

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: CS/HB 597

49th Legislature, 1st Session, 2009

Short Title: School Textbooks on Compact Disc

Sponsor(s): Representative Joseph Cervantes and Others

Analyst: Pamela Herman

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**HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 597**

Bill Summary:

CS/HB 597 creates the *Print Disability Access Act* to require publishers to provide printed instructional materials, upon request, in an electronic format that can be converted into compact discs (CDs) or other aural media for students with print disabilities.

Among its provisions, CS/HB 597:

- defines key terms, as follows:
 - “alternate accessible format” includes instructional compact discs, other aural media, digital talking books or electronic versions of printed materials able to be used to produce the materials in aural media;
 - “competent authority” means a licensed physician or osteopathic physician who may consult with colleagues in associated disciplines;
 - “educational institution” means a public school or public postsecondary institution;
 - “instructional material” means textbooks and other educational media that are used as a basis for instruction, including supplementary material, printed materials included in instructional kits, and electronic media;
 - “structural integrity” means all of the printed instructional materials, including text, sidebars, tables of contents, chapter headings and subheadings, footnotes, glossaries, and bibliographies, but not non-textual material;
 - “student” means a person certified by a competent authority as having a print disability, including dyslexia, resulting from organic dysfunction that is sufficiently severe to prevent reading of printed material in a normal manner, and who is accepted, enrolled in, or attending an educational institution; and
 - “textbook” means a book, a system of instructional materials, or a combination of a book and supplementary instructional material, including electronic textbooks;
- requires that a publisher of instructional materials published on or after July 19, 2006 for students attending educational institutions provide, upon the institution’s request, any printed instructional materials in an electronic format mutually agreed upon by the publisher and the educational institution;
- requires that the formats used include the nationally recognized standard for conversion of published files to aural and other media established under the federal *Individuals with Disabilities Education Improvement Act of 2004* (IDEA);

- permits the institution to use the electronic version of the printed material thus provided to transfer it or arrange for its transfer into an alternate accessible format;
- gives the institution the right to provide the material to students as permitted by applicable federal copyright law;
- requires that the electronic version of the materials:
 - comply with any applicable federal standard;
 - otherwise maintain the structural integrity of the printed instructional materials; and
 - include the latest corrections and revisions of the materials;
- requires that the electronic versions be provided to the institution at no additional cost and within 10 days after receipt of a written request, signed by an appropriate special or vocational educator, that certifies that:
 - the institution or the student has purchased the materials for the student's use;
 - the student is unable to use printed instructional materials; and
 - the printed materials are for use by the student in connection with a course at the institution;
- allows a publisher to require that the written request include a statement signed by the institution agreeing that the electronic material will be used only to produce materials for the student's educational purposes; and that neither the student nor the institution will make the material available for use by anyone other than the original student, except to another qualifying student or as otherwise permitted by federal law;
- requires the Public Education Department (PED), consulting with representatives from educational institutions and publishers, to adopt guidelines for the implementation of the *Print Disability Access Act* to address:
 - the designation of instructional materials required or essential to student success;
 - definitions clarifying what is required to maintain structural integrity, and requirements for presentation of visual elements in aural form;
 - requirements for approval and procurement of textbooks available in a computer or electronic format, and procedures for suspending publishers that fail to comply;
 - an administrative process for complaints against a publisher;
 - definitions clarifying what constitutes "educational purposes"; and
 - any other matters the department deems necessary or appropriate to carry out the purposes of the act; and
- confers a private right of action in district court, after exhaustion of administrative remedies, upon a student who contends that the *Print Disability Access Act* has been violated; gives standing to organizations representing the interests of persons with reading disabilities to assert any right conveyed in the act; and limits a student or organization that prevails in a lawsuit to the award of injunctive relief and reasonable attorney fees and costs.

Fiscal Impact:

CS/HB 597 does not make an appropriation.

