



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0293/1
GMM:kjf:jm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 322**

February 14, 2012 – Offered by Representatives KNILANS and SEIDEL.

1 **AN ACT to create** 106.57 of the statutes; **relating to:** accessible instructional
2 materials for students with disabilities enrolled in institutions of higher
3 education.

Analysis by the Legislative Reference Bureau

Current law

Under current state law, the University of Wisconsin System (UW System) and the Technical College System (TCS) may not deny to a student admission to, participation in, or the benefits of, or discriminate against a student in, any service, program, course, or facility because of the student's disability. In addition, under current federal law, a college, university, or other postsecondary institution, including a private postsecondary institution, may not exclude a student from participation in, deny a student the benefits of, or subject a student to discrimination under any program or activity receiving federal financial assistance. Federal regulations specify that a postsecondary institution receiving federal financial assistance must ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

The Substitute Amendment

Request for instructional material in alternative or electronic format.

This substitute amendment permits an institution or college campus within the UW System, a technical college within the TCS, or a private, nonprofit institution of higher education that is a member of the Wisconsin Association of Independent Colleges and Universities (institution of higher education), on behalf of a student who is blind or visually impaired, or who has a specific learning disability or other physical condition that prevents the student from using instructional material in standard print format, and who needs reasonable accommodations to read (student with a disability), to request a publisher to provide instructional material in either of the following formats:

1. Braille, large print texts, audio recordings created with the use of text-to-speech technology, electronic formats used with screen reader devices or other assistive technology, or digital talking books that are required by a student with a disability to make instructional material accessible to the student (alternative format).

2. A computer file or other digital medium embodying instructional material that can be made into an alternative format or that is capable of serving as an alternative format, if used with a screen reader device or other assistive technology (electronic format).

Under the substitute amendment, a request for instructional material in alternative format or electronic format (request) must certify: 1) that a copy of the instructional material in a standard format has been purchased for use by a student with a disability; 2) that the student is a student with a disability; 3) that the instructional material is for use by the student in connection with a course at the institution of higher education in which the student is enrolled; and 4) whether the institution of higher education has in its possession a copy of the instructional material in electronic format and, if so, whether that copy is capable, if used with assistive technology, of serving as an alternative format suitable for the needs of the student with a disability or of being converted, using generally available technology, into the particular alternative format needed by the student. In addition, the publisher may require the student to sign a statement agreeing that the student will use the instructional material in alternative format solely for his or her own educational purposes and that the student will not copy or distribute the instructional material in alternative format for use by others.

Provision of instructional material in alternative or electronic format.

The substitute amendment requires a publisher, in response to a request, to do one of the following:

1. Provide to the requester a copy of the instructional material in alternative format by delivering a computer disk or file.

2. Provide to the requester access to the instructional material in alternative format by providing an Internet password or by providing that access in any other appropriate matter.

3. Provide to the requester a copy of the instructional material in electronic format.

4. At its option, grant to the institution of higher education permission to convert the instructional material into the particular alternative format needed by the student with a disability.

5. If the publisher believes that it is unable to provide the instructional material in alternative format or electronic format or grant permission to convert the instructional material into alternative format because the publisher does not own or control some or all of the copyright in the instructional material, provide to the requester the name of the person that, to the best of the publisher's knowledge, is able to fulfill the request.

Within seven days after receiving a request, the publisher must respond to the request by providing a notice advising the requester as to which of the actions, if any, permitted under the substitute amendment the publisher intends to take. If the publisher provides notice that the publisher intends to provide a copy of the instructional material in electronic format, the publisher must provide the material in that format no later than seven days after providing that notice. If the publisher provides notice that the publisher intends to provide a copy of, or access to, the instructional material in alternative format, the publisher must provide that material or that access no later than 14 days after providing that notice.

Under the substitute amendment, instructional material provided by a publisher in electronic format must: 1) maintain the structural integrity of the original instructional material, which means that all of the information provided in printed instructional material, including the text of sidebars; the table of contents; chapter headings and subheadings; footnotes; indexes; glossaries; bibliographies; nontextual elements, such as pictures, illustrations, graphs, charts, and screenshots; and any other data that are pertinent to the instructional material, is included when that printed instructional material is provided in alternative format or electronic format; 2) be compatible with an assistive technology that is suitable for the needs of the student with a disability or, if the student needs an embossed Braille version of the instructional material, be compatible with commonly used Braille translation software; and 3) include corrections and revisions that have been generally published with respect to the instructional material.

Use of instructional material in alternative or electronic format. The substitute amendment permits an institution of higher education to create an alternative format of instructional material for which a request has been made if any of the following apply:

1. The publisher provides a copy of the instructional material in electronic format.

2. The publisher grants permission to convert the instructional material into alternative format.

3. The publisher indicates that the publisher does not intend to provide a copy of the instructional material in alternative format or electronic format because the institution of higher education already possesses a copy of the instructional material in electronic format that is capable of serving as an alternative format or of being converted in an alternative format.

