree has held leadership positions with the Washington Association on Postsecondary Education and Disability (WAPED) and the Association on Higher Education and Disability (AHEAD). She has also contributed to two Washington State legislative task forces on transition and transfer pathways for students with disabilities. She currently serves on the AHEAD Board of Directors and on the advisory board of the University of Washington's DO-IT Center.

Judith Risch



Judy is one of the nation's foremost experts on digital accessibility. She is a twenty-year veteran of the Office for Civil Rights, including five years as Project Director of the National Digital Accessibility Task Force, where she oversaw Section 504 and ADA Title II enforcement across educational institutions and contributed to the 2024 DOJ ADA Title II digital accessibility regulation.

Judy's practice encompasses both policy guidance and technical implementation. On the policy side she assists educational institutions with compliance guidance, civil rights investigations, institutional accessibility strategy and governance, and training for administrators, legal counsel, and IT staff. On the technical side she aids her clients with WCAG 2.0/2.1/2.2 conformance review and remediation planning, manual and automated accessibility audits (JAWS, NVDA), VPAT review, and accessible technology procurement.

Considerations and Disclaimers

This is not legal advice.

This presentation is for general educational purposes only. Consult your institution's legal counsel before making any decisions about your specific accessibility obligations.

Two disciplines, one goal: defensible inclusion

1

Level setting

The new Title II landscape — the rule, the 2026 extension, scope and exceptions

2

Risk management

A framework to identify, prioritize, and address barriers within real resource constraints

3

Undue burden & fundamental alteration

The standards revisited for digital, clinical, and emerging contexts — and the process that makes decisions defensible

4

Cases & continuous improvement

Worked examples, enforcement lessons, equity guardrails, and discussion

The questions every institution is asking

“Where do we focus limited resources?”

Thousands of pages, PDFs, apps, and tools. No institution can remediate everything at once. The answer is risk management: prioritize by impact and exposure, and document the rationale.

“How do we decide when we truly can't?”

Undue burden and fundamental alteration are real — but narrow — standards. Used well, they are a disciplined process. Used badly, they are an excuse that fails in enforcement.

The through-line: strong process beats perfect outcomes. Regulators and courts look at how you decided, not just what you achieved.

1

Level setting: the new Title II landscape

What the rule requires, what changed in April 2026, and what it means for public colleges and universities right now.

The 2024 Final Rule at a glance

WCAG 2.1 Level AA

The technical standard for web content and mobile apps of state and local government entities.

28 CFR Part 35, Subpart H

1

Who is covered

All public entities under ADA Title II — including public colleges and universities, and services provided through contractors and vendors.

2

What is covered

Web content and mobile applications a public entity provides or makes available — websites, documents (PDF, Word, PowerPoint), video/audio, course content, and third-party tools used to offer services.

3

Why it matters

First time DOJ has adopted a specific technical standard for digital accessibility — moving from case-by-case 'effective communication' to a measurable benchmark.

4

Published

April 24, 2024 — after years of litigation and guidance filling the gap.

5

Built-in limits

Compliance is not required where it would result in a fundamental alteration of the service, program, or activity — or in undue financial and administrative burdens.

April 2026: the timeline shifted — the standard didn't

Interim Final Rule, effective April 20, 2026: DOJ extended compliance dates by one year. Everything else — including WCAG 2.1 AA — is unchanged.

ENTITY	ORIGINAL DATE	NEW DATE
Public entities · population 50,000+ (most public universities)	April 24, 2026	April 26, 2027
Public entities · under 50,000, and special district governments	April 26, 2027	April 26, 2028

DOJ's stated rationale: entities need more time to “muster resources,” technology needs time to mature, and extra time lets entities focus on compliance “rather than diverting time and attention towards the undue burden and fundamental alteration defenses.”

Disability advocates opposed the delay; several higher-ed associations had requested it. Public comment closed June 22, 2026.

An extension is not a pause

Title II applies today

Effective communication and program access obligations have existed since 1990. A student who can't access course content has a claim now — no 2027 date required.

Section 504 & state law

Resolution agreements, HHS's separate 504 web rule, and state accessibility statutes keep independent pressure on — on their own timelines.

Litigation doesn't wait

Private plaintiffs and OCR complaints predate the rule and continue through the extension. The rule sets a standard; it never was the only source of risk.

Decisions now lock in 2027

Every procurement, platform migration, and course-content decision made this year determines whether April 2027 is achievable.

