The Accommodation Subscription:

Tiered Artificial Intelligence Accessibility, Reliance, and the Nondelegable Duty in Public Education

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Abstract

Captions, transcripts, and synthetic speech are auxiliary aids and services. On the major educational artificial intelligence platforms they are also priced. A rudimentary version of each is distributed at no cost, and the version that actually works for a disabled student sits inside a paid edition or a paid add-on that the school district must purchase separately. This article argues that the resulting arrangement violates Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act in the hands of the purchasing district, and Title III of the Americans with Disabilities Act in the hands of the vendor, and that the two conclusions are independent of one another. The argument depends on no doctrinal reform. It rests on three settled propositions: that the duty of a public entity runs through its contractual and licensing arrangements and cannot be discharged by procurement; that an auxiliary aid must be effective rather than merely present; and that a covered entity may not impose the cost of nondiscriminatory treatment on the individuals who require it. A closing Part treats, as an alternative posture, the harder case of a vendor with no physical premises, which is reachable only on a functional reading of the statutory categories. The article then identifies the harm that tiered pricing produces over time. A student is given an aid, adapts to it, and organizes their participation around it, and the aid is then withdrawn when the district cannot absorb a price increase it did not set. That withdrawal, not the initial purchase, is the actionable event, and it is a lost educational opportunity in the exact sense that the Ninth Circuit preserved from the reach of *Cummings v. Premier Rehab Keller* in *Payan v. Los Angeles Community College District*.

Keywords: disability law; civil rights; Section 504; ADA Title II; ADA Title III; auxiliary aids and services; effective communication; surcharge rule; lost educational opportunity; students with disabilities; educational technology procurement; software licensing.

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Contents

I. Introduction

A public school district that licenses an educational technology platform is not buying software. It is choosing the instrument through which it will deliver its own program, and a student in that district cannot elect a different one, because the edition and add-on selections are made once at the level of the tenant and apply to every account inside it.[1] When the platform sorts its accessibility functions across price tiers, the district's purchasing decision becomes an allocation of access, and the allocation is made by an entity that owes a nondelegable duty to the students on the other side of it.

This article takes one platform as its worked example and one district as its defendant. The example is Google Workspace for Education, whose public accessibility page states a commitment to universal access and, on the same page, conditions live translated captions and in-document synthetic speech on the purchase of the Google AI Pro for Education add-on and conditions automated meeting transcripts on the purchase of a paid edition.[2] The defendant is the district that bought the tier below.

Part II sets out the pricing architecture as the vendor itself describes it, including the free functions, which matter to the argument rather than defeating it. Part III establishes that the gated functions are auxiliary aids and services within the meaning of the implementing regulations and that the governing standard is effectiveness rather than existence. Parts IV through VII develop the claims against the district. Parts VIII and IX develop the claims against the vendor. Part X states the alternative postures, including the same analysis applied to a state education agency and to other vendors selling comparable platforms into the same market.

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1. Compare Google Workspace for Education Editions, Google for Education, https://edu.google.com/workspace-for-education/editions/ (last visited Aug. 1, 2026) (editions and add-ons are purchased by the institution).

2. Accessibility Features in Google for Education, Google for Education, https://edu.google.com/intl/ALL_us/our-values/accessibility/ (last visited Aug. 1, 2026) [hereinafter Google Accessibility Page]. Page content captured on the date of visit. The page is organized under four headings named for the disabilities the listed features serve: display and vision, motor and dexterity, cognitive and spoken feedback, and audio and captions.

A. What This Article Does Not Argue

Three disclaimers, stated at the outset because each corresponds to a position that the argument is likely to be mistaken for.

The article does not argue that a vendor must give away its product. It argues that a covered entity may not distribute the cost of nondiscriminatory treatment onto the class that requires it, and that a public entity may not discharge its own obligation by declining to buy the version of a tool that works.

The article does not argue that the presence of a free captioning function is irrelevant. It argues the opposite: the free function is the baseline against which effectiveness is measured, and its inadequacy for particular students is what the record will show.

The article does not depend on any expansion of the physical nexus doctrine under Title III. The vendor against which the Title III count is brought operates physical retail locations open to the public, which satisfies even the narrowest circuit formulation. Part X takes up separately, and as an alternative posture, the harder case of a vendor with no premises.[3]

II. The Architecture of the Gate

A. The Commitment and the Tier on the Same Page

Google's education accessibility page organizes its features into four categories named for the disabilities they serve: display and vision, motor and dexterity, cognitive and spoken feedback, and audio and captions.[4] The taxonomy is the vendor's own. It forecloses at the threshold the characterization of these functions as general productivity features that happen to benefit disabled users, because the vendor has already classified them by the impairment they address.

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3. Google opened its first physical retail store in New York in 2021. Clare Duffy, *Meta Is Opening a Retail Store*, CNN Business (Apr. 25, 2022). Current locations are listed in the Google Store retail directory.

4. Google Accessibility Page, *supra* note 2.

The same page states the company's commitment to making information universally accessible and to building products with and for the disability community.[5]

B. Three Tiers, Not One

The gate is not a single line item. Google states that Education Fundamentals is available at no charge to qualifying institutions, that enhanced capabilities come with the paid editions, and that Google AI Pro for Education is purchased separately on top of any edition.[6] Accessibility functions are distributed across the upper two levels.

Automated meeting transcription requires a paid edition of Google Workspace for Education. The vendor's stated purpose for the function is to assist people with limited working memory and those who need additional processing time.[7] This is the cleanest exhibit on the page. The disability rationale and the payment condition occupy the same sentence, and the gate operates at the level of the tenant's edition rather than at the level of an optional feature, so a district on the no-cost edition cannot reach the function at all without upgrading its entire deployment.

Live translated captioning in Google Meet requires the paid Google AI Pro for Education add-on.[8] In-document listening in Google Docs, with adjustable voices and adjustable playback speed, is included with the same paid add-on.[9]

C. What Is Free, and Why It Is the Beginning of the Argument

The same page offers, at no stated cost, closed captioning in Google Meet and Google Slides, caption tracks on Drive files, browser-level live captioning, a select-to-speak function, a reading

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5. *Id.*

6. Compare Google Workspace for Education Editions, Google for Education, https://edu.google.com/workspace-for-education/edition (last visited Aug. 1, 2026).

7. Google Accessibility Page, *supra* note 2. The transcription entry appears twice on the page, once under the cognitive category and once under the hearing category.

