

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95814-6511
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March 20, 2003

TO: Superintendents and Presidents
Chief Instructional Officers
Chief Student Services Officers
Chief Business Officers
Chief Information Systems Officers
Librarians
Discrimination Complaint Coordinators
Community College Attorneys
DSPS Coordinators
High Tech Center Directors

FROM: Ralph Black
General Counsel

Subject: New Requirements Regarding Implementation of section 508
of the Rehabilitation Act of 1973
Legal Opinion M 03-09

Synopsis: On June 11, 2001, we distributed an advisory, Legal Opinion M 01-17 (see attached), which advised districts that the requirements for accessibility for persons with disabilities established by section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and regulations implementing that Act would generally apply to the development, procurement, maintenance, or use of electronic or information technology by community college districts. At that time, the applicability of section 508 to colleges was rather indirect in the sense that it depended upon the state's participation in a federal grant program under the Assistive Technology Act of 1998 and extended only to purchases made with Technology and Telecommunications Infrastructure Program (TTIP) funds or under a grant or contract from the Chancellor's Office.

Senate Bill 105 (Stats. 2002, ch. 1102) added language to Government Code section 11135 codifying in state law the obligation of state agencies and entities receiving state funds to comply with the requirements of section 508 and its implementing regulations set forth in Part 1194 of Title 36 of the Federal Code of Regulations. The enactment of SB 105 makes the following changes in this area of the law:

1. The requirements of section 508 are now applicable regardless of whether or not California continues to receive funding under the Assistive Technology Act.

2. The accessibility requirements of section 508 will now apply to the development, procurement, maintenance, or use of electronic or information technology by a community college district using any source of state funds, not just those identified in Legal Opinion 01-17.
3. Districts and entities that contract with districts for the provision of electronic or information technology or for the provision of related services must respond to, and resolve, any complaints regarding accessibility.
4. Since these requirements have been incorporated into Government Code section 11135, which is the basic state nondiscrimination statute enforced by the Chancellor's Office, persons who feel accessibility issues have not been adequately addressed by the district or its contractors may file a discrimination complaint using the procedures set forth in title 5, sections 59300 et seq., of the California Code of Regulations. Such complaints shall be treated as alleging discrimination on the basis of disability. Districts that are currently revising their nondiscrimination complaint policies should make appropriate adjustments in those policies. Districts that have already completed recent revisions to their nondiscrimination complaint policies should incorporate the requirements of SB 105 at the next practical opportunity.

Each of the California Virtual College regional centers, as well as the Professional Development Center at El Camino College, have received training in the technologies and techniques used to develop accessible Web based instructional resources and will be able to provide assistance to college staff in dealing with these issues. The High Tech Center Training Unit (HTCTU) at DeAnza College is also available to provide training and technical support to faculty and staff dealing with the issues of access to information technology. You can visit the HTCTU web site at: <http://www.htctu.fhda.edu>.

Further information concerning the section 508 regulations can be obtained from the Access Board's website <http://www.access-board.gov> and at <http://www.usdoj.gov/crt/508/508law.html>. Other resources, which may be useful in ensuring compliance with section 508 and SB 105, are located at <http://www.htctu.fhda.edu/standards/Top%2010%20FAQs%2004122001.htm> and http://www.htctu.fhda.edu/standards/SB105_resources.pdf and listed in attachments to this memo. You may also wish to review the Distance Education Access Guidelines developed by the Chancellor's Office which are available at: <http://www.htctu.fhda.edu/dlguidelines/final%20dl%20guidelines.htm>.

Action/Date Requested: Please take the steps described above to ensure that information technology developed, purchased, or licensed by your college complies with the requirements of section 508.

Contact: If you have questions concerning the legal requirements of section 508, you may call Chancellor's Office General Counsel, Ralph Black, at (916) 327-5692. If you have technical questions regarding the section 508 standards or how to achieve accessibility, you may contact Carl Brown, Director of the HTCTU, at (408) 996-6047. Questions concerning the discrimination complaint process should be directed to Assistant General Counsel, Renee Brouillette, at (916) 322-4145.

RB:sj

cc: Thomas Nussbaum, Chancellor
Judith James, Vice Chancellor for Student Services
Victoria P. Morrow, Executive Vice Chancellor
Dona Boatright, Vice Chancellor for Educational Services
Patrick Perry, Vice Chancellor for Technology, Research and Information Systems
Marianne Estes, Dean, Student Services
LeBaron Woodyard, Dean, Academic Affairs and Instructional Resources
Scott Hamilton, DSPS Coordinator
Carl Brown, HTCTU Director
Larry Toy, President, Foundation for California Community Colleges

M 03-09

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June 11, 2001

TO: Superintendents and Presidents
Chief Instructional Officers
Chief Student Services Officers
Chief Business Officers
Community College Attorneys
DSPS Coordinators
High Tech Center Directors

FROM: Ralph Black
General Counsel

Subject: New Federal Regulations Implementing section 508
of the Rehabilitation Act of 1973
Legal Opinion M 01-17

Synopsis: The purpose of this memo is to advise you about the impact on your district of new regulations relating to accessibility for persons with disabilities which have been issued by the federal Architectural and Transportation Barriers Compliance Board (Access Board). These regulations implement section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d). The section 508 regulations (36 C.F.R. §§ 1194.1 et seq.) require that electronic and information technology purchased or used by federal agencies must be accessible for use by persons with disabilities.