Scope and the five exceptions

1

Archived web content

Kept only for reference/research, in an archive area, not changed since archiving

2

Preexisting conventional electronic documents

PDFs, Word, PowerPoint, Excel posted before the compliance date

3

Third-party content

Content posted by third parties — unless posted under contract, license, or other arrangement

4

Individualized password-protected documents

Conventional documents about a specific person, property, or account

5

Preexisting social media posts

Posts published before the compliance date

The exceptions collapse

An 'archived' or 'preexisting' document loses its exception the moment it is currently used to apply for, access, or participate in your services or programs.

And individuals can still request access to excepted content — effective communication duties remain.

The safe harbor for minor gaps

The rule builds in some breathing room. Even if you fall short of the technical standard in [§ 35.200\(b\)](#), you are still treated as compliant — but only where you can show the gap has such minimal impact that people with disabilities can still do all of the following, with substantially equivalent timeliness, privacy, independence, and ease of use:

- (a)** Get the same information as everyone else;
- (b)** Take part in the same interactions;
- (c)** Complete the same transactions; and
- (d)** Otherwise participate in and benefit from the same services, programs, and activities.

Bottom line: isolated, low-impact defects won't automatically break compliance — but the burden is on you to prove it.

What will enforcement actually look like?

1

Will the rule even take effect?

The 2024 Final Rule is on the books, but its future isn't guaranteed. A shift in administration, fresh litigation, or changed agency priorities could delay, narrow, or unwind it before the 2026–2027 compliance deadlines arrive.

2

Enforcement is litigation-driven

In practice, pressure comes less from proactive federal audits than from private lawsuits, DOJ complaints, and demand letters. Title II carries a private right of action — plaintiffs and advocacy groups, not just the government, set the pace.

3

Federal capacity is an open question

It's genuinely unclear how much investigative and enforcement muscle the federal government will bring right now. Plan for the uncertainty — documented, prioritized progress is the posture you can defend either way.

Bottom line: don't wait for a federal knock — documented, prioritized progress is your best defense whether the push comes from Washington or a plaintiff's attorney.

2

A risk management approach to compliance

Perfect compliance is impossible. Defensible, prioritized, documented progress is not.

The mindset shift

FROM

- › “Are we compliant?” (yes/no)
- › Audit everything, fix in page order
- › Accessibility as an IT project with an end date
- › Fear-driven, complaint-driven work

TO

- › “How well are we managing our risk?” (a posture)
- › Inventory, prioritize by impact, remediate in risk order
- › Accessibility as a permanent operational function
- › Data-driven, equity-driven, documented progress

Risk = likelihood × impact. Both the likelihood a barrier is encountered and the severity of harm when it is.

Four dimensions of accessibility risk



Legal & regulatory

DOJ enforcement, OCR complaints, private litigation, state AG action. Driven by visible non-compliance and poor process.



Human

A student who can't register, read the syllabus, or complete labs assignments. The harm the law exists to prevent — and the strongest predictor of complaints.



Operational

Emergency remediation is 3–10× the cost of building it right. Inaccessible procurement creates multi-year lock-in.



Reputational

Public resolution agreements, press coverage, campus trust. Accessibility failures are increasingly newsworthy.

Weigh all four — but let the human dimension anchor your priorities. It is both the point and the best leading indicator of legal risk.

