

## NWHEAT – Accessibility Webinar Series

December 2, 2021, Part 2:

### Common Issues and Best Practices in Working with Procurement and Vendors

**Date: December 2, 2021 – 2:00 PST**

The webinar was not recorded.

#### Presenters

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#### Summary

The information provided in this webinar should not be considered legal advice and is informational only. For technical assistance contact either of the two presenters directly or email the Office of Civil Rights' (OCR) general email address: [OCRWebAccessTA@ed.gov](mailto:OCRWebAccessTA@ed.gov)

#### *Planning for and Selection of Hardware and Software Products*

There are three laws regarding accessibility and the procurement process:

1. [Section 504](#) of the Rehabilitation Act,
2. [Title II](#) of the Americans with Disabilities Act,
3. [Section 508](#) of the Rehabilitation Act.

Section 504 and Title II are the regulations enforced by the Office of Civil Rights. If an institution accepts funds from the federal government (including grants), then it needs to abide by Section 504. Section 508 covers only federal agencies and an institution would need to comply only if an agency outsourced some of its operations to an institution. Libraries need to follow the requirements in Title II. States might have their own regulations and requirements in addition to any federal rules.

Vendors are NOT covered by any of those laws. Vendors are not state or local governments, so Title II does not apply. They are not getting funding directly from the federal government, so Section 504 does not apply. Institutions should communicate to vendors that it is your expectation that they help you meet the institution's legal obligations.

Steps in the procurement process:

- Identify your needs. Institutional personnel should be very clear on their accessibility needs and the users need for the item to be procured. A common mistake is to focus on the “bells or whistles” of the software or hardware and not the everyday needs.
- Include the campus experts. Include the institution's disability office and those responsible for providing reasonable accommodations in the planning and decision-making process.
- Estimate the costs. Consider the cost options of obtaining the software/hardware, adapting it to meet accessibility needs, and providing possible accommodations to meet accessibility needs. Providing accommodations may be a more cost-effective option than trying to retrofit any of the

hardware/software candidate products to meet the accessibility needs. Alternatively, hardware/software that is slightly more expensive to acquire might be more cost effective than employing workarounds.

- Review VPATs. Request that vendors supply their VPAT ([Vendor Product Accessibility Template](#)), which is a form completed by the vendor indicating where the product meets accessibility requirements and where it does not. Be sure to review the VPAT for the correct version of the product. These are self-rating instruments and the quality of the information provided varies. VPATs are sometimes completed by a marketing person rather than those with technical knowledge of the product. A VPAT that clearly indicates accessibility shortfalls may prove more valuable than one that is completely positive. VPAT's indicating shortfalls might be completed by individuals at the vendor who are paying closer attention to the accessibility issues.
- Perform your own testing. This will help assure that the institution's needs are met. For online technologies, be sure to try the software on different browsers, platforms, and machines. Include the disability office in the testing. Ask the vendor about any negative or unexpected results in the testing. Assure that the vendor tested any workarounds (e.g, some software workarounds have conflicted with common accessibility commands). To test the product, request access from the manufacturer to the product or work with peers who have already purchased it. Institutions are encouraged to work together to share test results. While some lawyers worry about the possible liabilities of sharing data, OCR staff have not been made aware of those worries actually occurring in real life..

### ***Contract Negotiations and Language...and Steps After Contracting***

Contracts should be: 1) kept current and b) reflect all the changing accessibility needs. Products and accessibility needs change over time and old contracts might not cover emerging situations.

Accessibility standards that the institution expects vendors to meet should be clearly identified and communicated to the vendor. Contract language should also address the steps to be taken when standards or regulations change in the future. This provision is often overlooked.

Have clear expectations of the vendor and about how the vendor will address new or unexpected accessibility issues raised by a student, staff, or faculty member? OCR has noted that institutions have often not addressed or have inadequately addressed this issue in contracting. Vendors should have a timeline for responsiveness. If there are accessibility issues outside the scope of the contract, that should be identified in the contract. Also identify methods for changing or opting out of the contract.

Product updates and patches are inevitable. The contract should address how accessibility concerns will be handled within updates and patches. Detail what the expectations of the vendor will be if changes to the product make it perform in a way that is no longer acceptable in meeting accessibility requirements.

After the contract is signed, the institution has several steps to take in maintaining the efficacy of the agreement:

- Establish a process for addressing new concerns. Assure that students, staff, and faculty members have a method for raising new concerns. Detail steps that will happen once those concerns will be raised.

- Develop a process to monitor and assess the accessibility of the product over time. As technologies change, is the product still accessible? Data need to be collected to provide assurance that accessibility needs are being met or to demonstrate that a change is required. One possible source of data is to regularly survey product users. Data collected should be shared with the vendors.

The Department of Education does not provide model contract language. Their staff can suggest good practices and give technical assistance, but they cannot give legal advice. The Department also cannot provide a list of vendors that meet accessibility standards as they cannot appear to endorse one product over another. They urged institutions to share the contract language that has worked for them with each other.

Vendors can be encouraged to contact the Department. OCR staff cannot contact vendors on their own.

Any institution is invited to engage the National Digital Access Team for resources. Contact the presenters or send correspondence to [OCRWebAccessTA@ed.gov](mailto:OCRWebAccessTA@ed.gov).

### **Presenter Biographies**

Ms. Mobley is a Co-Lead and Founder of OCR's National Digital Access Team and serves as OCR's National Disability Expert. She supports all 12 regional offices on difficult disability cases, and provides day-to-day management over OCR's digital accessibility docket. Prior to joining OCR in 2006, she was with the U.S. Department of Justice, Civil Rights Division, Disability Rights Section since 1992. There, among other things, she served as a liaison to the Access Board to develop the Section 508 Standards, and co-authored and organized the Attorney General's guidance to agencies to carry out responsibilities under Section 508 of the Rehabilitation Act. She was honored with the Attorney General's Award for Excellence in Information Technology for her work on Section 508. In 2006, she was awarded the John Marshall Award for leading a large team of attorneys and investigators under Project Civic Access, a broad-based DOJ enforcement initiative under Title II of the Americans with Disabilities Act. Mary Lou graduated from Occidental College with an honors degree in philosophy and Duke University with both a law degree and a master's in philosophy.

Amy Kim has worked for the Office for Civil Rights (OCR), U.S. Dept. of Education since 2003, and has worked extensively in schools, colleges, and universities as a civil rights attorney helping students and families resolve discriminations complaints, including disability-related concerns. Previously, she worked for the Office of the General Counsel, U.S. Dept. of Health and Human Services. Amy obtained her B.S. in Biochemistry from the University of Washington, and J.D. from the University of Washington, School of Law. Amy enjoys volunteering in her local community and has assisted a variety of community and civic organizations, including serving as an officer of the International Community Health Services (a community health center), the Civil Rights Law Section of the Washington State Bar Association, and the Joint Asian Judicial Evaluation Committee. Amy is the child of political refugees from Korea, and grew up in Covington, WA. She currently resides in Seattle.