

# Accessibility Law for e-Learning Authors

(second edition)

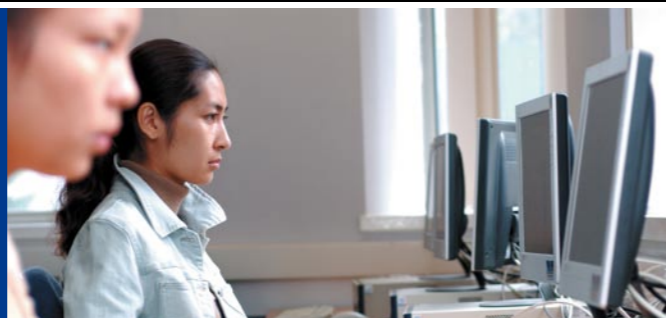
## Points to Remember for e-Learning Authors

- DDA requires institutions not to substantially discriminate against students with disabilities.
- Where e-learning environments are inaccessible, institutions should take reasonable steps to overcome that barrier.
- In line with the DED, institutions should adopt and maintain institution-wide policies and practices in relation to the accessibility of e-learning environments, referring to external standards and guidelines where appropriate and institutions should ensure that accessibility policies are being followed.
- Contributors to e-learning environments should be aware of these policies and comply with them, by ensuring as far as possible that materials are available in an accessible format.
- Colleges and universities should ensure that accessibility issues are considered from the outset when developing or procuring new e-learning environments, authoring tools and content management systems.
- Colleges and universities should ensure that they provide appropriate ICT facilities, and assistive technologies, to allow students to access the e-learning environment where possible.
- The provision of accessible e-learning and materials may actually help an institution to overcome accessibility problems inherent in other methods of teaching and assessment.

This paper contains an overview of some of the key issues to be considered in relation to the topic. This paper does not constitute legal advice. For legal advice, please contact, Brodies LLP (<http://www.brodies.co.uk>)



# Accessibility Law for e-Learning Authors



## Introduction

When developing e-learning environments or authoring e-learning materials, it is important that educational institutions and e-learning authors bear in mind the institution's obligations under disability discrimination legislation.

## What Does the Law Say?

Part IV of the Disability Discrimination Act 1995 (the 'DDA') places obligations on further and higher education institutions not to *discriminate* against any student by denying them access to the provision of *student services* by reason of that student's *disability*.

Section 28R(2) of the DDA states that:

***"It is unlawful for the body responsible for an educational institution to discriminate against a disabled student in the student services it provides or offers to provide"***

Section 28T(1) of the DDA states that:

***"where a provision, criterion or practice....is applied by or on behalf of a responsible body....relating to....student services provided for, or offered to, students....and that provision....places disabled persons at a substantial disadvantage in comparison with people who are not disabled, it is the duty....of the responsible body to take such steps as it is reasonable, in all the circumstances of the case, for it to have taken in order to prevent the provision....having that effect"***

## Some Legal Definitions

The term 'disability' as used in the DDA is broadly defined as a mental or physical impairment having a substantial adverse long term effect on the ability to carry out normal day to day activities. It can include a wide range of disabilities, for example visual and hearing impairments, motor impairments, and cognitive disabilities. 'Student services' for the purpose of the DDA means services provided wholly or mainly for students, and thus includes distance learning, e-learning, information and communication technology and resources, as well as physical access to those resources. Note that the provision of e-learning facilities to the general public (in addition to, or instead of, students) is subject to a similar set of obligations under Part III of the DDA. The extent of 'reasonable, in all the circumstances' is discussed later in this paper.

## Additional Law to Consider

In addition to Part IV of the DDA, institutions will also have obligations under the Disability Equality Duty (the 'DED') to promote equality and access. As well as the DED there are also the public procurement regulations, which require institutions, wherever possible, ***"to take into account criteria for disabled persons or the suitability of the design for all users"*** when laying down technical specifications/requirements in their invitations to tender.

## Who is Legally Responsible for Complying with the DDA?

The DDA states that ***"the responsible body"*** is legally responsible for compliance with the DDA. This will be the college board of management, the university court, or other governing body of the institution. However, employees should note that an individual can be personally liable if he ***"knowingly aids an unlawful act"***.