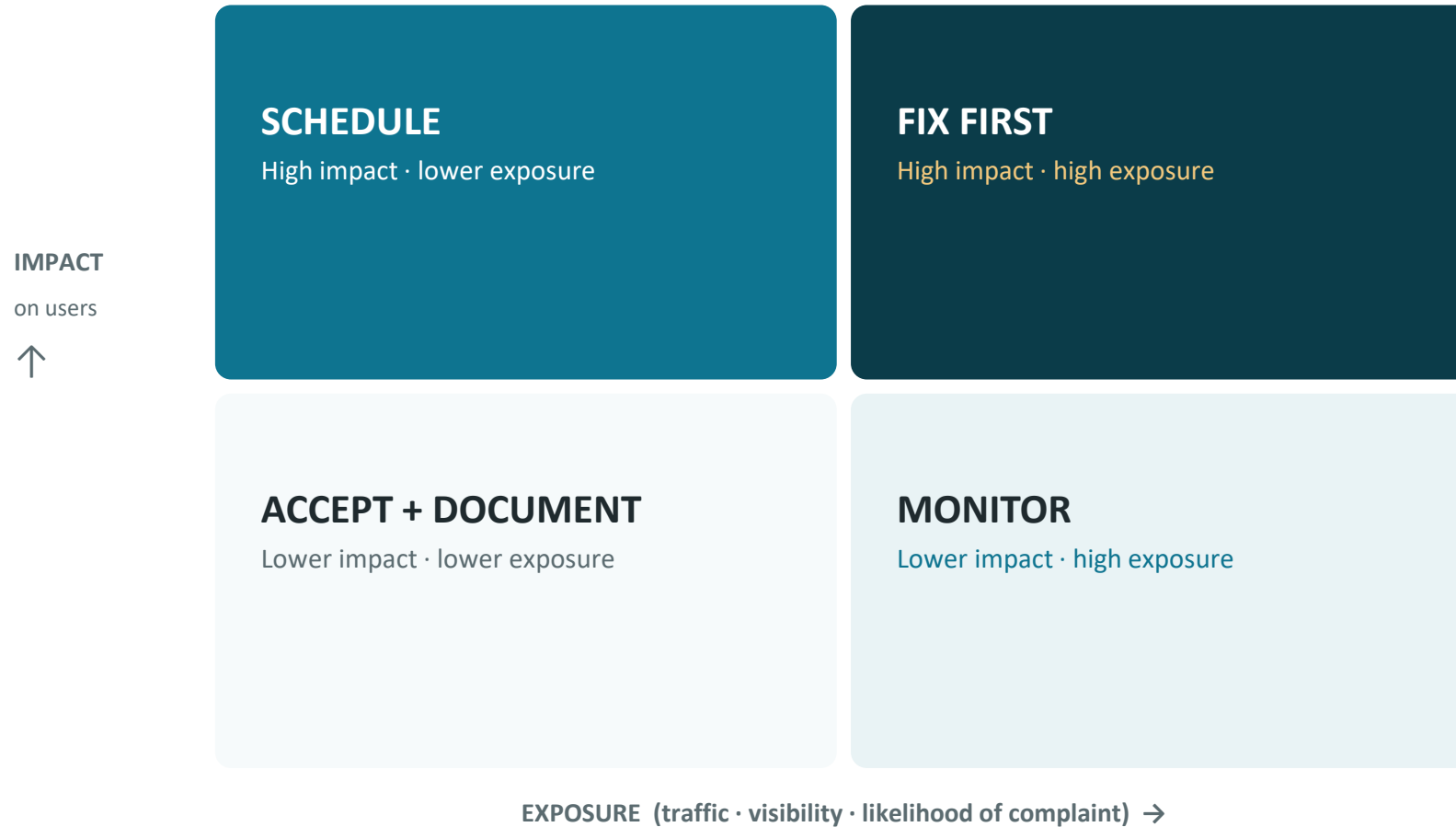
Identify your risk profile — no one size fits all

- **Map your exposure** — Review past complaints, OCR history, high-traffic public-facing interfaces, and critical vendor dependencies.
- **Conduct an environmental scan** — Assess current initiatives, staffing capacity, institutional expertise, and existing policies, procedures, and training.
- **Identify gaps** — Determine where tools, processes, resources, or knowledge are lacking and where additional investment is needed.
- **Inventory existing resources** — Catalog accessibility tools and practices that can be immediately leveraged and promoted.
- **Engage legal counsel** — Establish ongoing consultation; your risk profile drives downstream decisions and may require tailored guidance.

Step one: know your digital estate

Public websites & subdomains	Often thousands of pages across decentralized owners; subdomain sprawl is the norm in higher ed
Documents (PDF, Word, PPT)	Usually the largest volume category — syllabi, forms, reports, scanned legacy files
Mobile applications	Campus apps, transit, dining, safety — explicitly covered by the rule
LMS & course content	Highest human impact: required for participation, deadline-driven, no workaround
Procured third-party tools	Registration, payment, library databases, clickers, proctoring — covered when used to offer your services
Media	Video (captions, audio description) and audio (transcripts) across all of the above

The prioritization matrix



How to use it

- › Score each inventory category, not each page
- › ‘Impact’ = can a person complete the task another way?
- › ‘Exposure’ = traffic, public visibility, complaint history
- › Re-score after each remediation cycle
- › ‘Accept’ always means: documented, with an on-request access path

Set priorities based on risk profile

You cannot fix everything at once. Prioritize where risk and user impact intersect:

- **High traffic & high impact** — most-visited pages, high-enrollment and sequenced courses, large public-engagement surfaces.
- **Critical pathways & tasks** — admissions applications, registration, graduation, tickets, parking permits, online storefronts, payments.
- **Known accessibility issues** — anywhere users have reported barriers; complaints are a leading indicator of lawsuits.
- **Legal-risk hot spots** — content areas flagged in lawsuits elsewhere (e.g., forms, PDFs, video).

