

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that books and other instructional materials are needed in alternate accessible formats for use by elementary and secondary school students who are unable to use print as their primary learning media. The Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446, made important changes to the law, including the establishment of the National Instructional Materials Accessibility Standard and the National Instructional Materials Access Center, which serves as a central repository for files formatted in accordance with the National Instructional Materials Accessibility Standard and as a conduit for the distribution of those files to schools.

The legislature further finds that existing state law pertaining to instructional materials for exceptional children directs publishers to meet requirements that are now out of date and undesirable due to advances in technology. Thus, a revision is necessary to harmonize existing state law with the existing federal law and practice, including technological advancements that make more instructional materials available in appropriate accessible formats.

Accordingly, the purpose of this Act is to:

- (1) Provide for the timely availability of accessible instructional materials and technology for eligible students; and
- (2) Ensure that such materials are distributed to eligible students in accordance with the Individuals with Disabilities Education Act, as amended, and the Copyright Act of 1976, as amended.

SECTION 2. Section 302A-442.5, Hawaii Revised Statutes, is amended to read as follows:

“§302A-442.5 Instructional materials; exceptional children. (a) Whenever used in this section, unless a different meaning clearly appears from the context:

“Accessible format” has the same meaning as in section 121(d)(1) of the Copyright Act of 1976 (17 U.S.C. 121(d)(1)), as amended.

“Accessible instructional materials” means print instructional materials provided to eligible students in the accessible format most appropriate to the needs of each eligible student.

“Assistive technology device” has the same meaning as in section 602(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(1)), as amended.

“Assistive technology service” has the same meaning as in section 602(2) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(2)), as amended.

“Braille” means the system of reading and writing through touch commonly known as standard English braille.

“Eligible student” means an elementary or secondary school student who:

- (1) Is eligible for services under the Individuals with Disabilities Education Act, as amended;
- (2) Is approved as an eligible person, as defined in section 121(d)(3) of the Copyright Act of 1976 (17 U.S.C. 121(d)(3)), as amended; and
- (3) Attends a department school, a private school under chapter 302C, a public charter school under chapter 302D, or an approved alternative education program under section 302A-1132(a)(5).

“National Instructional Materials Access Center” means the center established pursuant to section 674(e) of the Individuals with Disabilities Education Act (20 U.S.C. 1474(e)), as amended.

“National Instructional Materials Accessibility Standard” has the same meaning as in section 674(e)(3)(B) of the Individuals with Disabilities Education Act (20 U.S.C. 1474(e)(3)(B)), as amended.

“Print instructional materials” means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction by students in the classroom, including:

- (1) Digital instructional materials obtained in an appropriate accessible format for an eligible student; or
- (2) Materials that can be provided by the National Instructional Materials Access Center in a valid National Instructional Materials Accessibility format.¹

“Technology mediated instruction” means learning that is aided or entirely accomplished through the use of computer-based technology.

(b) [All publishers of textbooks and instructional materials sold to the State or any public school shall furnish computer diskettes for literary subjects in the American Standard Code for Information Interchange from which braille versions can be produced. Publishers shall also furnish computer diskettes in American Standard Code for Information Interchange for nonliterary subjects including natural sciences, computer science, mathematics, and music when braille specialty code translation software is available.] In accordance with section 612(a)(23) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(23)), as amended, the State adopts the United States Secretary of Education’s National Instructional Materials Accessibility Standard as in effect on the effective date of Act , Session Laws of Hawaii 2023, and as may be subsequently revised. The department shall coordinate with the National Instructional Materials Access Center to obtain the benefits of this service.

(c) [This section shall not apply to publishers of textbooks and instructional materials written in the Hawaiian language.] The department, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, including digital materials, shall obtain instructional materials from the publisher or other source that are in, or can be rendered in, the appropriate accessible format for the eligible student using the instructional material; provided that:

- (1) If the needed instructional materials cannot be obtained in the eligible student’s appropriate accessible format, the department may enter into a written contract with the publisher of the print instructional materials to require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or
- (2) If the needed instructional materials cannot be obtained in the eligible student’s appropriate accessible format due to being new or innovative start-up instructional materials or a Hawaii-based publisher, the department may purchase materials as a pilot for up to one calendar year.

(d) The department shall obtain accessible instructional materials for eligible students attending any department school and, to the maximum extent allowed, assist any private school under chapter 302C, public charter school under chapter 302D, or eligible student enrolled in an approved alternative

education program pursuant to section 302A-1132(a)(5), to obtain instructional materials in accessible formats when the department receives a request from the school or program; provided that the department shall not be liable for the expense of any instructional materials obtained other than the expense for instructional materials obtained for eligible students attending department schools.

(e) Each eligible student shall receive accessible instructional materials without regard to whether the accessible instructional materials have been purchased in accordance with subsection (c). Eligible students shall receive accessible instructional materials at the same time the corresponding print instructional materials are provided to all other students in the classroom, including any assistive technology device and assistive technology service to be provided in advance and needed for the eligible student to use the accessible instructional materials.

(f) Technology shall be provided to each eligible student receiving technology mediated instruction, including any assistive technology device and assistive technology service needed for the technology to be accessible to and usable by the eligible student.

- (g) The individualized education program for an eligible student shall:
- (1) Contain information sufficient to document approval of the student as an eligible person, as defined in section 121(d)(3) of the Copyright Act of 1976 (17 U.S.C. 121(d)(3)), as amended;
 - (2) Identify:
 - (A) The print instructional materials to be used by the students without disabilities;
 - (B) All accessible formats of the instructional materials; and
 - (C) The services and instruction to be provided to convert the print instructional materials into accessible instructional materials and enable the eligible student to use the instructional materials in one or more accessible formats usable by the eligible student;
 - (3) Specify the supplementary aids and services the individualized education program reasonably anticipates the eligible student will need to receive for the duration of the individualized education program for reasonable access to classroom materials and media not identified in paragraph (2)(A);
 - (4) If the eligible student is blind and receiving instruction in braille or the use of braille, ensure that instructional materials are provided in braille and may be used by the eligible student in addition to other accessible formats available;
 - (5) List any assistive technology device and assistive technology service needed for the eligible student to use accessible instructional materials and technology mediated instruction, including timely and appropriate instruction to enable the eligible student to use the technology to access age-appropriate content independently;
 - (6) Ensure that any assistive technology device or assistive technology service used for accessible instructional materials is available for use by the eligible student in school, at home, and in other settings to the same extent that print instructional materials are available to other students; and
 - (7) Identify and provide technology to be used by an eligible student when receiving technology mediated instruction, including any assistive technology device and assistive technology service needed for the technology to be accessible to and usable by the eligible student.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 7, 2023.)

Note

1. Period should be underscored.