



10 Strategies for Mitigating Legal Risks Involving Digital Accessibility Compliance

1. Keep comprehensive documentation of policies, processes and testing

States may better manage their risks for web accessibility investigations through a well-managed, consistent digital accessibility program with documented policies, clear procurement requirements and testing procedures. Courts and federal agencies may look for evidence of accessibility in the enterprise's foundation; therefore, states should keep records of audits, VPAAT reviews, remediation plans and communication with vendors.

2. Create a corrective plan for known digital accessibility gaps

States can decrease legal exposure by having a clear, time-bound correction plan that prioritizes high-impact barriers, assigns responsibility and tracks progress. Good faith efforts may mitigate penalties or settlement demands.

3. Create a process for handling unknown and/or emerging issues

Litigation risks may decrease when states can show structured, transparent and repeatable methods are in place to address emerging digital accessibility issues. Include complaint intake procedures, escalation pathways and criteria for determining severity.

4. Promptly reply to complaints, demand letters and user experience issues

Legal analysis suggests that delayed or incomplete responses often result in lawsuits, while prompt responses that address the issue, outline next steps and offer alternative methods can prevent formal action.

5. Include Legal counsel when accessibility issues are discovered

Involving legal early ensures that correspondence, remediation plans and vendor interactions are structured to protect the state's legal position. Legal counsel can help frame responses, preserve privilege, ensure corrective actions align with federal mandates and navigate the complexity of relevant accessibility laws.

6. Remediate non-compliant content and systems and document everything

Strong compliance includes evidence that the issues were addressed. Research suggests plaintiffs target entities with persistent, unresolved issues and/or repeat accessibility offenders. States with completed and documented remediation are more likely to avoid repeat claims.

7. Provide accessible, alternative content formats and services during remediation

Offering alternate accessible formats for content and services demonstrates compliance with the ADA’s “effective communication” requirement, even if the main digital asset is undergoing remediation. While alternate formats are not a substitute for accessible technology, they can reduce harm and show good-faith effort.

8. Centralize all communications and documentation through legal counsel during active litigation

When a state enters active litigation or receives a formal complaint, centralizing all communications, timelines and remediation records with legal counsel is the most defensible posture. Ensure all documentation is timely, accurate and clear.

9. Cooperate fully with investigators and fully participate in structured remediation

During active litigation, a state’s best posture is one of transparency, full cooperation and evidence of ongoing remediation. This includes providing investigators with all information requested and showing “reasonable steps” towards accessibility as mandated by DOJ’s Title II rulemaking and enforcement guidelines.

10. Use existing contract obligations to encourage vendor cooperation with fact-finding and remediation efforts

States must take full responsibility for inaccessible, contracted third-party content and services and mandate accessibility in contract terms and conditions. States must enforce contract clauses that require vendors to provide documentation, participate in issue resolution and comply with federal civil rights laws. During an investigation, states may be required to demonstrate oversight and due diligence in managing vendor relationships.

Primary Author

Kalea Young-Gibson, NASCIO Policy Analyst
kyoung-gibson@nascio.org

About NASCIO

Founded in 1969, the National Association of State Chief Information Officers (NASCIO) represents state chief information officers (CIOs) and technology executives and managers from the states, territories and District of Columbia. NASCIO’s mission is advancing government excellence through trusted collaboration, partnerships and technology leadership. NASCIO provides state CIOs and state members with products and services designed to support the challenging role of the state CIO, stimulate the exchange of information and promote the adoption of IT best practices and innovations. From national conferences to peer networking, research and publications, briefings and government affairs, NASCIO is the premier network and resource for state CIOs. For more information, visit [NASCIO.org](https://www.nascio.org).