



BILL: Senate Bill 617

TITLE: Local School Systems – Equivalent Access Standards – Digital Tools
(Nonvisual Access Accountability Act for K–12 Education)

DATE: February 16, 2022

POSITION: Favorable with amendments

COMMITTEE: Senate Education, Health, and Environmental Affairs Committee

CONTACT: Mary Pat Fannon, Executive Director, PSSAM

This bill requires each local school system to provide a student with disabilities access to digital tools that (1) are fully and equally accessible to and independently usable by the student and (2) enable the student to acquire the same information, participate in the same interactions, and access the same services as a student without disabilities, with substantially equivalent ease of use. Each digital tool developed or purchased by a local board must include specifications for access for students with disabilities in accordance with technical standards issued under specified federal law or any other widely accepted or freely available technical standard. Each local school system must establish an evaluation process for digital tools being considered for development or purchase for conformity with the above requirements. The bill establishes certain procurement procedures regarding digital tools and civil penalties for vendors that fail to meet specified accessibility standards, after certain notification.

The Public Schools Superintendents’ Association of Maryland (PSSAM) **supports SB 617 with amendments**. PSSAM supports the intent of this bill to ensure that every public school student in Maryland, regardless of disability, has the digital access they need to enable them to succeed, and to expect that local school systems make their websites and other on-line content comply with accessibility guidelines. Unfortunately, Senate Bill 617 includes specific requirements that might make it more difficult to procure appropriate digital tools, and it includes undefined terms that are confusing or overly-broad.

Even though local boards would support the bill’s provisions that would place much of the burden of compliance on their vendors, it might not always be possible and affordable to find vendors who would be willing to accept the liability and other mandates required by the bill. Even some of the largest education technology suppliers in the country may choose to forego the responsibilities set out in the bill by not offering their services to Maryland school systems. The unintended consequence may result in fewer available options for accessible digital technology.

PSSAM offers the following amendments:

We request that the bill replace all references to “Technology-Based Instructional Products” with “Digital Tool” which is defined on page 2 A (2). In order to avoid any confusion, “hardware” would need to be deleted on page 3, line 16.

PAGE 2 LINE 5

(II) ~~A COURSE;~~

Justification: The term “course” is too broad and is not otherwise consistent with the other parts of the definition of “digital tool” that are in fact technology/digital based.

PAGE 2, LINE 6-7

(III) INFORMATION AND COMMUNICATION TECHNOLOGY SERVICES, INCLUDING SOFTWARE AND OPERATING SYSTEMS, **TIED DIRECTLY TO STUDENT INSTRUCTION;**

Justification: The term “communication technology services” is broad enough to include the phone system used in school offices which use a display screen. It could be prohibitively expensive to make every individual phone compliant for every individual with a disability, as opposed to current law that may require an employer to make an individual phone used by a person with a disability be accessible for that individual.

PAGE 2, LINES 11-15

(3) (I) “EQUIVALENT ACCESS” MEANS THE ABILITY TO RECEIVE, USE, AND MANIPULATE INFORMATION AND OPERATE CONTROLS NECESSARY TO ACCESS AND USE INFORMATION TECHNOLOGY ~~BY NONVISUAL MEANS, SO THAT A STUDENT WITH DISABILITIES CAN ACCESS THE SAME SERVICES AS A STUDENT WITHOUT DISABILITIES WITH SUBSTANTIALLY EQUIVALENT EASE OF USE~~ **TECHNOLOGY NECESSARY FOR THAT STUDENT TO ACHIEVE THE INSTRUCTIONAL OUTCOMES CONSISTENT WITH THE STUDENT’S IEP PLAN, AS DEFINED IN § 8-408 OF THIS ARTICLE, OR THE STUDENT’S 504 PLAN, AS PROVIDED UNDER THE FEDERAL REHABILITATION ACT OF 1973**

*Justification: The bill should not be limited to visual disabilities and the **title** of the bill should be changed to reflect the applicability to all students with IEPs or 504 plans. Additionally, the access needed by an individual student should be tied to that student’s needs, as opposed to using undefined standard of “substantially equivalent ease of use” compared to a broad group of non-disabled students.*

PAGE 3, LINES 3-4

(C) (1) This subsection {does not apply} ~~APPLIES~~ to teacher-developed instructional materials {until fiscal year 2005} **USED BY THE INDIVIDUAL TEACHER.**

Justification: The local school system cannot ensure that every tool used by every teacher in every classroom be accessible to any student with disabilities, whether or not an affected student with disabilities is even in that classroom. Rather, the teacher must ensure that each students' IEPs or Section 504 plan is fully met, and any provision in either the IEP or Section 504 plan that requires specific digital accessibility must be followed, which would be addressed in other sections of the bill.