8. *Id.*

9. *Id.*

mode with synthetic speech, and optical character recognition that reads scanned documents aloud.[10]

The measured record answers the question these free functions are meant to close. Learning gains for students with disabilities using speech recognition captioning have been observed only where transcription accuracy reached at least 85 percent; other work places the classroom threshold at 90 percent and holds that 98 percent or better may be required to preserve the meaning and intent of the message, while actual accuracy rates are most often too low for deaf and hard of hearing students in ordinary educational settings.[11] A vendor answering with a headline accuracy figure has not answered, because word error rate correlates poorly with whether deaf and hard of hearing users can actually use the resulting caption.[12] And the errors a machine makes are not the errors a human makes: automatically generated caption errors impose greater cognitive demand on the reader, and deaf and hard of hearing students obtain less from even an accessible mainstream lecture than their hearing peers do.[13]

An adversary will lead with this list. The answer is that it proves the claim rather than defeating it. Congress and the Department of Justice did not write a rule requiring covered entities to provide something in the general vicinity of an aid. The rule requires the aid to be effective for the individual, and it requires the entity to give primary consideration to what that individual says they need.[14] A student who is deaf and reads a language other than the one being spoken in the classroom is not served by monolingual captions, and the premise underlying

10. *Id.*

11. Abraham Glasser, Kesavan Kushalnagar & Raja Kushalnagar, *Deaf, Hard of Hearing, and Hearing Perspectives on Using Automatic Speech Recognition in Conversation*, in PROCEEDINGS OF THE 19TH INTERNATIONAL ACM SIGACCESS CONFERENCE ON COMPUTERS AND ACCESSIBILITY 427, 429 (2017), https://doi.org/10.1145/3132525.3134781.

12. Sushant Kafle & Matt Huenerfauth, *Evaluating the Usability of Automatically Generated Captions for People Who Are Deaf or Hard of Hearing*, in PROCEEDINGS OF THE 19TH INTERNATIONAL ACM SIGACCESS CONFERENCE ON COMPUTERS AND ACCESSIBILITY 165 (2017), https://doi.org/10.1145/3132525.3132542.

13. Sushant Kafle, Peter Yeung & Matt Huenerfauth, *Evaluating the Benefit of Highlighting Key Words in Captions for People Who Are Deaf or Hard of Hearing*, in PROCEEDINGS OF THE 21ST INTERNATIONAL ACM SIGACCESS CONFERENCE ON COMPUTERS AND ACCESSIBILITY 43 (2019), https://doi.org/10.1145/3308561.3353781.

14. 28 C.F.R. § 35.160(b)(1)–(2) (2025).

that observation is documented rather than assumed. Research on media accessibility proceeds from the finding that the surrounding spoken language typically functions as a second language for deaf and hard of hearing readers, and testing deaf and hard of hearing participants with instruments designed for foreign learners places them at markedly lower reading proficiency levels than hearing controls on the same instrument.[15] Lower reading literacy also makes fast moving captions harder to follow, which compounds the problem rather than presenting a separate one.[16] A student whose disability affects working memory is not served by a caption stream that vanishes as it scrolls, and the mechanism has a name. The transient information effect occurs when explanatory information disappears before the learner has adequately processed it, producing inferior learning compared with a more permanent source; a permanent written record can be revisited and therefore consumes fewer working memory resources than transitory text that must be held while it is integrated.[17] That is the difference between a caption and a transcript, and it is the difference the vendor prices. In each case the free function exists and does not work, and the working function is behind a price.

D. The Analytics Gate, Offered as Pattern Rather Than Count

A parallel structure appears in the platform's literacy tool. Read Along in Google Classroom is available at no cost to all education users, while the analytics that track a student's reading progress over time and across assignments are restricted to the higher edition and a separate

15. Paweł Aleksandrowicz, *The Reading Comprehension Skill of d/Deaf and Hard-of-Hearing Poles and Its Importance for Media Accessibility*, 2 J. AUDIOVISUAL TRANSLATION 26 (2019), https://doi.org/10.47476/jat.v2i1.87.

16. Kafle, Yeung & Huenerfauth, *supra* note 13.

17. Anne-Marie Singh, Nadine Marcus & Paul Ayres, *The Transient Information Effect: Investigating the Impact of Segmentation on Spoken and Written Text*, 26 APPLIED COGNITIVE PSYCH. 848 (2012), https://doi.org/10.1002/acp.2885; *see also* Wayne Leahy & John Sweller, *Cognitive Load Theory, Modality of Presentation and the Transient Information Effect*, 25 APPLIED COGNITIVE PSYCH. 943 (2011), https://doi.org/10.1002/acp.1787 (finding the advantage of transitory presentation reversed where the transitory text was too long to be processed easily in working memory).

add-on.[18] Here the student-facing support is free and the instrument that would let a district identify which students are struggling is paid.

This is a different shape from the gates discussed above, and the article treats it accordingly. Longitudinal reading data is not itself an auxiliary aid. It is the evidentiary layer on which identification and placement decisions rest, which situates it in the district's methods of administration and in its obligations to identify students who may need services.[19] It is offered here as evidence of a consistent architecture, not as an independent count.

E. The Same Architecture Elsewhere

Google is the worked example because its disclosures are unusually explicit, and because its platform is student facing, which is what makes the auxiliary aids analysis attach. It is not the only vendor selling an artificial intelligence platform into public education, and the claims against the district in Parts IV through VII do not depend on whose name appears on the license.

A second vendor is worth describing precisely, because the imprecise version of the comparison is wrong. OpenAI offers ChatGPT for Teachers free to verified United States kindergarten through twelfth grade educators through June 2027, and states in its own documentation that after that date it may introduce or adjust pricing.[20] The same documentation states that the plan is not for students and that student accounts and student facing features may come later.[21] Named district participants include School District U-46 and Township High School District 211, both in Illinois.[22]

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18. Read Along in Google Classroom Is Now Available to All Education Users to Support Foundational Literacy, Google Workspace Updates (June 25, 2026) (rollout completion expected July 3, 2026; advanced analytics limited to Education Plus and the Teaching and Learning add-on); Read Along in Google Classroom, Classroom Help (overall progress dashboard and longitudinal tracking available only with those editions).

19. *See* 34 C.F.R. § 300.111 (child find); 34 C.F.R. § 104.35 (evaluation and placement).

20. ChatGPT for Teachers, OpenAI Help Center, https://help.openai.com/en/articles/12844995-chatgpt-for-teachers (last visited Aug. 1, 2026); A Free Version of ChatGPT Built for Teachers, OpenAI (Nov. 19, 2025), https://openai.com/index/chatgpt-for-teachers/.

21. ChatGPT for Teachers, *supra* note 20.

22. A Free Version of ChatGPT Built for Teachers, *supra* note 20.

Two consequences follow, and they run in opposite directions. Because the product is not student facing, it does not presently generate the student side auxiliary aids claim that this article develops, and treating the two vendors as interchangeable on that point would be an error. But because the vendor has publicly announced a free period with a stated end date and has reserved the right to price the product afterward, it supplies the clearest available illustration of the mechanism examined in Part VI, in which an institution and its users adapt to a tool during a free period and the price is set later.