Prioritization in practice

Asset	Impact	Exposure	Priority & Action
Registration & admissions funnel	High	High	Fix first — audit + manual test now
Current-term LMS course content	High	High	Fix first — templates, training, captions
Third-party payment portal	High	Medium	Schedule — vendor ACR, contract remedy at renewal
Departmental event pages	Medium	Medium	Monitor — scan quarterly, fix on refresh
Pre-2020 PDF archive (40k files)	Low*	Low	Accept + document — archive properly, remediate on request

**Low until a file in it is assigned in a course — then it's current content and moves to the top. Inventories are living documents.*

Building institutional capacity

Governance

- › Executive sponsor(s) with budget authority
- › Identify roles or group of roles with a clear charge to build and monitor a plan
- › Convene strategic partners such as Library, IT, Instructional Design, Marketing, Enrollment Management, HR, Medicine
- › Distributed liaisons in colleges & units
- › Standing committee that meets on a cycle
- › Documents decisions, trade-offs, and timelines.

Policy

- › Digital accessibility policy naming WCAG 2.1 AA
- › Roles and escalation paths in writing
- › Procurement standard with review triggers
- › Exception process that runs through the established systems
- › Update any parallel policies needed such as procurement, non-discrimination, etc.

People & practice

- › Role-based training (authors, developers, buyers)
- › Accessible-by-default templates & tooling
- › Automated scanning + manual testing program
- › Corrective-action plans with owners and dates
- › Develop and implement an accessibility plan that transition initial work into sustainable operations long term
- › Establish communications aligned to the work and developed plan, note milestones, process improvements and resources for support

Procurement is your strongest control point

1

Before purchase

Require a current VPAT/ACR — then verify it. Test critical user paths with assistive technology for high-stakes tools.

2

In the contract

Accessibility warranty tied to WCAG 2.1 AA, remediation timelines, right to test, and remedies — not just a representation.

3

At renewal

Renewals are leverage. Re-review conformance, escalate known gaps, and price the cost of switching into the decision.

4

When gaps exist

Documented vendor roadmap + your interim plan for equally effective access. A known gap with no plan is your risk, not the vendor's.

Documentation: your good-faith story

Keep a running record of:

- › Inventory and audit results, with dates and methods
- › Prioritization rationale — why this order, who decided
- › Remediation log: what was fixed, when, by whom
- › Training delivered, and to which roles
- › Budget requests — including the ones that were denied
- › Vendor accessibility reviews and correspondence
- › Alternative-access plans for anything deferred or excepted

Why it matters

Enforcement outcomes turn on demonstrated good faith: a documented plan, visible progress, and honest handling of what's not done yet.

“If it isn't written down, it didn't happen.”

3

Undue burden & fundamental alteration, revisited

Decades-old standards, brand-new terrain. What they actually require — and the process that makes a determination defensible.

The legal foundations

Fundamental alteration

A change so significant that it alters the essential nature of the service, program, or activity.

About what the program is — an academic-judgment and mission question.

Undue burden

Significant difficulty or expense — measured against all resources available to the public entity, not one department's budget.

About what the entity can bear — a resources question.

Where they live: Title II program access (28 CFR § 35.150), effective communication (§ 35.164), and now the web rule (§ 35.204) — plus Section 504 parallels. In every location, they are narrow, case-by-case limits — not categorical exits.

What a valid determination requires

1

Right decision-maker

The head of the public entity or their designee — not a webmaster, a department chair, or a vendor.

2

Entity-wide resource analysis

Considers all resources available for use in the funding and operation of the service, program, or activity.

3

Written statement

A signed, dated statement of the reasons for reaching the conclusion.

4

Maximum-extent obligation

Even with a valid defense, you must still act to ensure access to the maximum extent possible — equally effective alternative access.

A defense without these elements is not a defense — it's a liability admission with extra steps.

What these defenses are NOT

“We can't afford it”

...without an entity-wide resource analysis. Department budgets don't define the standard.

