

Digital Accessibility: New Challenges for Campuses Using Technologies in New Ways

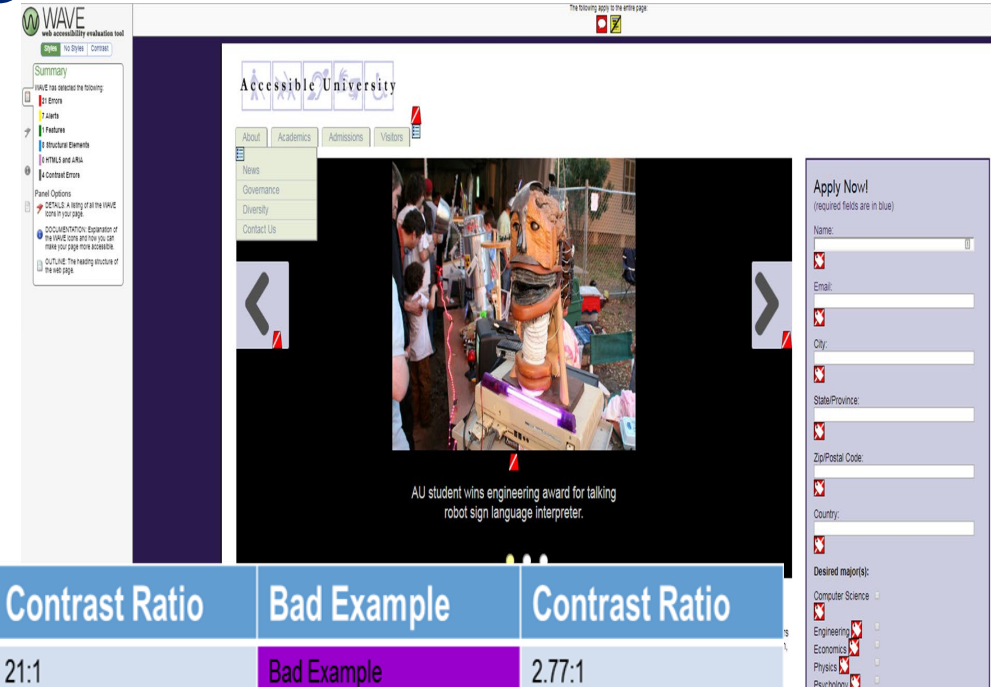
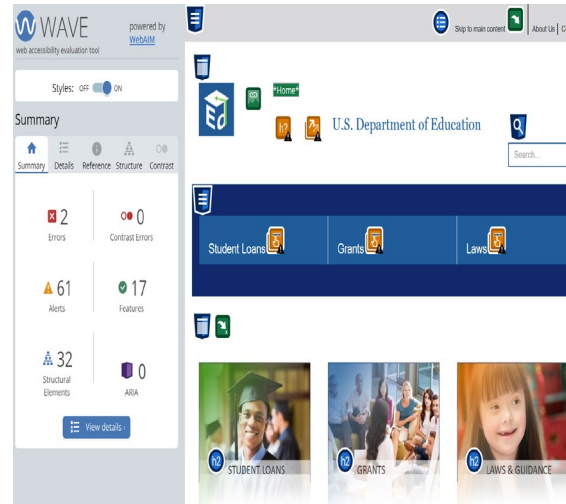
Northeast Regional Computing Program

Phil Catanzano
September 23, 2020

Holland & Knight

What Are We Talking About?