Issues:

In 2003, the Legislature passed and the Governor signed the *Braille Access Act*, to require a publisher that prints instructional materials for students attending educational institutions to provide, upon request of the institution, any printed instructional materials in a mutually-agreed-upon electronic format for transfer by the institution to an alternate accessible format.

- The *Braille Access Act* defines a student as a blind or visually handicapped person accepted at, enrolled at, or attending an educational institution.
- According to the National Center on Accessing the General Curriculum (NCAC), however, as of 2001, students with specific learning disabilities (such as dyslexia and other disorders) comprised slightly over 45 percent of all K-12 students with disabilities, and many of them struggle with print materials. NCAC states that both special education legislation (IDEA) and civil rights law (the federal *Americans with Disabilities Act*, Section 504) have repeatedly reinforced the rights of students with disabilities to equal learning opportunities, including access to appropriate and accessible textbooks.
- According to PED, IDEA, and US Department of Education (USDE) regulations include students with dyslexia among the categories of students eligible for special education services:
 - The IDEA regulations define “child with a disability” to include a child evaluated as having a “specific learning disability,” which means “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell. . .including conditions such as dyslexia.”
 - IDEA regulations define students eligible to receive books produced in specialized formats to mean those who are “blind or persons with print disabilities,” that is, children who would qualify to receive books and other publications produced in specialized formats pursuant to an older federal law administered by the Library of Congress, *An Act to Provide Books for the Adult Blind*, enacted in 1931.
 - The 1931 federal law is the source of language in PED rule interpreting the *Braille Access Act* and the proposed *Print Disability Access Act*, which defines:
 - “student” to mean “a person certified by a competent authority as having a print disability. . .resulting from an organic dysfunction that is sufficiently severe to prevent reading of printed material in a normal manner”; and
 - “competent authority” to mean “a licensed physician. . .who may consult with colleagues in associated disciplines.”
- According to NCAC, as part of the 1966 revisions to the federal *Copyright Act*, the “Chafee Amendment” was enacted to allow alternate format creation by “a nonprofit organization or governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of the blind or persons with disabilities” without seeking permission from the copyright holder.
- NCAC notes, however, that prior to 2004, the Chafee Amendment came, to be used as the basis for the large-scale creation and distribution of accessible textbooks, without compensation to either publishers or rights holders.

- Modeled after the *Braille Access Act*, the *Print Disability Access Act* proposed in CS/HB 597, includes language that allow publishers to require assurances from educational institutions that the alternate accessible format materials produced pursuant to the act will be used only by the student on whose behalf they were requested or another qualified student at the educational institution.

Background:

According to information on the USDE website, production of educational materials in alternate accessible formats for students who are blind or have other print disabilities is governed by IDEA as reauthorized in 2004.

- Regulations promulgated under IDEA, which became final in 2006, established the National Instructional Materials Accessibility Standard (NIMAS), to be used in the preparation of electronic files suitable and to be used only for efficient conversion of educational print materials into alternate accessible formats for students who are blind or who have other print disabilities.
- NIMAS file sets are source files designed to be converted by software or accessible media producers into specialized formats such as Braille, audio text, digital format, or large print for eligible students.
- Under NIMAS, publishers provide source files upon demand for the purpose of creating alternative formats, and state educational agencies such as PED may coordinate with the National Instructional Materials Access Center (NIMAC), a national repository for NIMAS files authorized under IDEA, to produce the needed materials.
- Nothing in IDEA or the NIMAS regulations requires a local school district to coordinate with NIMAC; however, if it chooses not to do so, the district must provide an assurance to the state that it will provide instructional materials to blind persons and those with print disabilities in a timely manner.
- Although the NIMAS standards are implemented in New Mexico as the *Braille Access Act*, NIMAS supports a wider range of students with print disabilities, including those who have physical limitations that make it difficult to manage print-based materials, and those with print disabilities due to organic dysfunction. The NIMAS framework already provides for recording of materials, and the copyright issues have been addressed through the federal NIMAS legislation.

Related Bills:

HJM 43 *Include Dyslexia in Disabilities*

SJM 48 *Include Dyslexia in Disabilities*