III. The Gated Functions Are Auxiliary Aids and Services

A. The Regulatory Definitions Name Them

The Title II definition of auxiliary aids and services is a list, and the functions at issue appear on it. The list includes real-time computer-aided transcription services and open and closed captioning, including real-time captioning, among the methods of making aurally delivered information available to individuals who are deaf or hard of hearing.[23] It separately includes audio recordings, screen reader software, and accessible electronic and information technology among the methods of making visually delivered materials available to individuals who are blind or have low vision.[24] The Title III definition is materially identical.[25]

Transcription and captioning are therefore not analogous to auxiliary aids. They are enumerated. Synthetic speech applied to a document is an audio recording of visually delivered material and, on the vendor's own account, is offered to make written material available to students who cannot use it as printed.

That function is not a convenience whose loss is trivial. A meta-analysis of text to speech and related read aloud tools reports an average weighted effect size of .35 on reading comprehension for students with reading disabilities, with a 95 percent confidence interval from

23. 28 C.F.R. § 35.104 (definition of "Auxiliary aids and services") (eCFR ed. July 30, 2026).
24. *Id.*
25. 28 C.F.R. § 36.303(b) (eCFR ed. July 30, 2026).

.14 to .56.[26] Subsequent experimental work finds that students with dyslexia are significantly more on task when reading with text to speech than when reading at their own pace, and that comprehension improves in both disabled and typically developing readers,[27] and that reading rate improves across grade groups.[28] Adjustable playback speed and voice selection, the two attributes the vendor places behind its add-on, are the parameters this literature identifies as doing the work.

B. The Standard Is Effectiveness, and the Regulation Says So Twice

The argument that a free captioning function discharges the obligation fails on the text of the general prohibition. A public entity may not, directly or through contractual, licensing, or other arrangements, provide a qualified individual with a disability an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.[29] The Section 504 regulation applicable to education recipients states the same prohibition in the same structure.[30]

The effective communication provision supplies the operational rule. A public entity must furnish appropriate auxiliary aids and services where necessary to afford an equal opportunity to participate in and enjoy the benefits of its programs, and in determining which aids are necessary it must give primary consideration to the requests of individuals with disabilities.[31]

Two consequences follow. A district cannot answer a student who needs a transcript by pointing to a caption stream, because the regulation directs it to start from what the student

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26. Sarah G. Wood, Jerad H. Moxley, Elizabeth L. Tighe & Richard K. Wagner, *Does Use of Text-to-Speech and Related Read-Aloud Tools Improve Reading Comprehension for Students with Reading Disabilities? A Meta-Analysis*, 51 J. LEARNING DISABILITIES 73, 77 (2018), https://doi.org/10.1177/0022219416688170.

27. Paola Bonifacci, Elisa Colombini & Michele Marzocchi, *Text-to-Speech Applications to Reduce Mind Wandering in Students with Dyslexia*, 38 J. COMPUTER ASSISTED LEARNING 440 (2022), https://doi.org/10.1111/jcal.12624.

28. Sofia Grunér, Per Östberg & Martina Hedenius, *The Compensatory Effect of Text-to-Speech Technology on Reading Comprehension and Reading Rate in Swedish Schoolchildren with Reading Disability*, 33 J. SPECIAL EDUC. TECH. 98 (2018), https://doi.org/10.1177/0162643417742898.

29. 28 C.F.R. § 35.130(b)(1)(iii).

30. 34 C.F.R. § 104.4(b)(1)(iii) (prohibiting provision of an aid, benefit, or service "that is not as effective as that provided to others").

31. 28 C.F.R. § 35.160(b)(1)–(2).

asked for. And a district cannot answer a student who needs translated captions by pointing to monolingual captions, because a caption in a language the student does not read is not as effective in affording an equal opportunity to reach the same level of achievement. In each case the free function exists, does not work for the student, and the function that does work is priced.

IV. The District: Title II and Section 504

A. Status Is Not in Dispute

A public school district is a public entity subject to Title II and a recipient of federal financial assistance subject to Section 504 and the Department of Education's implementing regulation.[32] It is a unit of local government, which is why this article names a district rather than a state education agency: no Eleventh Amendment question arises, and no question arises about when the administration of a program by a private platform is attributable to a state.

A note on citation hygiene, because it has trapped others. The 2024 restructuring that renumbered the Section 504 regulation moved the sections of the Department of Health and Human Services regulation at 45 C.F.R. part 84, where the recipient definition now sits at § 84.10 and the general prohibitions at § 84.68. The Department of Education's regulation at 34 C.F.R. part 104, which governs school districts, was not renumbered, and its section numbers remain as they have long been cited.[33]

B. The Duty Runs Through the License

The operative words appear in the chapeau of the general prohibition. A public entity, in providing any aid, benefit, or service, may not discriminate "directly or through contractual,

32. 42 U.S.C. § 12131(1); 29 U.S.C. § 794; 34 C.F.R. pt. 104.

33. Compare 45 C.F.R. §§ 84.10, 84.68 (eCFR ed. July 24, 2026), with 34 C.F.R. §§ 104.4, 104.33 (eCFR ed. July 24, 2026).

licensing, or other arrangements."[34] The Section 504 regulation for education recipients carries the identical phrase.[35]

A district that selects a license tier is making a contractual arrangement, and the prohibition reaches it in terms. The vendor designed the tier. The district bought it. Nothing in the regulation makes the vendor's design a defense, and everything in the phrase quoted above anticipates precisely the argument that a covered entity may route its obligations through a contract and be free of them.

There is a further hook in the education regulation that has no Title II twin. A recipient may not aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to an organization or person that discriminates on the basis of disability in providing any aid, benefit, or service to the beneficiaries of the recipient's program.[36] A district that renews a multi-year license with a vendor whose product allocates auxiliary aids by price is supplying that assistance with knowledge of the allocation.

C. Methods of Administration and Eligibility Criteria

A public entity may not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination.[37] A public entity also may not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities, unless the criteria are necessary for the service being offered.[38]

The procurement architecture is the method of administration. What that architecture actually looks like has been studied. In a multisite study of districts selected as leading edge in educational technology adoption, purchasing decisions turned on teacher interest, usage data, and interoperability, student learning outcome data was not uniformly emphasized, and subscription

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34. 28 C.F.R. § 35.130(b)(1).
35. 34 C.F.R. § 104.4(b)(1).
36. 34 C.F.R. § 104.4(b)(1)(v).
37. 28 C.F.R. § 35.130(b)(3)(i); *accord* 34 C.F.R. § 104.4(b)(4)(i).
38. 28 C.F.R. § 35.130(b)(8).

products were added quickly or dropped based on how teachers were using them.[39] If that is the process at districts chosen for their sophistication, the assumption that a typical district independently evaluates whether a tier serves its disabled students does not survive contact with the record. Where the district selects a tier, and the tier determines which students receive an effective aid, the selection is a facially neutral practice that operates on an identifiable class. The claim must plead the mechanism, meaning the specific functions gated and the specific students who require them, rather than a statistical disparity at large.[40]

D. Effective Communication Carries the Present Violation

The present violation runs on the effective communication requirement and its Section 504 counterpart, not on any technical standard and not on any future compliance date.[41] The obligation to furnish appropriate auxiliary aids where necessary to afford an equal opportunity to participate attaches now, and nothing in the web rule postpones it.[42]

E. The Web Rule, in a Subordinate Position

The Title II web accessibility rule requires a public entity to ensure that web content and mobile apps it "provides or makes available, directly or through contractual, licensing, or other arrangements" are readily accessible to and usable by individuals with disabilities.[43] That general statement is not date-limited. The technical requirement is. Compliance with WCAG 2.1 Level A and Level AA is required beginning April 26, 2027 for a public entity other than a special district government with a total population of 50,000 or more, and beginning April 26, 2028 for a public

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39. Sara Dexter, Aubrey Francisco & Christina Luke Luna, *Five Leading-Edge K-12 Districts' Decision-Making Processes for EdTech Innovations*, 59 J. EDUC. ADMINISTRATION 352 (2021), https://doi.org/10.1108/jea-10-2020-0222.