- **Navigation**
- **Readability**
- **Headings & Lists**
- **Use of Color**
- **Images**
- **Hyperlinks**
- **Tables**
- **Forms**
- **Video & Audio**



Good Example	Contrast Ratio	Bad Example	Contrast Ratio
Good Example	21:1	Bad Example	2.77:1
Good Example	5.1:1	Bad Example	2.6:1
Good Example	8.4:1	Bad Example	1.3:1
Good Example	5.7:1	Bad Example	1.3:1
Good Example	9.5:1	Bad Example	1.2:1

Accessing Digital Environments

Visual Impairments

- Screen Readers, ZoomText, Control colors

Deaf or Hard of Hearing

- Captions and/or transcripts

Motor Impairments

- Mouth stick/head wand, trackball mouse

Cognitive Impairments

- Literacy/Text-to-Speech software
- Time management, mindfulness apps

Future

- Voice recognition software

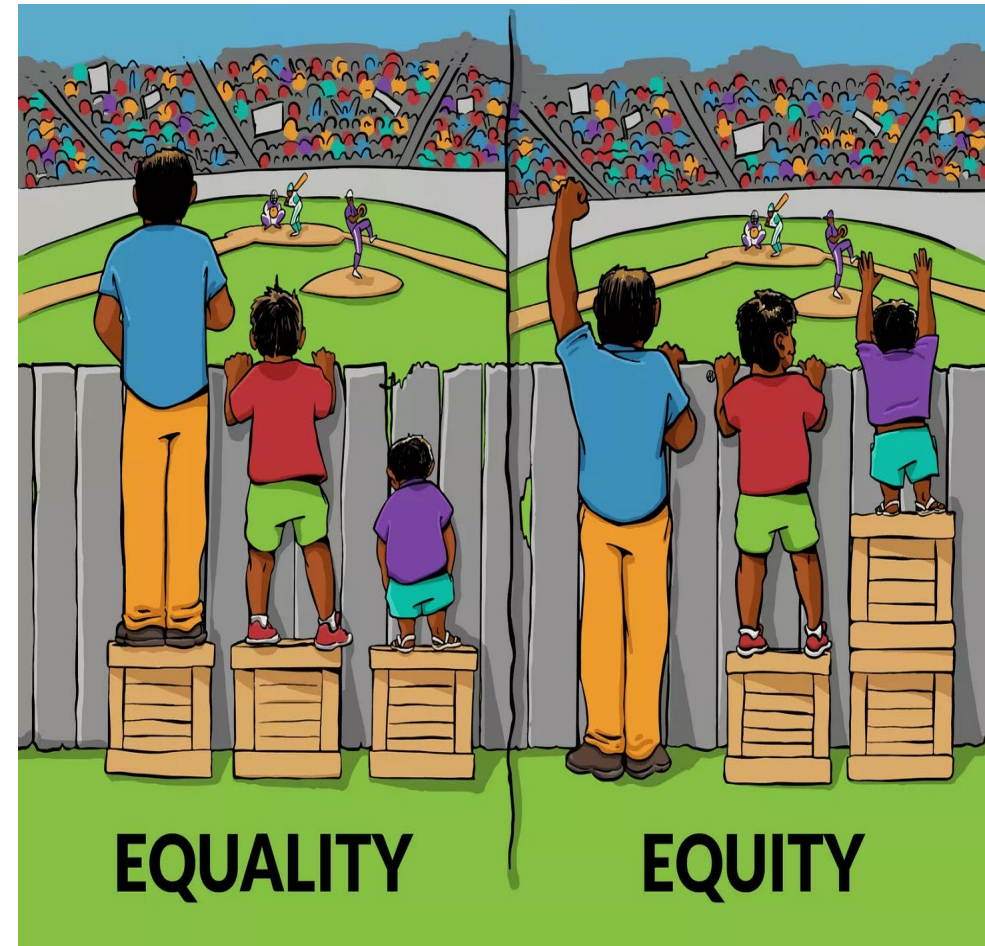


Statutory Framework

- Americans with Disabilities Act
 - Title II = public institutions
 - Title III = private institutions considered “public accommodation[s]”
- Section 504 of the Rehabilitation Act of 1973
- Section 508?
- World Wide Web Consortium (W3C) and the Web Content Accessibility Guidelines (WCAG)?

What Does “Accessibility” Even Mean?

“Accessible” means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use. (Definition taken from federal resolution agreements.)



Litigation Lessons?

