

## High Profile Litigation

### Actions That Led to Lawsuits

None of us have to look very far to read about an institution that has been investigated due to an accessibility complaint ([35+ higher ed institutions over the last 20 years](#)), or the tremendous amount of money that the investigation ended up costing. According to Ceilo<sup>24</sup>, the [most common mistakes that spur legal complaints](#) include:

- Failure to caption educational videos both available to students and freely to the public
- Failure to caption announcements at college sporting events
- Use of inaccessible devices in the classroom such as clickers and electronic readers
- Use of inaccessible websites, apps, and LMS
- Use of technologies and materials that are not accessible to screen readers (i.e. PDFs)

### Legal Parties Involved

Lawsuits often come about when a student with a disability files a complaint with the Office for Civil Rights (OCR), or when the OCR catches accessibility deficiencies during compliance reviews. The National Federation of the Blind (NFB) and National Association of the Deaf (NAD) often support or represent these individuals facing discrimination. These agencies usually start with a letter asking universities to work with them to fix the accessibility problems. Sometimes the two parties will agree to fix the issues, then other times when universities do not cooperate the situation will escalate into a lawsuit. Let's take a look at a higher education example of each response.

#### Example 1 - Lawsuit: Harvard/MIT

A federal lawsuit was filed by the National Association of the Deaf (NAD) against MIT and Harvard in 2015 by claiming that these institutions violated the ADA and Rehabilitation Act by not providing accurate, if any closed captioning at all, for their online lectures and course materials. Both universities filed a motion to dismiss the case, claiming that the provision of closed captions would result in a "different" product and thus is not required legally. This motion was denied on the basis that providing auxiliary aids and services does not change the content, but rather enables individuals with disabilities to access the content that Harvard already provides. It was reported that the plaintiff's lawyer targeted Harvard and MIT, two institutions that were previously considered to be pioneers in e-learning, in hopes that it would pressure other universities to comply with stricter captioning standards.

#### Example 2 - Structured Negotiation: UC Berkeley

Three students from the University of California, Berkeley pursued legal action from 2011- 2013 due to the university's inaccessible textbooks and impractical timeframe for accommodations. One student with a visual impairment was told that the first class assignment was to read a book that was not listed on the syllabus by the end of the week. This presented an issue since it took several weeks to get a book converted to an audio format. Another student with dyslexia and ADD was unable to do research in the library because they would not convert books to a digital format unless they were listed on the course syllabus. In this case, instead of traditional litigation, the Disability Rights Advocates (DRA) that represented the students decided to work directly with the university to come up with a solution, a process known as structured

negotiation. The case was settled with UC Berkeley agreeing to pay for all legal fees, as well as make significant changes to their library and print-to-digital conversion process.

### **Lessons Learned**

The webinar (66:26) from 3PlayMedia [What One School Learned from DOJ/OCR Accessibility Rulings at Other Institutions](#) showcases how the University of Washington has used lessons learned from these settlements, agreements, and resolutions to shape their own accessibility services and policies. *Both closed captions and a transcript are available for this webinar recording.*

### **References:**

Burgstahler, S. & Thompson, T. (2017). [What One School Learned from DOJ/OCR Accessibility Rulings at Other Institutions](#). 3PlayMedia.

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Wells, K. (2017). [Accessibility Lawsuit Insights – What Goes Wrong & How to Fix It](#). ceilo<sup>24</sup>.