4. The publisher does not respond to a request within seven days after receipt of the request as required under the substitute amendment or does not fulfill the request within 7 or 14 days after providing notice of its intent as required under the substitute amendment.

The substitute amendment requires an institution of higher education that has in its possession a copy of instructional material in alternative format or electronic format that has been provided by a publisher or an alternative format of instructional material that has been created by the institution to satisfy all subsequent requests for instructional material in that format from its own students without requesting the publisher to provide that material and permits the institution, if requested, to provide instructional material in that format to another institution of higher education for use by a student of that other institution. The substitute amendment, however, requires the institution of higher education to provide to the publisher, for each student for whom the instructional material is provided, the same certification and statement that is required for an original request.

Nonapplicability of substitute amendment. The requirements and prohibitions created in the substitute amendment, however, do not apply to a person that is a member of a nationwide exchange network that facilitates the delivery of instructional material in alternative format to students with disabilities, if that material is delivered within seven days after a request for the material. The substitute amendment also does not apply if instructional material in the particular format needed by a student with a disability is commercially available from the publisher of the material.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 106.57 of the statutes is created to read:

2 **106.57 Postsecondary education; accessible instructional material for**
3 **students with disabilities. (1) DEFINITIONS.** In this section:

4 (a) "Alternative format" means Braille, large print texts, audio recordings
5 created with the use of text-to-speech technology, electronic formats used with
6 screen reader devices or other assistive technology, or digital talking books that are
7 required by a student with a disability to make instructional material accessible to
8 the student.

1 (b) “Electronic format” means a computer file or other digital medium
2 embodying instructional material that can be made into an alternative format or
3 that is capable of serving as an alternative format, if used with a screen reader device
4 or other assistive technology.

5 (c) “Institution of higher education” means an institution or college campus
6 within the University of Wisconsin System, a technical college within the technical
7 college system, or a private, nonprofit institution of higher education that is a
8 member of the Wisconsin Association of Independent Colleges and Universities.

9 (d) “Instructional material” means a textbook or other material written and
10 published in print format primarily for use by students in postsecondary instruction
11 that is required or essential to the success of a student with a disability in a course
12 of study in which the student is enrolled, as determined by the instructor of the
13 course in consultation with the person specified in sub. (2) (b) who requests that
14 material in alternative format or electronic format under sub. (2) (a).

15 (e) “Maintain the structural integrity” means to include all of the information
16 provided in the original instructional material, including the text of sidebars; the
17 table of contents; chapter headings and subheadings; footnotes; indexes; glossaries;
18 bibliographies; nontextual elements, such as pictures, illustrations, graphs, charts,
19 and screenshots; and any other data that are pertinent to the instructional material,
20 when that original instructional material is provided in alternative format or
21 electronic format.

22 (f) “Publisher” means a person that is in the business, whether for profit or not
23 for profit, of selling instructional material in which the person owns or controls some
24 or all of the copyright. “Publisher” does not include a person that is a member of a
25 nationwide exchange network that facilitates and supports the delivery of

1 instructional material in alternative format to students with disabilities, if that
2 material is delivered to those students through that network within 7 working days
3 after a request for that material is made.

4 (g) "Student with a disability" means a student enrolled in an institution of
5 higher education who is blind or visually impaired, or who has a specific learning
6 disability or other physical condition that prevents the student from using
7 instructional material in standard print format, and who needs reasonable
8 accommodations to read.

9 (h) "Writing" includes facsimile transmission or electronic mail.

10 **(2) REQUEST FOR INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT.**

11 (a) Except as provided in this paragraph, an institution of higher education, on
12 behalf of a student with a disability, may request a publisher to provide instructional
13 material in alternative format or electronic format by submitting to the publisher a
14 request that complies with par. (b) and with any additional requirement imposed by
15 the publisher under par. (c). An institution of higher education may not request a
16 publisher to provide instructional material under this paragraph if the instructional
17 material in the particular format needed by the student is commercially available
18 from the publisher of the material.

19 (b) A request under par. (a) for instructional material in alternative format or
20 electronic format shall be prepared and signed by the coordinator of services for
21 students with disabilities at the institution of higher education or by another
22 employee of the institution of higher education who is responsible for providing
23 services or accommodations for students with disabilities or for monitoring
24 compliance with the federal Americans with Disabilities Act, 42 USC 12101 to 12213,
25 or the federal Rehabilitation Act of 1973, 29 USC 701 to 796L, on behalf of the

1 institution of higher education, shall provide notice to the publisher of the
2 publisher's duties under this section, and shall certify all of the following:

3 1. That a copy of the instructional material in standard format has been
4 purchased for use by a student with a disability by the student or by the institution
5 of higher education in which the student is enrolled. The institution of higher
6 education shall keep records sufficient to verify that a separate copy of instructional
7 material in standard format has been purchased for each student with a disability
8 for whom instructional material in alternative format or electronic format is
9 requested under par. (a), and a publisher has the right to inspect, or receive copies
10 of, those records that relate to instructional material published by the publisher.