- Drive-by litigation” v. litigation for change, e.g., MIT/Harvard litigation
- Not just academic – web accessibility is heightened issue for private businesses:
 - “In a society in which business is increasingly conducted online, excluding businesses that sell services through the Internet from the ADA would[:] ‘run afoul of the purposes of the ADA and would severely frustrate Congress’ intent that individuals with disabilities fully enjoy the goods, services, privileges, and advantages available indiscriminately to other members of the general public.” Nat’l Ass’n of the Deaf v. Netflix, Inc.;
 - Other examples: Winn-Dixie, Dunkin Donuts, etc.

What about OCR?

March 2018: OCR dismissed a number of web accessibility complaints after revising the Case Processing Manual to include a “frequent flyer” section at CPM 108(t)

November 2018: Section 108(t) removed and OCR begins process of re-opening certain cases closed under that provision as complaints or “directed investigations.”

May 2018: National Federation for the Blind, NAACP, and Council for Parent Advocates and Attorneys sued Department of Education, over March 2018 changes.

Present: Directed Investigations

What Does OCR Typically Focus Upon?

- Web accessibility policy that identifies technical standards appropriate to the content at issue. *WCAG 2.1, Level AA
- Appropriate oversight of accessibility efforts
 - Designated web accessibility coordinator
- Procurement processes
- Training
- Audit program
- Complaint/reporting mechanism

Procurement Process

- Requiring Accessibility Conformance Documentation (e.g., VPAT, tailored negotiations, etc.)
- Evaluating EIT Accessibility
 - Reviewing Accessibility Conformance Documentation
 - Conducting Automated, Manual, and Functional testing
- Working with vendor to improve accessibility of EIT (Accessibility Roadmap)
- Including Accessibility Assurances in RFPs & Contracts*
- Conducting Exceptions on a case by case basis
- Providing Equally Effective Alternative Access
- Maintaining Inventory

**Products and services that are considered non-technology purchases may have an online, mobile or application component (e.g., parking mobile app).*

Tips to Bring Back to Campus

- 1. Identify key stakeholders and strategic partnerships**
- 2. Determine the scope of the task**
- 3. Create a strategy (concrete and idealistic)**
- 4. Prioritize efforts – you cannot fix the issue overnight**
- 5. Include the community through training and other involvement**

Key Stakeholders and Partnerships

- Administrators
- Academic Affairs
- Shared Governance
- Counsel
- Business Office
- Information Technology
- Distance Education
- Diversity, Equity & Inclusion
- Accessibility/Disability Services
- Marketing & Communications
- Libraries
- Centers for Learning & Teaching
- Auxiliary Services
- Athletics

Determine the Scope of the Task

- The internet & intranet websites
- Content delivered in digital form
- Electronic books & electronic book reading systems
- Search engines & databases
- Learning management systems
- Classroom technology
- Mobile-based applications
- Social Media?
- *“Wait a minute: I don’t even own this website!!”*

Common Question: What role does the institutional individual accommodation process play?

Comprehensive Digital Accessibility Strategy

- Enact Policies & Procedures to support a digital accessibility program
 - Identify standards, definitions, scope, exceptions
- Establish Committees, Working Groups, Liaison System
- Determine Roles & Responsibilities
- Provide/Obtain Professional Development Opportunities
- Acquire or develop tools and services to monitor and sustain compliance, including mechanism to report and remediate access barriers
- Offer access to assistive technologies

Prioritization

- Registered individuals with disabilities facing digital accessibility barriers
- Low hanging fruit (e.g., Accessibility Statement on website, syllabus)
- Public facing, high traffic websites
- Essential intranet functions (e.g., registration and payment systems)
- Plan for new, modified, and legacy content
- Procurement (e.g., high impact)

Challenge Areas

- Large websites
- Procurement
 - Vendor obligation versus institutional obligation
 - Ensuring “prior to”
 - Providing equally effective alternate access
- Libraries
 - Digital database bundles of decades worth of content
- Athletics
 - Real time stats, live video, difficult vendors, etc.
- Video, Interactive, or even non-dynamic documents like PDFs
 - Time consuming and difficult authoring tool(s)

Questions?

Phil Catanzano

Phil.Catanzano@hklaw.com