This law is not limited to assistive technologies used by people with disabilities, but rather it applies to the development, procurement, maintenance, or use of all electronic and information technologies. The standards address software applications and operating systems (36 C.F.R. § 1194.21), web-based intranet and internet information and applications (36 C.F.R. § 1194.22), telecommunications products (36 C.F.R. § 1194.23), video or multimedia products (36 C.F.R. § 1194.24), self contained closed products such as copiers (36 C.F.R. § 1194.25), and desktop and portable computers (36 C.F.R. § 1194.26).

These regulations are applicable to the states by virtue of the Assistive Technology Act of 1998 (29 U.S.C. § 3002). As a result, the Chancellor's Office has taken certain steps to comply with these regulations. All Chancellor's Office contracts and grants commencing after the new regulations become effective on June 21, 2001, will contain a provision requiring the contractor or grantee to comply with the section 508 regulations. In addition, each district will be asked to certify that it complies with section 508 as a condition of receiving funds for 2001-02 under the Technology and Telecommunications Infrastructure Program (TTIP).

This means that colleges will need to take steps to ensure that information technology or services or products purchased, leased, or developed with TTIP funds or other funds received by grant or contract from the Chancellor's Office (or any other state or federal agency) meet the section 508 standards. To ensure that the section 508 requirements are satisfied, we suggest that, after the regulations go into effect on June 21, 2001, each contract you sign with a vendor of hardware or software contain the provision set forth below or substantially similar language:

"Vendor hereby warrants that the products or services to be provided under this agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. Vendor further agrees to indemnify and hold harmless the _____ Community College District, the Chancellor's Office of the California Community Colleges, and any California community college using the vendor's products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement."

You may now be negotiating contracts which will provide for services or products to be delivered or used next year. With respect to any agreements to be signed before the June 21st effective date of the regulations, we recommend that you include the above provision but substitute the following sentence in place of the first sentence thereof:

"Vendor hereby warrants that the products or services to be provided under this agreement will comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at 36 Code of Federal Regulations part 1194, prior to the time they are to be delivered or used by the District, and no payment shall be due to vendor until said requirements have been met."

At this point in time it is not entirely clear whether the Assistive Technology Act will extend the application of the section 508 regulations to all purchases made by colleges. The U.S. Department of Education which administers the Assistive Technology Act is expected to issue guidelines which may help clarify this matter in the future. However, the Chancellor's Office strongly recommends that colleges fully comply with section 508. In its 1998 decision concerning accessibility for blind and visually impaired students in the community colleges, the Office for Civil Rights of the U.S. Department of Education (OCR) held that the Americans with Disabilities Act of 1990 imposes essentially the same requirements on colleges. As a result, if a college does not purchase available equipment or software which provides accessibility, OCR and the Chancellor's Office will not accept an argument based on undue financial hardship if a discrimination complaint is subsequently filed. This will typically mean that the college will be found in violation of the ADA and required to replace or modify the product, often at much higher cost.

To aid colleges in achieving compliance with section 508, we have asked the Foundation for California Community Colleges to insert language similar to the above into cooperative purchasing agreements it signs with vendors of information technology. We have also issued such instructions to the California Virtual College (CVC) Regional Centers to ensure that products and services they obtain for use by colleges will be section 508 compliant. In addition, each of the CVC sites as well as the Professional Development Center at El Camino College will be receiving training in the technologies and techniques used to develop accessible Web based instructional resources and will be able to provide assistance to college staff in dealing with these issues. The High Tech Center Training Unit (HTCTU) at DeAnza College is also available to provide training and technical support to faculty and staff dealing with the issues of access to information technology. You can visit the HTCTU web site at: <http://www.htctu.fhda.edu>.

Further information concerning the section 508 regulations can be obtained from the Access Board's website <http://www.access-board.gov> and at <http://www.usdoj.gov/crt/508/508law.html>. You may also wish to review the Distance Education Access Guidelines developed by the Chancellor's Office which are available at: <http://www.htctu.fhda.edu/dlguidelines/final%20dl%20guidelines.htm>.

Action/Date Requested: Please take the steps described above to ensure that information technology developed, purchased, or licensed by your college complies with the requirements of section 508.

Contact: If you have questions concerning the legal requirements of section 508, you may call Chancellor's Office General Counsel, Ralph Black, at (916) 327-5692. If you have technical questions regarding the section 508 standards or accessibility requirements, you may contact Carl Brown, Director of the HTCTU, at (408) 996-6047.

RB:sj

cc: Thomas Nussbaum, Chancellor
Judith James, Vice Chancellor for Student Services
Victoria P. Morrow, Vice Chancellor for Educational Services and
Economic Development
Lindy Williams, Dean, Student Services
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Scott Hamilton, DSPS Coordinator
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