PAGE 3, LINES 23-30

(II) THE EVALUATION PROCESS ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE EVALUATION OF THE DIGITAL TOOL FOR NONVISUAL ACCESS BY AN EMPLOYEE **OR CONTRACTOR** OF THE LOCAL SCHOOL SYSTEM WHO:

1. ~~SPECIALIZES~~ **HAS KNOWLEDGE** IN ACCESSIBILITY AND WEB CONTENT ACCESSIBILITY GUIDELINES; ~~OR~~

~~2. IS A BLINDNESS SPECIALIST WHO IS KNOWLEDGEABLE IN ACCESSIBILITY.~~

Justification: The school system should be allowed to use a contractor for this service. In addition, it is unclear what "specializes" means, and there is no current certification or licensure for a "blindness specialist".

PAGE 3, LINES 31-34

~~(H)~~ **(5)** A PROCUREMENT CONTRACT FOR A DIGITAL TOOL SHALL REQUIRE A VENDOR TO INDEMNIFY THE STATE BOARD OR A LOCAL SCHOOL SYSTEM FOR LIABILITY AND COSTS ARISING FROM THE FAILURE OF THE DIGITAL TOOL TO MEET THE REQUIREMENTS OF THIS SECTION.

Justification: This subsection seems to be misplaced and not directly connected to Section (4) where it currently falls. The subsection should be made its own Section (5) (also requiring the current Section (5) on page 4, line 1 to be renumbered as (6)).

PAGE 4, LINE 22-26

(II) AFTER THE DEPARTMENT RECEIVES A NOTICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF DISABILITIES TO ~~ENSURE THAT ANOTHER PRODUCT IS PURCHASED THAT WILL OFFER AN EFFECTIVE EDUCATIONAL OPTION~~ **ALLOW THE LOCAL SCHOOL SYSTEM TO OBTAIN A PRODUCT THAT DOES NOT MEET THE EQUIVALENT ACCESS STANDARDS BUT PROVIDES THE BEST EQUIVALENT ACCESS FUNCTIONALITY.**

Justification: This amendment recognizes that there may be circumstances where another product is not available, but leaves it up to the local school system to determine what product can be obtained in the best interests of the students.

PAGE 5, LINE 3-4

(II) ANY OTHER WIDELY ACCEPTED ~~OR~~ **AND** FREELY AVAILABLE TECHNICAL STANDARD.

Justification: Although the terms “widely accepted” and “freely available” are not well-defined, the bill would be too broad if the digital tool purchased could simply meet standards that are solely “freely available”, a term that could apply to anything found on the Internet.

PAGE 5, LINES 5-12

(2) A LOCAL SCHOOL SYSTEM SHALL PROVIDE A STUDENT WITH DISABILITIES ACCESS TO DIGITAL TOOLS THAT **ARE NECESSARY FOR THAT STUDENT TO ACHIEVE THE INSTRUCTIONAL OUTCOMES CONSISTENT WITH THE STUDENT’S IEP PLAN, AS DEFINED IN § 8-408 OF THIS ARTICLE, OR THE STUDENT’S 504 PLAN, AS PROVIDED UNDER THE FEDERAL REHABILITATION ACT OF 1973.**

~~(I) ARE FULLY AND EQUALLY ACCESSIBLE TO AND INDEPENDENTLY USABLE BY A STUDENT WITH DISABILITIES; AND~~

~~(II) ENABLE A STUDENT WITH DISABILITIES TO ACQUIRE THE SAME INFORMATION, PARTICIPATE IN THE SAME INTERACTIONS, AND ACCESS THE SAME SERVICES AS A STUDENT WITHOUT DISABILITIES, WITH SUBSTANTIALLY EQUIVALENT EASE OF USE~~

Justification: The term “student with disabilities” is a very broad term including not just fully functional students who happen to have a visual impairment, which is the assumption being made throughout the bill. There are some students with disabilities who cannot independently use any digital tool due to either severe physical or mental disabilities. In addition, the term “substantially equivalent ease of use” is an undefined standard that cannot easily be measured.

PAGE 6, LINES 1-4

(II) SHALL INDEMNIFY THE STATE BOARD **OR LOCAL BOARD** FOR LIABILITY RESULTING FROM THE USE OF A DIGITAL TOOL THAT FAILS TO MEET THE EQUIVALENT ACCESS STANDARDS UNDER SUBSECTION (F) OF THIS SECTION, INCLUDING NONVISUAL ACCESS.

Justification: It is not clear why the bill limited the indemnification in this provision just to the State Board.

We appreciate the opportunity to work on this legislation over the interim along with other education advocates, and look forward to working with the committee during their deliberations.

For the reasons stated above, PSSAM requests a **favorable report on SB 617 with our proposed amendments** described above.

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