## What Does This Mean in Practice?

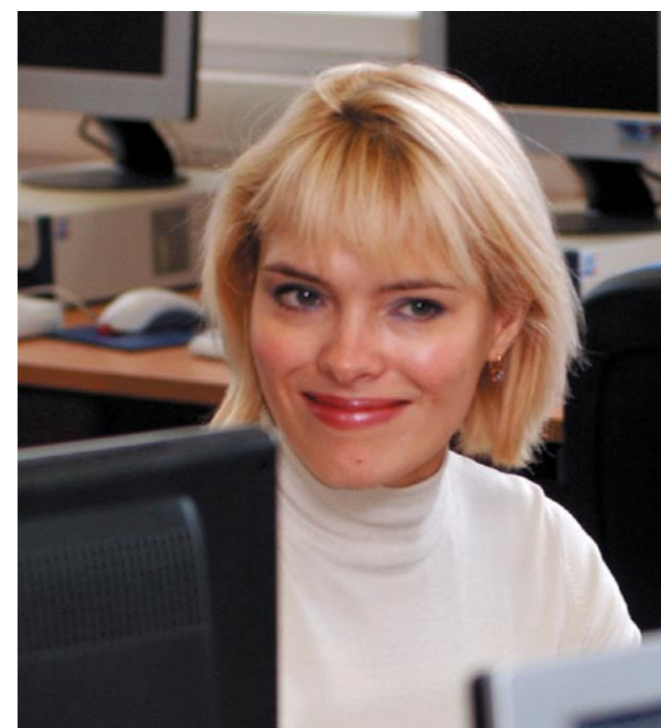
e-Learning authors and institutions should take 'such steps as it is reasonable, in all the circumstances of the case' to ensure that e-learning environments, and the materials that are made available through those systems, are accessible to students with disabilities and to ensure that such students are not placed at a substantial disadvantage compared to a student who does not have that disability. What is reasonable will always depend on the exact circumstances of a particular case, and as far as e-learning development and authoring is concerned there is no case law to aid in setting boundaries. However examples and help in providing an appropriate learning experience for disabled students may be had from the TechDis service [www.techdis.ac.uk](http://www.techdis.ac.uk). Institutions may need to take into account factors such as effective learning experience, ease of access to information, and current good practice in the sector.

Sometimes e-learning content cannot, for whatever reason, be provided in an accessible form (for instance, copyright or licensing restrictions or excessive cost). In such situations, e-learning authors should work with their institutions to consider alternative means or ways of providing access to that material. This might include involving the provision of learning support staff to assist a student in accessing and using the e-learning environment, or providing materials and/or the learning

experience offline using an alternative format or delivery method, or a combination of approaches which provide access to the materials and learning experience in a cost effective way.

In some situations, the accessibility of the materials provided through an e-learning environment will be dictated by the content management system or authoring tools used to run that e-learning environment, or by other external factors beyond the institution's control. e-Learning authors should work with their institution to see what reasonable steps can be taken by the institution (or its suppliers) to improve the accessibility of that e-learning environment as a whole. It is thus essential that accessibility is considered from the outset when designing or procuring an e-learning system.

It is important to remember that the DDA is not intended to restrict the use of new technologies, and should never cause an institution or a lecturer to stop, or be discouraged from, using an e-learning environment, on the basis that if it does not do so it will breach the DDA. What is important from a legal perspective is providing a workaround to ensure, as far as possible, that a disabled student is not placed at 'a substantial disadvantage' by either the use or the non-use of ICT.



## Accessibility Standards and Guidelines and their Legal Status

There are a number of useful standards for e-learning developers including the revised (Sept. 2006) Post 16 Education Code of Practice (see useful sources below). However, whilst complying with such standards may help to show that the institution has taken reasonable steps, it should be noted that adherence to standards or guidelines by itself will not necessarily guarantee fulfilment of an institution's obligations under the DDA. Indeed, properly considered, it may be the case that deviation from a standard or a particular guideline is the most appropriate action to avoid discrimination in a particular case. Organisations such as TechDis will be of help in providing information on the provision of a good learning experience for the needs of individual students but, as with use of standards, cannot guarantee an institution's compliance with its obligations under the DDA.

e-Learning authors and institutions should not therefore rely solely on compliance with guidelines and standards. The DDA comprises broad obligations, and does not prescribe compliance with any particular standards. The appropriate reasonable steps will always depend on the particular service provision in question.

## Useful Sources:

- **JISC Legal** at <http://www.jisclegal.ac.uk> for more detailed information on accessibility law.
- **Disability Rights Commission** at <http://www.drc-gb.org> for links to codes of practice including the revised (Sep 2006) Post 16 Education Code of Practice, standards and other guidance including the PAS 78 Guide to Good Practice in Commissioning Accessible Websites.
- **TechDis** at <http://www.techdis.ac.uk> for advice and resources, on technology and disability issues.