40. *Alexander v. Choate*, 469 U.S. 287 (1985).

41. 28 C.F.R. § 35.160(b)(1)–(2); 34 C.F.R. §§ 104.4(b)(1)(iii), 104.33(b)(1).

42. *Compare* 28 C.F.R. § 35.160(b)(1) (no compliance date), *with* 28 C.F.R. § 35.200(b) (technical standard phased by population).

43. 28 C.F.R. § 35.200(a)(1)–(2).

entity with a total population of less than 50,000 or any public entity that is a special district government.[44]

This article therefore uses § 35.200 for the arrangements language in subsection (a), which writes a vendor supplied tool into the entity's own obligation, and not as the source of a present violation. A declaratory count directed at the applicable future date is available and is not the center of the case. Which date applies to a given district turns on whether an independent school district is a special district government within the meaning of the rule. Part 35 does not define the term.[45] That classification question should be settled before the count is pleaded.

F. The District's Own Defense, and Why It Is Usually Unavailable

A district reading this far will reach for the provision that exists for exactly its situation. The Title II subpart does not require a public entity to take any action it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens.[46] An article arguing that a district must buy the tier that works has to meet that provision rather than walk past it.

It is met on the structure of the regulation itself, which is unusually demanding of the entity invoking it. The public entity bears the burden of proving that compliance would result in such alteration or burdens. The decision that it would must be made by the head of the public entity or a designee. It must be made after considering all resources available for use in the funding and operation of the service, program, or activity. And it must be accompanied by a written statement of the reasons for reaching that conclusion.[47] Where the entity determines that an action would result in such burdens, it must nonetheless take any other action that would

44. 28 C.F.R. § 35.200(b)(1)–(2).

45. A full-text search of 28 C.F.R. pt. 35 (eCFR ed. July 30, 2026) returns no definition of "special district government," although the term carries the operative distinction in § 35.200(b).

46. 28 C.F.R. § 35.164.

47. *Id.*

not do so and would ensure that individuals with disabilities receive the benefits or services it provides.[48]

Four requirements, and a district that simply purchased the base tier will typically satisfy none of them. There is no written statement, because nobody wrote one. There is no head of entity determination, because the decision was made in a procurement cycle. There is no consideration of all available resources, because the tier was selected against a technology line item rather than against the district's budget as a whole. And there is no showing that the district took the other available actions, which in this setting would include procuring the aid from a different vendor, contracting for human transcription, or paying for the add-on for the students who need it rather than for every account.

The defense is therefore not weak on these facts. It is usually unavailable on them, and its unavailability is a documentary question rather than a contested one. That is worth pleading affirmatively rather than waiting for the answer, because it converts a district's strongest statutory response into a request for four documents that do not exist.

V. The Surcharge Rules

A. The Text, Which Names Auxiliary Aids as the Paradigm

A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with nondiscriminatory treatment.[49] The Title III provision is parallel and reaches a public accommodation imposing such a surcharge, listing the provision of auxiliary aids first among its examples.[50]

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48. *Id.*
49. 28 C.F.R. § 35.130(f).
50. 28 C.F.R. § 36.301(c).

Two features of the text matter here. The regulation does not confine itself to a charge itemized against a named person; it reaches a surcharge on "any group of individuals with disabilities."[51] And it does not treat auxiliary aids as an incidental illustration; the provision of auxiliary aids is the leading example of the cost that may not be shifted.

One limit should be stated rather than discovered. The Department of Education's Section 504 regulation contains no surcharge provision.[52] Against the district, the surcharge argument therefore runs under Title II. Against the vendor, it runs under Title III.

B. The Bundling Answer

The strongest response is that the add-on is sold to the district rather than to a student, that it contains many functions unrelated to disability, and that it is nominally optional. The answer has three parts.

First, a covered entity does not escape the surcharge rule by wrapping a required auxiliary aid inside a package of unrelated goods. A rule that could be defeated by bundling would be a drafting exercise rather than a prohibition, and the regulation's reference to a group rather than an individual indicates that aggregation was contemplated rather than overlooked.

Second, the characterization of the package as undifferentiated productivity is unavailable on this record, because the vendor has already sorted these functions by the impairment each addresses.

Third, the identity of the payor does not change the incidence. Where a purchase is required in order for a class of students to receive an effective aid and is not required for anyone else, the cost of nondiscriminatory treatment has been placed on that class, and the fact that a public agency writes the check does not relocate it.

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51. 28 C.F.R. § 35.130(f); *accord* 28 C.F.R. § 36.301(c).

52. A full-text search of 34 C.F.R. pt. 104 (eCFR ed. July 24, 2026) returns no occurrence of the term.

C. What the Case Law Requires

Courts applying the surcharge provisions have supplied a workable test: the plaintiff establishes that the charge is a surcharge, that it is imposed only on persons with disabilities, and that it covers the cost of measures the statute requires.[53]

Two elements are straightforward on these facts and the third is the fight.

A charge is a surcharge if it exceeds the usual or normal amount, and that amount may be zero.[54] The add-on price is by construction an amount in excess of the base tier. The illustrative case named in that decision is a medical office charging deaf patients for interpreters, where a standard fee is set without reference to disability and the interpreter charge is added on top.[55] That is the structure here: a base license priced without reference to disability, and a further price for functions the vendor itself files under disability categories.

The measures are required, because the aids are enumerated in the regulatory definitions and because a district that has selected this platform as the means of delivering instruction has made these the operative aids. Where a public entity chooses a particular method of ensuring access, the method it chose becomes the required measure for surcharge purposes.[56]

The contested element is whether the charge falls only on people with disabilities. It does not fall on them by name. The answer is that incidence, not billing address, is what the provision polices. A district that purchases only the base tier withholds the effective aid from one class and from no one else. A district that purchases the add-on has done what the regulation contemplates, which is to spread the cost rather than concentrate it. That is the instruction courts have given elsewhere: an entity that wishes to pass on the cost of an access measure must pass it to everyone rather than to the protected class alone.[57] And the prohibition is not confined to the costs of an

53. *Duprey v. Connecticut, Dep't of Motor Vehicles*, 28 F. Supp. 2d 702 (D. Conn. 1998).