“The vendor can't do it yet”

Your procurement choice, your obligation. Vendor limitations don't transfer liability.

“The technology isn't accessible yet”

Deploying first and considering access later is the pattern regulators punish most.

A blanket policy

Categorical rules (‘we don't caption recorded lectures’) fail. Each determination is case-by-case.

A permanent answer

Costs fall, tools improve, resources change. Determinations must be revisited.

A quiet internal memo

Without the written statement, right signatory, and alternative access, it will not hold up.

Old standards, new terrain

1

AI-driven tools

Chatbots, proctoring, advising platforms — opaque interfaces, rapid updates that break conformance, bias risks layered on access risks

2

Online & hybrid learning

Synchronous sessions, third-party courseware, simulations — access failures now exclude from the core program, not the periphery

3

Employment contexts

Title I interplay: internal tools, HR systems, and workplace tech carry parallel duties to employees

4

Immersive & emerging tech

VR/AR labs, research platforms, maker spaces — often no mature accessibility pathway exists at adoption

The pattern: accessibility is an afterthought at deployment, and “we just can't make it accessible yet” becomes the reflex. The standards apply identically — what must improve is when the analysis happens: at adoption, not after the complaint.

Professional programs and clinical education

Where it gets hard

- › Technical standards written decades ago, framed around ability rather than essential function
- › Clinical placements controlled by external sites with their own tech and policies
- › Simulation, imaging, and diagnostic tools with no accessible mode
- › Licensure-driven requirements invoked — sometimes inaccurately — as immovable

The questions that discipline the analysis

- › Is this requirement truly essential — or just traditional?
- › Essential to the degree, or to one method of demonstrating it?
- › Who decided, with what evidence, and when was it last reviewed?
- › What alternatives were actually explored — with the student in the room?

A defensible decision process

1

Identify the barrier and the access being sought

2

Engage the individual — interactive, not adversarial

3

Explore alternatives with technical & pedagogical experts

4

Analyze feasibility against entity-wide resources

5

Run the equity check: who bears the cost of 'no'?

6

Head-of-entity (or designee) written determination

7

Provide alternative access + set a revisit date

Documenting the determination

The written statement should capture:

- › The specific access requested and barrier identified
- › Alternatives considered, with why each was or wasn't viable
- › The resource analysis (undue burden) or essential-nature analysis (fundamental alteration)
- › The alternative access being provided instead
- › Signature of the head of entity or formal designee, with date
- › A revisit date and the conditions that would reopen it

Also document the 'yes'

Record the cases where you considered the defense and didn't claim it. A pattern of disciplined analysis — mostly ending in access — is the strongest evidence your rare 'no' is real.

Equity guardrails for hard decisions

Transparency

People affected should know a determination was made, by whom, and how to seek reconsideration.

Evidence over instinct

Cost estimates, expert input, and tested alternatives — not impressions of difficulty.

Nothing about us without us

Disabled students, employees, and community members belong in the process, not just its output.

Watch for pattern bias

If 'undue burden' keeps landing on the same programs or populations, the process is broken, not the budget.

An undue-burden determination rations access. Treat it with the gravity that deserves.

4

Cases, culture & continuous improvement

Worked examples, enforcement lessons, and how to make this sustainable — then your questions.

Case 1: the 40,000-PDF archive

Situation

Decades of scanned minutes, reports, forms, and syllabi across departmental sites. Full remediation quoted in seven figures. Deadline approaching.

The wrong answers

Remediate everything (impossible); delete everything (destroys records, and some files are in active use); ignore it (indefensible).

The risk-managed answer

- › Inventory: which files are actively used vs. genuinely archival?
- › Move true archives into a designated archive area — properly invoking the exception
- › Remediate the actively-used tier now; accessible-by-default for all new documents
- › Publish an on-request remediation path with a committed turnaround
- › Document every step: the analysis is the defense

Case 2: the inaccessible specialized platform

Situation

A discipline-specific simulation platform — central to an advanced course — is unusable with a screen reader. No accessible competitor exists. A blind student enrolls.

The reflex to resist

“The technology just isn't accessible yet — the student should take a different course.” Unexamined, undocumented, and probably unlawful.