11 2. That the student is a student with a disability.

12 3. That the instructional material is for use by the student with a disability in
13 connection with a course at the institution of higher education in which the student
14 is enrolled.

15 4. Whether the institution of higher education has in its possession a copy of
16 the instructional material in electronic format and, if so, whether that copy is
17 capable, if used with assistive technology, of serving as an alternative format suitable
18 for the needs of the student with a disability or of being converted, using generally
19 available technology, into the particular alternative format needed by the student.

20 (c) A publisher may require a request under par. (a) to also be accompanied by
21 a statement signed by the student or, if the student is a minor, the student's parent,
22 guardian, or legal custodian agreeing to all of the following:

23 1. That the student will use the instructional material in alternative format
24 solely for his or her own educational purposes.

1 2. That the student will not copy or distribute the instructional material in
2 alternative format for use by others.

3 **(3) PROVISION OF INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT.**

4 (a) In response to a request under sub. (2) (a), on behalf of a student with a disability,
5 for instructional material in alternative format or electronic format, a publisher
6 shall do one of the following:

7 1. Provide to the requester a copy of the instructional material in alternative
8 format by delivering a computer disk or file.

9 2. Provide to the requester access to the instructional material in alternative
10 format by providing an Internet password or by providing that access in any other
11 appropriate matter.

12 3. Provide to the requester a copy of the instructional material in electronic
13 format.

14 4. At its option, grant to the institution of higher education permission to
15 convert the instructional material into the particular alternative format needed by
16 the student with a disability.

17 5. If the publisher believes that it is unable to act under subd. 1. to 4. because
18 the publisher does not own or control some or all of the copyright in the instructional
19 material, provide to the requester the name of the person that, to the best of the
20 publisher's knowledge, is able to fulfill the request.

21 (b) Within 7 days after receipt of a request under sub. (2) (a), a publisher shall
22 respond to the request by providing to the requester one of the following notices in
23 writing:

24 1. A notice advising the requester as to which of the actions under par. (a) 1.
25 to 3. the publisher intends to take.

1 2. If the request indicates that the institution of higher education has in its
2 possession a copy of the instructional material in electronic format and that the copy
3 is capable of serving as an alternative format suitable for the needs of the student
4 with a disability or of being converted into the particular alternative format needed
5 by the student, a notice advising the requester that the publisher intends to take
6 none of the actions under par. (a) 1. to 3. If this subdivision applies, the publisher
7 may grant permission to convert the instructional material into alternative format
8 as provided in par. (a) 4.

9 3. If the publisher does not possess a copy of the instructional material in
10 alternative format or electronic format or if the publisher does not possess technology
11 that will maintain the structural integrity of the instructional material, a notice
12 advising the requester that the publisher intends to take none of the actions under
13 par. (a) 1. to 3. If this subdivision applies, the publisher may grant permission to
14 convert the instructional material into alternative format as provided in par. (a) 4.

15 4. If the publisher believes that it is unable to act under par. (a) 1. to 4. because
16 the publisher does not own or control some or all of the copyright in the instructional
17 material, notice of the name of the person that, to the best of the publisher's
18 knowledge, is able to fulfill the request.

19 (c) 1. If the publisher provides notice under par. (b) 1. that the publisher intends
20 to provide a copy of the instructional material in electronic format as provided in par.
21 (a) 3., the publisher shall provide the material in that format no later than 7 days
22 after providing that notice.

23 2. If the publisher provides notice under par. (b) 1. that the publisher intends
24 to provide a copy of the instructional material in alternative format as provided in
25 par. (a) 1. or to provide access to the instructional material in alternative format as

1 provided in par. (a) 2., the publisher shall provide the material in that format or
2 provide that access no later than 14 days after providing that notice.

3 (d) Instructional material provided by a publisher in alternative format or
4 electronic format shall meet all of the following requirements:

5 1. To the extent possible, maintain the structural integrity of the original
6 instructional material, except that this requirement does not apply to nontextual
7 instructional material unless the publisher possesses technology that will maintain
8 the structural integrity of the nontextual instructional material. If the publisher
9 does not have technology that will maintain the structural integrity of the original
10 instructional material, the publisher shall so notify the institution of higher
11 education under par. (b) 3. and may grant permission to the institution of higher
12 education to convert the instructional material into alternative format as provided
13 in par. (a) 4.

