
HOUSE BILL 2638

State of Washington 61st Legislature 2010 Regular Session

By Representatives McCoy, Quall, Eddy, Lias, Moeller, Dickerson, Wallace, and Sells

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1 AN ACT Relating to instructional materials provided in a
2 specialized format version; amending RCW 28B.10.916; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the knowledge,
6 skill, and ability to succeed both academically and later in a chosen
7 profession are accumulated through myriad sources, including
8 instructional materials. Therefore, it is the intent of the
9 legislature to ensure that students provided with instructional
10 materials pursuant to RCW 28B.10.916 be permitted to retain those
11 materials if they so desire.

12 **Sec. 2.** RCW 28B.10.916 and 2004 c 46 s 1 are each amended to read
13 as follows:

14 (1) An individual, firm, partnership or corporation that publishes
15 or manufactures instructional materials for students attending any
16 public or private institution of higher education in the state of
17 Washington shall provide to the public or private institution of higher
18 education, for use by students attending the institution, any

1 instructional material in an electronic format mutually agreed upon by
2 the publisher or manufacturer and the public or private institution of
3 higher education. Computer files or electronic versions of printed
4 instructional materials shall be provided; video materials must be
5 captioned or accompanied by transcriptions of spoken text; and audio
6 materials must be accompanied by transcriptions. These supplemental
7 materials shall be provided to the public or private institution of
8 higher education at no additional cost and in a timely manner, upon
9 receipt of a written request as provided in subsection (2) of this
10 section.

11 (2) A written request for supplemental materials must:

12 (a) Certify that a student with a print access disability attending
13 or registered to attend a public or participating private institution
14 of higher education has purchased the instructional material or the
15 public or private institution of higher education has purchased the
16 instructional material for use by a student with a print access
17 disability;

18 (b) Certify that the student has a print access disability that
19 substantially prevents him or her from using standard instructional
20 materials;

21 (c) Certify that the instructional material is for use by the
22 student in connection with a course in which he or she is registered or
23 enrolled at the public or private institution of higher education; and

24 (d) Be signed by the coordinator of services for students with
25 disabilities at the public or private institution of higher education
26 or by the college or campus official responsible for monitoring
27 compliance with the Americans with disabilities act of 1990 (42 U.S.C.
28 12101 et seq.) at the public or private institution of higher
29 education.

30 (3) An individual, firm, partnership or corporation specified in
31 subsection (1) of this section may also require that, in addition to
32 the requirements in subsection (2) of this section, the request include
33 a statement signed by the student agreeing to both of the following:

34 (a) He or she will use the instructional material provided in
35 specialized format solely for his or her own educational purposes; and

36 (b) He or she will not copy or duplicate the instructional material
37 provided in specialized format for use by others.

1 (4) A public or private institution of higher education that
2 provides a specialized format version of instructional material
3 pursuant to this section may not require that the student return the
4 specialized format version of the instructional material.

5 (5) If a public or private institution of higher education provides
6 a student with the specialized format version of an instructional
7 material, the media must be copy-protected or the public or private
8 institution of higher education shall take other reasonable precautions
9 to ensure that students do not copy or distribute specialized format
10 versions of instructional materials in violation of the copyright
11 revision(~~s~~) act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

12 (~~(5)~~) (6) For purposes of this section:

13 (a) "Instructional material or materials" means textbooks and other
14 materials that are required or essential to a student's success in a
15 postsecondary course of study in which a student with a disability is
16 enrolled. The determination of which materials are "required or
17 essential to student success" shall be made by the instructor of the
18 course in consultation with the official making the request in
19 accordance with guidelines issued pursuant to subsection (~~(9)~~) (10)
20 of this section. The term specifically includes both textual and
21 nontextual information.

22 (b) "Print access disability" means a condition in which a person's
23 independent reading of, reading comprehension of, or visual access to
24 materials is limited or reduced due to a sensory, neurological,
25 cognitive, physical, psychiatric, or other disability recognized by
26 state or federal law. The term is applicable, but not limited to,
27 persons who are blind, have low vision, or have reading disorders or
28 physical disabilities.

29 (c) "Structural integrity" means all instructional material,
30 including but not limited to the text of the material, sidebars, the
31 table of contents, chapter headings and subheadings, footnotes,
32 indexes, glossaries, graphs, charts, illustrations, pictures,
33 equations, formulas, and bibliographies. Structural order of material
34 shall be maintained. Structural elements, such as headings, lists, and
35 tables must be identified using current markup and tools. If good
36 faith efforts fail to produce an agreement between the publisher or
37 manufacturer and the public or private institution of higher education,
38 as to an electronic format that will preserve the structural integrity

1 of instructional materials, the publisher or manufacturer shall provide
2 the instructional material in a verified and valid HTML format and
3 shall preserve as much of the structural integrity of the instructional
4 materials as possible.

5 (d) "Specialized format" means Braille, audio, or digital text that
6 is exclusively for use by blind or other persons with print access
7 disabilities.

8 ((+6+)) (7) Nothing in this section is to be construed to prohibit
9 a public or private institution of higher education from assisting a
10 student with a print access disability through the use of an electronic
11 version of instructional material gained through this section or by
12 transcribing or translating or arranging for the transcription or
13 translation of the instructional material into specialized formats that
14 provide persons with print access disabilities the ability to have
15 increased independent access to instructional materials. If such
16 specialized format is made, the public or private institution of higher
17 education may share the specialized format version of the instructional
18 material with other students with print access disabilities for whom
19 the public or private institution of higher education is authorized to
20 request electronic versions of instructional material. The addition of
21 captioning to video material by a Washington public or private
22 institution of higher education does not constitute an infringement of
23 copyright.

24 ((+7+)) (8) A specialized format version of instructional materials
25 developed at one public or private institution of higher education in
26 Washington state may be shared for use by a student at another public
27 or private institution of higher education in Washington state for whom
28 the latter public or private institution of higher education is
29 authorized to request electronic versions of instructional material.

30 ((+8+)) (9) Nothing in this section shall be deemed to authorize
31 any use of instructional materials that would constitute an
32 infringement of copyright under the copyright revision act of 1976, as
33 amended (17 U.S.C. Sec. 101 et seq.).

34 ((+9+)) (10) The governing boards of public and participating
35 private institutions of higher education in Washington state shall each
36 adopt guidelines consistent with this section for its implementation
37 and administration. At a minimum, the guidelines shall address all of
38 the following:

1 (a) The designation of materials deemed "required or essential to
2 student success";

3 (b) The determination of the availability of technology for the
4 conversion of materials pursuant to subsection (~~(4)~~) (5) of this
5 section and the conversion of mathematics and science materials
6 pursuant to subsection (~~(5)~~) (6)(c) of this section;

7 (c) The procedures and standards relating to distribution of files
8 and materials pursuant to this section;

9 (d) The guidelines shall include procedures for granting exceptions
10 when it is determined that an individual, firm, partnership or
11 corporation that publishes or manufactures instructional materials is
12 not technically able to comply with the requirements of this section;
13 and

14 (e) Other matters as are deemed necessary or appropriate to carry
15 out the purposes of this section.

16 (~~(10)~~) (11) A violation of this chapter constitutes an unfair
17 practice under chapter 49.60 RCW, the law against discrimination. All
18 rights and remedies under chapter 49.60 RCW, including the right to
19 file a complaint with the human rights commission and to bring a civil
20 action, apply.

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