54. *Id.* (a fee is a surcharge if it is in excess of a usual or normal amount, even where that amount is zero).

55. *Id.*

56. *Id.* (special plates and placards were required measures because the State chose them as its method of restricting access to reserved spaces).

57. *Id.*

entity's own obligations; a public entity may not relieve a private entity of its compliance costs and then route them to disabled people.[58]

That framing also identifies the remedy. This article does not ask a court to order a vendor to give away a product. It asks that the price of nondiscriminatory treatment be carried by the base tier, which is what the regulation has always required of a covered entity that would rather charge for access.

VI. Reliance and Withdrawal

A. The Mechanism

A tiered product is not a static allocation. In the economics of information goods this arrangement has a name and a design logic: versioning, in which a seller offers a functionally degraded version alongside a full one in order to sort buyers by willingness to pay.[59] The restrictions placed on the free version are not incidental to that design; they are the instrument by which it operates.[60] This article draws no inference about any vendor's intent from that literature, and it does not need to. The point is narrower: the gap between tiers is engineered rather than accidental, and its size is a decision. A student who receives an aid at the beginning of a school year does not experience it as a licensing decision. The student adapts to it, learns through it, and organizes their participation in the classroom around it.

The harm this Part identifies arrives later. When the price of the paid tier rises, or when a grant expires, or when a district reallocates its technology budget, the aid is withdrawn from a student who had it. The district's stated reason will be cost, and the cost will have been set by a party the student cannot reach.

58. *Klingler v. Director, Dep't of Revenue*, 433 F.3d 1078 (8th Cir. 2006).

59. Paul Belleflamme, *Versioning in the Information Economy: Theory and Applications*, 51 CESIFO ECON. STUD. 329 (2005), https://doi.org/10.1093/cesifo/51.2-3.329.

60. Christine Halmenschlager & Patrick Waelbroeck, *Fighting Free with Free: Freemium vs. Piracy* (2014), https://doi.org/10.2139/ssrn.2475641 (describing restrictions on the free version, including quality, as a central element of freemium design).

Nothing in that sequence is speculative. At least one vendor in this market has announced the schedule in advance, offering an education product at no cost through a stated date and reserving the right to introduce or adjust pricing afterward.[61] A district that builds instructional practice around a tool during such a period is on notice that the period ends. So is the vendor. What neither has committed to is what happens to the student who by then depends on the function.

B. Withdrawal Is the Actionable Event

Denial at the outset and withdrawal after reliance are not the same claim, and the second is stronger. A denial case asks a court to determine what a student would have needed. A withdrawal case shows what a student used, for how long, and what happened when it stopped. The record contains a baseline of effectiveness established by the district's own deployment, documented reliance in the student's plan and coursework, and regression measurable against that baseline. Each of those is also the evidence the plaintiff needs on damages, because a lost opportunity proved to a reasonable certainty is exactly what survives.

The consequence of losing an assistive technology a person has come to rely on is a studied phenomenon rather than an intuition. Abandonment and non-use of provided assistive technology have been documented for three decades,[62] and the determinants are grouped in the literature as personal, device related, environmental, and intervention related rather than as a failure of the user.[63] The strand of that work most directly on point locates abandonment in the

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61. ChatGPT for Teachers, *supra* note 20 (free for verified United States kindergarten through twelfth grade educators through June 2027; pricing may be introduced or adjusted after that date, with advance notice).

62. Betsy Phillips & Hongxin Zhao, *Predictors of Assistive Technology Abandonment*, 5 ASSISTIVE TECH. 36 (1993), https://doi.org/10.1080/10400435.1993.10132205.

63. Roelof Wessels, Bea Dijcks, Mathijs Soede, Lars Lyhne Gelderblom & Luc De Witte, *Non-Use of Provided Assistive Technology Devices, a Literature Overview*, 15 TECH. & DISABILITY 231 (2003), https://doi.org/10.3233/tad-2003-15404.

perceived quality of the delivery process itself,[64] which is to say in how the provider administers the provision. A district that ends a subscription is administering the provision.

C. Cost Does Not Define the Obligation

Where an assistive technology device or service is required as part of a child's special education, related services, or supplementary aids and services, the public agency must ensure it is made available.[65] The parallel Section 504 obligation is the provision of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of other students are met.[66]

The Supreme Court has been careful about the role of cost in defining that obligation. Rejecting a proposed multi-factor test that would have folded cost into the definition of a district's duty, the Court observed that accommodating the cost concerns Congress may have had is a different exercise from using cost itself as the definition, and that a district cannot limit educational access by pointing to the limitations of its existing resources.[67] The claim here is narrower and harder to answer: a vendor's decision to reprice a tier is not a change in what a student needs, and the district's obligation is defined by the student's need rather than by the invoice.

D. Why This Part Makes the District the Right Defendant

The vendor sets the price and owes no duty to the student under the education statutes. The district owes the duty and does not set the price. The student's loss is produced by the interaction of the two, and only one of them is answerable for it. That asymmetry is not a defect in the case. It is the reason the nondelegable duty exists.

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64. Stefano Federici & Simone Borsci, *Providing Assistive Technology in Italy: The Perceived Delivery Process Quality as Affecting Abandonment*, 11 DISABILITY & REHABILITATION: ASSISTIVE TECH. 22 (2016), https://doi.org/10.3109/17483107.2014.930191.

65. 34 C.F.R. § 300.105(a); *see* 34 C.F.R. §§ 300.5, 300.6.

66. 34 C.F.R. § 104.33(b)(1).

67. *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999). The decision does not hold that expense is always irrelevant and expressly did not reach any threshold for undue burden.

VII. Damages

A. The Concession

Emotional distress damages are unavailable and this article concedes the point rather than litigating it. *Cummings v. Premier Rehab Keller, P.L.L.C.* held such damages unrecoverable in private actions under the Spending Clause antidiscrimination statutes.[68] The Ninth Circuit has now extended that holding to Title II, reasoning that the remedies available under Title II are defined by the statute's own reference to the Rehabilitation Act, which in turn adopts the remedies of Title VI.[69] The argument that the ADA is not Spending Clause legislation supplies no escape, because the incorporation is express.[70]

B. What Survives

The same decision holds that plaintiffs may seek compensatory damages for lost educational opportunities under Title II, agreeing with the Eleventh Circuit that compensation for lost educational benefits remains available after *Cummings*, and finding that the district court erred in barring the plaintiffs from seeking those damages.[71] The anchor is the principle that where legal rights have been invaded and a federal statute provides a general right to sue, federal courts may use any available remedy to make good the wrong done.[72] Plaintiffs must prove the amount with reasonable certainty.[73]

One point of precision, because the shorthand is already circulating. The majority did not classify lost educational opportunity damages as economic rather than emotional harm as

68. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022). The parallel Supreme Court Reporter citation is superseded and is not used here.