14 2. Be compatible with an assistive technology that is suitable for the needs of
15 the student with a disability or, if the student needs an embossed Braille version of
16 the instructional material, be compatible with commonly used Braille translation
17 software.

18 3. Include corrections and revisions that have been generally published with
19 respect to the instructional material.

20 (e) 1. Subject to subd. 2., an institution of higher education may create an
21 alternative format of instructional material for which a request has been made under
22 sub. (2) if any of the following apply:

23 a. The publisher provides a copy of the instructional material in electronic
24 format under par. (a) 3.

1 b. The publisher grants permission to convert the instructional material into
2 alternative format as provided in par. (a) 4.

3 c. The publisher responds to the request as provided in par. (b) 2.

4 d. The publisher does not respond to the request as required under par. (b).

5 e. The publisher does not fulfill the request as provided in par. (c) 1. or 2.

6 2. An institution of higher education may not create an alternative format of
7 instructional material if the instructional material in the particular alternative
8 format needed by a student with a disability is commercially available from the
9 publisher of the material.

10 (f) A publisher that sells instructional materials for use by students enrolled
11 in institutions of higher education shall provide the name and contact information
12 of its office or employee who is designated to handle requests under sub. (2) (a) to the
13 persons specified in sub. (2) (b) for those institutions. A publisher may provide that
14 information either by posting that information on its Internet site or by providing
15 that information in writing to those persons. If a publisher fails to provide that
16 information, a person specified in sub. (2) (b) may request that information, or may
17 request instructional material under sub. (2) (a), by sending the request to the
18 publisher at the address of the publisher's principal place of business, directed to the
19 attention of the publisher's rights and permissions department.

20 (g) Nothing in this subsection may be construed to require a publisher to incur
21 an investment that the publisher cannot reasonably recoup. If a publisher has not
22 previously produced a digital version of fully typeset and edited instructional
23 material, including instructional material produced through a method that does not
24 require the creation of a digital file, the publisher may condition its provision of the

1 instructional material in alternative format or electronic format on payment of
2 reasonable compensation for the expense of creating that format.

3 **(4) USE OF INSTRUCTIONAL MATERIALS IN ALTERNATIVE OR ELECTRONIC FORMAT.** (a)

4 1. Subject to subds. 2. and 3., if an institution of higher education has in its
5 possession a copy of instructional material in alternative format or electronic format
6 that has been provided by a publisher under sub. (3) (c) or an alternative format of
7 instructional material that has been created by the institution of higher education
8 under sub. (3) (e), the institution of higher education shall satisfy all subsequent
9 requests for instructional material in that format from its own students without
10 requesting the publisher to provide that material and may, if requested, provide
11 instructional material in that format to another institution of higher education for
12 use by a student of that other institution.

13 2. An institution of higher education that satisfies a request for or provides
14 instructional material under subd. 1. shall, for each student for whom the
15 instructional material is provided, provide to the publisher the information specified
16 in sub. (2) (b) 1. to 4. and the statement specified in sub. (2) (c).

17 3. An institution of higher education may not satisfy a request for or provide
18 instructional material under subd. 1. if the institution receives notice that an
19 alternative format or an electronic format of the instructional material in the same
20 specifications is commercially available from the publisher of the material.

21 (b) An institution of higher education in possession of a copy of instructional
22 material in alternative format or electronic format that has been provided by a
23 publisher under sub. (3) (c) or an alternative format of instructional material that
24 has been created by the institution of higher education under sub. (3) (e) shall take
25 reasonable precautions to ensure that the format is not distributed to any 3rd

1 parties, except as permitted under par. (a) 1. or (c), and shall, to the extent possible,
2 maintain in effect all copy-protection measures embedded in the alternative format
3 or electronic format by the publisher.

4 (c) An institution of higher education may contract with a 3rd party to assist
5 the institution in creating an alternative format of instructional material as
6 permitted under sub. (3) (e) or as otherwise permitted by the publisher. If an
7 institution of higher education contracts with a 3rd party under this paragraph, the
8 contract shall provide all of the following:

9 1. That the electronic format from which the alternative format is created may
10 not be further distributed by the 3rd party.

11 2. That any alternative format made from the electronic format may be
12 provided only to the institution.

13 3. That all files provided by the institution to the 3rd party shall be returned
14 to the institution.

15 4. That the 3rd party may not retain, and must destroy, any copies of its work
16 product, including any interim work files.

17 5. That both the institution and the publisher shall have the power to enforce
18 the contractual provisions specified in subds. 1. to 4.

19 (d) If an institution of higher education permits a student with a disability to
20 directly use an electronic format version of instructional material, the disc or file of
21 the electronic format version shall be copy protected, or the institution of higher
22 education shall take reasonable precautions to ensure that the student does not copy
23 or distribute the electronic format version in violation of the federal Copyright Act,
24 17 USC 101 to 1332.