Running the process instead

- › Interactive process: what does the student need to demonstrate the learning outcomes?
- › Experts in: platform vendor, AT specialists, the faculty member on essential outcomes
- › Alternatives tested: data-layer access, paired-operator protocol, equivalent exercise
- › Formal determination only for what remains truly infeasible — signed, written, entity-level
- › Interim equally-effective access + vendor accessibility roadmap in the renewal contract + revisit date

The VR archaeology seminar

Situation

An 8-student seminar runs on a phone-based VR app — half the graded work happens inside it. Adopted by the instructor, no procurement review. No screen-reader support, no captions, motion-only navigation. A blind student enrolls.

The reflex to resist

“VR just isn't accessible yet — the student should take a different course.” An informal denial of participation, by the wrong people, with no record.

Running the process instead

- › Reframe: what are the essential outcomes — spatial reasoning, artifact analysis — vs. the delivery method (immersion)?
- › Interactive process with the student; alternatives explored with experts
- › Options tested: desktop build, accessible data layer, tactile 3D-printed models, navigator protocol, described walkthroughs
- › Vendor engaged in writing; renewal tied to an accessibility roadmap
- › Written determination only for the narrow residue — with alternative access and a revisit date

The community 5K with a third-party vendor

Situation

An annual campus 5K is run by a contracted race-management vendor. Three concerns: a screen-reader user can't complete online registration; a wheelchair racer asks about competing; a deaf runner asks how the start and safety announcements will work.

The reflex to resist

“The vendor runs the race — accessibility is their department. And it's a fun run, not the Paralympics.” Complaints will name the entity, not the vendor.

Running the process instead

- › Registration: vendor platform = your web content under the rule (no third-party exception for contractors) — remediate, plus an equally effective phone/in-person path now
- › Wheelchair division: individualized reasonable-modification analysis — a racing chair doesn't fundamentally alter a community 5K
- › Communication access: visual start signals, texted announcements, ASL on request (§ 35.160)
- › Physical layer: route, parking, accessible toilets — a checklist, not an improvisation
- › Durable fix: accessibility requirements written into next year's vendor contract

Interlibrary loan: inconsistently accessible documents

Situation

ILL delivers scans from lending libraries nationwide — some clean and tagged, many image-only files a screen reader renders as silence. Patrons download them from a password-protected portal. Volume: tens of thousands of documents a year.

The reflex to resist

“The lending library sent it that way.” And: “Let's just email the files instead — email isn't a website.”

Running the process instead

- › These are current service deliverables — the 'preexisting document' exception fails on current use; the individualized-documents exception fails because the article isn't about the patron
- › Accessible-by-default where cheap: automatic OCR on every incoming scan
- › Visible 'request an accessible copy' path with a committed turnaround; proactive remediation for flagged patrons
- › Push upstream: better source files from lenders and consortium partners
- › Undue-burden analysis reserved for the true residue (handwriting, degraded microfilm) — individual, written, with alternative access

Does emailing the documents change the outcome?

What changes

The applicable standard.

The web rule's WCAG 2.1 AA standard governs web content and mobile apps. A document sent by email to an individual patron is arguably outside that technical scope.

What doesn't

The obligation.

Effective communication (§ 35.160) follows the communication into every channel — web, email, or paper. An image-only scan emailed to a blind patron is not effective communication, full stop. A timely accessible version is still owed.

And the workaround creates new problems: intent evidence of dodging the standard, and a slower, unequal channel for disabled patrons (§ 35.130).

Channel-shifting changes which rule applies — never whether access is required.

What enforcement patterns teach us

1

It starts with one person

Most matters begin with a single student, employee, or community member and a single barrier — usually after informal requests went nowhere.

2

Process failures outweigh technical ones

Resolutions consistently cite missing policies, no designated coordinator, no auditing, no training — more than any specific WCAG failure.

3

The remedies are predictable

Adopt a standard; name a coordinator; audit on a schedule; train; fix on a timeline; report. Building these now is cheaper than agreeing to them later.

4

Good faith changes outcomes

Documented plans, visible progress, and responsive handling of complaints shape both the tone and the terms of resolution.

Risk-based, not people-rationing

Deprioritized ≠ abandoned

Everything in the 'accept/monitor' tiers keeps a working alternative-access path with an owner and a turnaround commitment.

Measure outcomes, not just scans

Automated scores measure code. Also track: time-to-remediate requests, complaint themes, disabled-user task completion.