69. *Payan v. L.A. Cmty. Coll. Dist.*, No. 24-1809 (9th Cir. Mar. 11, 2026) (holding emotional distress damages unavailable under Title II through the incorporation chain at 42 U.S.C. § 12133 and 29 U.S.C. § 794a(a)(2)); *accord A.W. ex rel. J.W. v. Coweta Cnty. Sch. Dist.*, 110 F.4th 1309, 1314 (11th Cir. 2024).

70. *See Barnes v. Gorman*, 536 U.S. 181, 190 n.3 (2002).

71. *Payan*, No. 24-1809 (9th Cir. Mar. 11, 2026); *A.W.*, 110 F.4th at 1315–16.

72. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 66 (1992) (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).

73. *Payan*, No. 24-1809 (9th Cir. Mar. 11, 2026) (agreeing with the partial dissent on this point); *see Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 962 (9th Cir. 2001).

a general matter, and expressly did not decide how such damages are classified in all contexts. It held them recoverable as appropriate relief for an invasion of legal rights, distinct from the emotional distress damages *Cummings* forecloses. The characterization of Title II remedies as limited to those traditionally available in contract, and therefore to economic damages, appears in the partial dissent.[74] The distinction matters to how the claim is pleaded: the plaintiff establishes an invaded right and a lost opportunity with a provable value, rather than arguing about a damages taxonomy the court declined to settle.

This is an education case, which places the class inside the preserved category rather than adjacent to it. The live question becomes what counts as a lost opportunity, which is a question about the scope of the right wearing the clothing of a question about remedy.

C. Reaching Damages at All

Compensatory damages under Title II and Section 504 require intentional discrimination, and the governing standard is deliberate indifference, which has two elements: knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that likelihood.[75]

The knowledge element is satisfied where the plaintiff has alerted the entity to the need, where the need is obvious, or where the accommodation is required by statute or regulation.[76] The failure to act element is not satisfied by speculation; the entity must undertake a fact-specific inquiry, gather sufficient information, and give primary consideration to what the individual requests.[77] That last point ties this Part to the effective communication analysis above: the same regulation that defines the district's substantive duty supplies the measure of its indifference.

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74. *Payan*, No. 24-1809 (9th Cir. Mar. 11, 2026) (Lee, J., dissenting in part). A brief that describes the majority as having adopted the economic characterization will be corrected.

75. *Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001) (en banc); *accord Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334 (11th Cir. 2012) (adopting deliberate indifference for Section 504 compensatory damages and noting that all but one sister circuit to reach the question had done the same).

76. *Duvall*, 260 F.3d 1124.

77. *Id.* (linking the duty to investigate to the primary consideration requirement in the Attorney General's regulations).

Attribution requires care. Liability attaches through an official who has authority to address the discrimination and to institute corrective measures, who has actual knowledge, and who fails to respond adequately, which is a fact-specific inquiry into who held complete discretion at a key decision point.[78] On these facts the inquiry is unusually clean, because the official who selects the license tier is by definition the person exercising discretion at the decision point that allocates the aid.

And the notice exhibit is the deprivation exhibit. The vendor's public page states which functions are gated and which disabilities they serve. One document establishes both that the aid was withheld and that the district knew what it was declining to buy.

D. Exhaustion

Exhaustion under the Individuals with Disabilities Education Act[79] is required only where the gravamen of the suit is the denial of a free appropriate public education, and courts identify the gravamen by asking two questions: whether the plaintiff could have brought essentially the same claim had the conduct occurred at a public facility that is not a school, and whether an adult at the school could have pressed essentially the same grievance.[80]

Both answers here are yes, and the fit is close enough to be worth stating rather than assuming. A public library or a public hospital that deployed the same platform on the same tier would present the identical claim to the identical class of users. A deaf teacher, or a parent attending a conference conducted over the same platform, could press the identical grievance. Under the test, a complaint that survives both questions is unlikely to be about a free appropriate public education even though it arises in a school.

Independently, exhaustion does not bar a suit under another federal statute where the relief sought is unavailable under that Act, and compensatory damages are such relief.[81] One

78. *Liese*, 701 F.3d 334 (adopting the attribution analysis of *Gebser v. Lago Vista Independent School District*).
79. 20 U.S.C. § 1415(l).
80. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017).
81. *Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023).

limit travels with that holding and should shape the prayer: a plaintiff who joins a request for the kind of equitable relief the Act does provide may find that request barred or deferred pending exhaustion.[82] The injunction sought here runs to the district's procurement and communication practices rather than to the contents of any individual plan, which keeps it outside that category, and a plaintiff who has a Section 504 plan and no individualized education program does not reach the question at all.

VIII. The Vendor: Title III

A. Coverage Without Doctrinal Reform

The vendor operates physical retail premises open to the public.[83] That satisfies the physical nexus requirement in the circuits that impose one and is beside the point in the circuits that do not. This article therefore reaches its Title III defendant without asking any court to revisit the nexus question, and its conclusions do not depend on how that question is eventually resolved.

B. The Joint That Looked Soft

The apparent difficulty is that the district is the purchaser and the student bought nothing, which invites the argument that Title III protects only clients and customers. The argument fails, and it fails on authority rather than on analogy.

The general rule of Title III guarantees full and equal enjoyment to any individual, and it contains no clients or customers limitation. The Supreme Court has said so directly, observing that the clause in which that phrase appears is not literally applicable to the general rule.[84] The Ninth Circuit has applied that reading, holding that the limited definition of individual in the clause does not circumscribe the general prohibition.[85] Another court of appeals has rejected the

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82. *Id.*
83. *See supra* note 3 and accompanying text.
84. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 679 (2001).
85. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724 (9th Cir. 2007).

limitation as well, and the decisions imposing it are district court authority running against the weight.[86]

Even on the narrow reading the claim survives, because the Court has held that a single payment suffices to make a person a client or customer.[87] A student who pays any technology fee is inside the category on that authority alone. The broad reading makes the question unnecessary.

What remains, and what this article does not assert, is the separate proposition that merely contracting with an entity subject to Title III does not make the contracting party liable for that entity's failures. That principle is sound and is not the claim here. The claim is that the vendor's own service, delivered to the student, is configured so that a class of students cannot enjoy it equally. The contract is how the service reaches the student. It is not the source of the duty.

C. Reasonable Modification and Auxiliary Aids

The vendor's obligations run through two provisions. The first requires reasonable modifications in policies, practices, or procedures when necessary to afford goods and services to individuals with disabilities, unless the modification would fundamentally alter the nature of what is offered.[88] The second requires auxiliary aids and services unless their provision would fundamentally alter the offering or impose an undue burden.[89] Both defenses are the vendor's to establish, and both are difficult to run on a record in which the vendor has already built the function, already ships it to paying customers, and describes it in its own materials as an accessibility feature.

D. Access and Content, and Why the Claims Are Sequenced

Captioning, transcription, and synthetic speech are access claims and are pleaded first because they are enumerated in the regulatory definitions of auxiliary aids and services. Summarization, reading level adaptation, and document reorganization are transformations of content, and

86. *See Menkowitz v. Pottstown Mem'l Med. Ctr.*, 154 F.3d 113 (3d Cir. 1998).
87. *Martin*, 532 U.S. at 679–80; *Molski*, 481 F.3d 724.
88. 42 U.S.C. § 12182(b)(2)(A)(ii); *see Martin*, 532 U.S. 661.
89. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a).

framing them as access invites the line drawn in *Doe v. Mutual of Omaha Insurance Co.*[90] The sequencing is deliberate and is stated here so that the discipline is visible rather than mistaken for an omission.

One remedial note. Damages are not available in private Title III actions; the relief is injunctive, with fees available to a prevailing party.[91] The money in this case is on the district side. The injunction is on the vendor side, and the injunction is the point.

E. The Category

The statute defines public accommodation by listing twelve categories of private entity, one of which is a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education.[92] A learning platform sold to schools as the environment in which instruction is delivered fits that residual clause more naturally than it fits the service establishment category, and the residual clause is written in functional terms: what the enumerated examples share is the delivery of education, not the possession of a building. The statutory text does not state that a listed entity must be a physical place, which is the silence at the center of the circuit disagreement over digital-only services and which this article does not need to resolve.

IX. The Vendor: Section 504, Pleaded in the Alternative

A. The Assistance Chain

Between September 2017 and March 2022, Fitbit LLC received five subawards totaling $8,780,002 under a National Institutes of Health cooperative agreement to the Scripps Research Institute, award number U24OD023176, in the amount of $202,512,666.65, with a period of

90. *Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999).
91. *Molski*, 481 F.3d 724; 42 U.S.C. § 12205.
92. 42 U.S.C. § 12181(7)(J).

performance running from July 6, 2016 to June 30, 2023.[93] Google completed its acquisition of Fitbit in January 2021 and has owned it since.[94]

B. Assistance in Google's Own Name

The Fitbit chain is not the only route and may not be the best one. Federal assistance records show 387 awards to Google LLC in its own name from the Federal Communications Commission, totaling $3,414,230.75, recorded as direct payments for specified use in the nature of a subsidy or other non-reimbursable direct financial aid, with the latest transaction dated June 25, 2024.[95] That route requires no acquisition analysis and no argument about which corporate entity holds what.

It carries its own limits, and the first of them is serious enough that the count should not be pleaded without confronting it. The Rehabilitation Act does not define federal financial assistance, and the Supreme Court has held that coverage attaches to those who actually receive the assistance rather than to those who merely benefit from it, because Congress imposed the obligations of Section 504 on entities in a position to accept or reject them as part of the decision whether to receive federal funds.[96] A program that discounts service for eligible households and

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93. Award Profile: Cooperative Agreement U24OD023176, Scripps Research Institute, USASpending.gov, https://www.usaspending.gov/award/ASST_NON_U24OD023176_075 (retrieved Aug. 1, 2026) (Department of Health and Human Services; Assistance Listings 93.310 and 93.368; total obligation $202,512,666.65; period of performance July 6, 2016 to June 30, 2023). The five subawards to Fitbit LLC appear under the Sub-Awards tab of that award record: $2,045,000 (Sept. 15, 2017); $125,000 (Sept. 1, 2018); $1,649,286 (Sept. 1, 2019); $1,601,508 (Mar. 1, 2021); $3,359,208 (Mar. 1, 2022).

94. Rick Osterloh, *Google Completes Fitbit Acquisition*, The Keyword (Jan. 14, 2021), https://blog.google/products/devices-services/fitbit-acquisition/.

95. Recipient Profile: Google LLC, Unique Entity Identifier NQV3T7DDKNT6, USASpending.gov, https://www.usaspending.gov/recipient/eddf926f-f4fe-e72c-14f1-ab22d5925171-C (retrieved Aug. 1, 2026). The 387 records comprise one award identifier carrying the Emergency Broadband Benefit prefix EBOEBB and 386 carrying the Affordable Connectivity Program prefix ACOACP. Representative record: Award ACOACP200000773842102042024, $60,169.64, https://www.usaspending.gov/award/ASST_NON_ACOACP200000773842102042024_027 (retrieved Aug. 1, 2026). The full set is reproducible through the USASpending award search API at https://api.usaspending.gov/api/v2/search/spending_by_award/ filtered to recipient Google LLC, awarding agency Federal Communications Commission, and assistance types 06 and 10.

96. *United States Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 605–07 (1986). The Court held commercial airlines were not recipients of grants made to airport operators, observing that not a single penny of the money went to the airlines and that coverage does not follow the aid past the intended recipient to those who benefit from it.

reimburses the provider is structured so that the household is the intended beneficiary and the provider is compensated. On the reasoning of that decision the provider looks like the airline rather than the airport, and a court could so hold.

The answer available is that the reimbursement is recorded in the federal assistance system as a direct payment in the nature of a subsidy rather than as procurement, that it is paid to the provider rather than to the household, and that the provider elects to participate and could decline. Whether that is enough has not been decided for these programs. A second limit compounds the first: assistance directed to a broadband subsidy is not obviously assistance extended to the corporation as a whole, which returns the analysis to the statutory reach provisions rather than avoiding them.

C. Entity Spread

The reach question is governed by the definition of program or activity. Where assistance is extended to a corporation as a whole, the entire corporation is the program.[97] Where the entity is principally engaged in providing education, health care, housing, social services, or parks and recreation, the entire corporation is the program regardless of the size of the assistance.[98] Otherwise the reach is limited to the plant or geographically separate facility in which the assistance was extended.[99]

The two routes therefore behave differently and should be pleaded in the alternative rather than merged. The Fitbit route runs on the second provision and on the proposition that the entity that received the assistance and operated the program was principally engaged in health care. The Federal Communications Commission route is stronger on recipient status, because the payments went to Google LLC by name, and weaker on spread, because a broadband subsidy is not obviously assistance to the corporation as a whole.

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97. 29 U.S.C. § 794(b)(3)(A)(i).
98. 29 U.S.C. § 794(b)(3)(A)(ii).
99. 29 U.S.C. § 794(b)(3)(B).

D. The Duration Problem, Stated in the Text

The Scripps period of performance closed on June 30, 2023, and the latest payment recorded to Google LLC in its own name is dated June 25, 2024. The conduct challenged in this article occurred in 2026. The rule that preserves claims accruing while assistance was live does not reach conduct that postdates the assistance, and this count is exposed on that ground.[100] The count is therefore pleaded in the alternative, and the exposure is stated here rather than buried in a footnote.