Fund the floor centrally

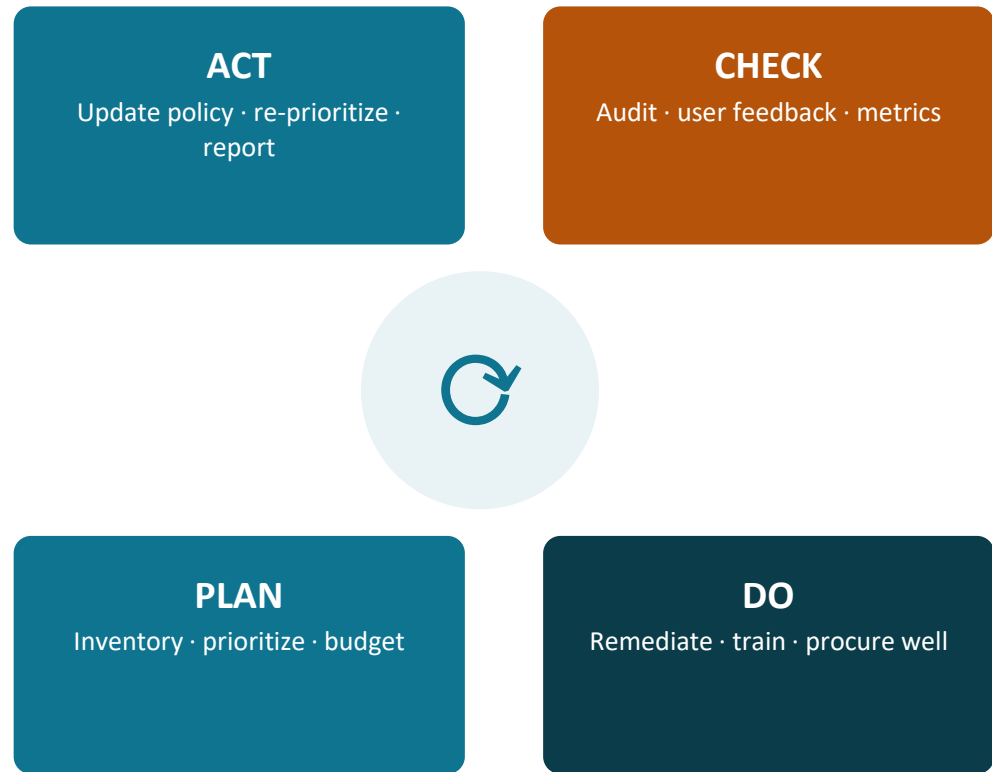
Captioning, document remediation, and AT support shouldn't depend on which department a student happens to encounter.

Universal design is risk reduction

Accessible-by-default templates, procurement, and pedagogy shrink the risk surface permanently — the cheapest risk management there is.

Accessibility is equity in action. Compliance is the floor — inclusion is the point.

The continuous improvement cycle



Annual rhythm

- › Re-run the inventory and re-score the matrix
- › Report progress (and gaps, honestly) to leadership
- › Review every UB/FA determination on its revisit date
- › Audit determinations for pattern bias
- › Refresh training and procurement standards as tech shifts

Five things to take home

1

The rule's not going away. The 2027 extension buys time to build capacity — it is not an exemption, and today's obligations never paused.

2

Perfect compliance is impossible. Defensible prioritization is not — inventory, score, remediate in risk order, and write it all down.

3

Undue burden and fundamental alteration are process standards. The quality of your process is the defense.

4

Good faith is demonstrated, not asserted. Documentation of plans, progress, and even denied budget requests is your record.

5

Equity is the point. Risk management allocates resources; it must never quietly allocate exclusion.

DISCUSSION

Let's talk

?

What's the highest-risk item in your digital estate that nobody at your institution owns yet?

?

Has your institution ever executed a formal undue-burden determination — with the written statement? What happened?

?

What would it take to get accessibility review into your procurement workflow this year?

Resources – The Regulations

Department of Justice – Americans with Disabilities Act Title II:

- [Title II Regulations](#)
- [Title II Fact Sheet](#)
- [Title II Small Entities Compliance Guide](#)
- [Title II State and Local Governments: First Steps Toward Complying](#)
- [Federal Register - Extension](#)

Resources – A11Y Community

- EDUCAUSE IT Accessibility Listserv
- ATHEN Listserv
- AHEAD Listserv
- International Association of Accessibility Professionals (IAAP)
- State/Local government agencies
- IAAP - Home
- Other digital accessibility professionals in your state

THANK YOU

Thank you

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Questions?