E. The Negative Result

A search of federal assistance records conducted on August 1, 2026 located no grant or cooperative agreement, prime or subaward, from the Department of Education to any Google entity, and no assistance award from any agency naming a Google entity as a subrecipient.[101]

X. Alternative Postures

A. The State Education Agency

Where a state agency rather than a district selects or approves the platform, two questions are added that this article's posture avoids. The first is sovereign immunity, which requires an abrogation analysis for Title II damages and turns on the express waiver condition attached to federal financial assistance.[102] The second is the boundary question of when the administration of a program through a private platform is attributable to the state, on which the surviving

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100. *See Koslow v. Pennsylvania*, 302 F.3d 161 (3d Cir. 2002). The duration authority is thin and this article does not overstate it: the point rests on a court of appeals footnote and a single district decision.

101. USASpending award search API, https://api.usaspending.gov/api/v2/search/spending_by_award/ (queries run Aug. 1, 2026), filtered to awarding agency Department of Education, assistance types 02, 03, 04, 05, 06, and 10, across the full available date range, run at both the prime and the subaward level against the recipient strings Google, Fitbit, and YouTube. Each returned zero records. The identical query shape run without the agency filter returned the five Fitbit subawards described in Part IX.A, which establishes that the query path functions and that the null is a finding rather than an artifact. The absence of Department of Education assistance is distinct from the Federal Communications Commission awards discussed in Part IX.B.

102. 42 U.S.C. § 2000d-7; *see United States v. Georgia*, 546 U.S. 151 (2006).

binding appellate authority is narrow and one frequently quoted decision was vacated as moot.[103] Naming a district makes both questions unnecessary, which is the reason to name one.

B. Other Vendors and Other Platforms

The claims against the district are vendor neutral in the sense that matters. A district that delivers instruction to students through any platform allocating auxiliary aids across price tiers is in the same posture, and nothing in Parts IV through VII depends on whose name appears on the license. The qualifier is that the platform must reach students; a product sold as a staff tool raises employment questions under a different Title and is outside this article.

The Title III analysis is not vendor neutral. Two firms can sell the identical instructional platform, configured the identical way, into the identical school, and be answerable to different degrees under the same statute because one of them rents a storefront. That is a fact about the doctrine rather than about the products, and it is why the subsections that follow take up the second vendor instead of leaving it unaddressed.

C. A Vendor Without Premises, and the Functional Test It Requires

A vendor without retail premises can be reached under Title III, but only on a reading of the statutory categories that some circuits have rejected. That is why the analysis sits here rather than in Part VIII: the claims developed above require no doctrinal reform, and this one does. It is set out in full so that the second vendor is answered rather than avoided, and so that a practitioner who is willing to litigate the premise has the argument in hand.

The premise is that the twelve enumerated categories describe functions rather than buildings. The First Circuit held as much three decades ago, reasoning that by including a travel service in the list of public accommodations Congress plainly contemplated service establishments whose customers never enter a structure, and that it would be irrational to protect a person who walks into an office while leaving unprotected a person who buys the identical

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103. *Noel v. N.Y.C. Taxi & Limousine Comm'n*, 687 F.3d 63 (2d Cir. 2012); *Ivy v. Williams*, 781 F.3d 250 (5th Cir. 2015), *vacated as moot sub nom. Ivy v. Morath*, 580 U.S. 956 (2016).

service by telephone or by mail.[104] The Seventh Circuit has said the same in substance: the site of the sale is irrelevant to the congressional goal of equal access to sellers of goods and services, and what matters is that the good or service is offered to the public.[105]

The statutory text supports the premise in one further respect already noted. The residual clause covering a place of education says nothing about physical presence, and neither does any other category.[106]

The contrary line is real and should be named. Several circuits require a nexus to a physical place, and the leading decisions confining Title III to access rather than to the content of what is sold come from that line.[107] A plaintiff who needs the premise should not file where it has been rejected. Interface and auxiliary aids claims belong in the First Circuit, where the premise is settled. A claim that must reach what the service itself delivers belongs in the Second Circuit, which has the only appellate authority addressing the substance of what a covered entity sells rather than the door through which it is sold.[108]

D. Applying the Premise

The premise reaches OpenAI, and the count does not run through any school's license.

That routing matters and is deliberate. A count built on the institutional contract invites the answer that the student is not in a service relationship with the vendor, and it invites a second answer drawn from the very case that supplies the site-of-sale language. The Seventh Circuit held that a retirement plan negotiated between an employer and a union was not a public accommodation because no one could walk in off the street and ask to participate: it was a private

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104. *Carparts Distrib. Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12 (1st Cir. 1994) (holding that establishments of public accommodation are not limited to actual physical structures).

105. *Morgan v. Joint Admin. Bd.*, 268 F.3d 456 (7th Cir. 2001). The observation is supporting analysis rather than the holding; the holding is described below.

106. 42 U.S.C. § 12181(7)(J).

107. *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104 (9th Cir. 2000); *Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999).

108. *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28 (2d Cir. 1999).

deal rather than a public offering.[109] An institutional license, standing alone, looks like that private deal.

The answer is that it does not stand alone. Both vendors discussed here offer their services to the general public, and anyone may walk in off the street and obtain an account. The institutional deployment is a configuration of a publicly offered service, not a closed plan available only to members. The public offering is what satisfies Morgan, and the count against the vendor can be brought by any disabled user of the public service without reference to any school at all.

On that service, the architecture is the one this article has been describing. OpenAI's own documentation states that voice conversation is available to logged-in users, that free users receive a smaller model and a daily cap, that subscribers receive nearly unlimited daily use and the more capable model, and that the options available depend on the plan.[110] Spoken input and spoken output are the access modality for users who cannot type, cannot see a screen, or cannot read printed text at speed. A daily cap on that modality is a cap on their access to the service and on nothing else, because a user who can type is unaffected by it.

Two limits on the count, stated rather than left for a reader to find. This article does not assert any fact about the accessibility configuration of the vendor's education product, which it has not examined against the vendor's own documentation. And the count depends on the functional premise, so in a circuit that has rejected that premise it fails at the threshold rather than on the merits. That is the doctrinal cost of the second vendor having no storefront, and it is the whole of the difference between the two counts.

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109. *Morgan*, 268 F.3d 456.

110. Voice Mode FAQ, OpenAI Help Center, https://help.openai.com/en/articles/8400625-voice-mode (last visited Aug. 1, 2026); ChatGPT Voice, OpenAI Help Center, https://help.openai.com/en/articles/20001274-chatgpt-voice (last visited Aug. 1, 2026).

XI. Conclusion

The functions at issue are named in the regulations as auxiliary aids and services. The standard is effectiveness rather than existence, and the regulation says so in the same sentence that forbids a public entity from discriminating through its licensing arrangements. The prohibition on shifting the cost of nondiscriminatory treatment onto the people who require it names the provision of auxiliary aids as its leading example. None of that is new law, and none of it asks a court to extend anything.

What is new is the arrangement. A district buys a platform, the platform sorts its accessibility functions by price, and a student who needs a transcript receives a caption stream instead. The student adapts to whatever arrived, and the following year it may not arrive, because a price the student never saw moved. The statutes have an answer to that, and the answer has been available the entire time.

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