



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 124
[2011 Assembly Bill 322]

**Instructional Materials for Disabled
Students**

2011 Wisconsin Act 124 (the Act) generally requires publishers to provide electronic or other alternative versions of textbooks to college students who are blind or have other disabilities that prevent them from using standard printed materials. The Act establishes a procedure that must be followed for requesting an electronic or alternative version of a textbook, and sets forth the duties of a publisher who receives such a request. The Act identifies circumstances under which an electronic or other alternative version of a textbook is not required to be provided, and requirements that must be followed by a student who receives instructional materials in alternative or electronic format.

The specific provisions of the Act are described in detail below.

ELIGIBLE STUDENTS

The Act applies to any 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, and is enrolled in any of the following institutions of higher education:

- An institution or college campus within the University of Wisconsin System.
- A technical college within the Wisconsin Technical College System.
- One of the 20 private, nonprofit institutions of higher education that are members of the Wisconsin Association of Independent Colleges and Universities.

INSTRUCTIONAL MATERIALS COVERED

The provisions of the Act apply to a textbook or other material written and published in print format primarily for use by students in postsecondary instruction that is required or essential to the success of a student with a disability in a course of study in which the student is enrolled, as determined by the course instructor. In making the determination, the instructor must consult with the coordinator

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

of services for students with disabilities or another employee of the institution of higher education who is responsible for providing services or accommodations for students with disabilities or for monitoring compliance with the federal Americans with Disabilities Act or the federal Rehabilitation Act of 1973.

REQUEST FOR MATERIALS

Who May Submit Request; What May Be Requested

An institution of higher education may, on behalf of an eligible student, request a publisher to provide instructional material in either of the following formats:

Alternative Format

The Act defines “alternative format” to mean any of the following that are required by a student with a disability to make instructional material accessible to the student:

- Braille.
- Large print text.
- An audio recording created with the use of text-to-speech technology.
- An electronic format used with a screen reader device or other assistive technology.
- A digital talking book.

Electronic Format

The Act defines “electronic format” to mean 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.

Material provided in electronic format must meet all of the following requirements:

- 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 an alternative format or electronic format.
- 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.
- Include corrections and revisions that have been generally published with respect to the instructional material.

Required Contents Of Request

The institution of higher education must certify all of the following in its request for instructional material in alternative or electronic format on behalf of a student:

- A copy of the instructional material in a standard format has been purchased for use by that student. The publisher has a right to inspect or receive copies of records verifying the purchase.
- The student is a student with a disability.
- The requested material is for use by the student in connection with a course at the institution of higher education in which the student is enrolled.
- Whether the institution of higher education has 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 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 an alternative format solely for his or her own educational purposes and that the student will not copy or distribute the instructional material in an alternative format for use by others.

DUTIES OF PUBLISHERS

Response Required Within Seven Days

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 Act the publisher intends to take. The notice must be provided in writing. Fax or e-mail are acceptable forms of written notice.

What Publisher Must Provide; Time Limits

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

- Provide the requester a copy of the instructional material in an alternative format by one of the following means, no later than 14 days after providing that notice described above.
 - Delivering a computer disk or file.
 - Providing the requester access to the instructional material in an alternative format by providing an Internet password or by providing that access in any other appropriate matter.
- Provide to the requester a copy of the instructional material in electronic format no later than seven days after providing the notice described above.
- Grant the institution of higher education permission to convert the instructional material into the particular alternative format needed by the student with a disability.

Exception Due to Lack of Copyright

If the publisher does not own or control some or all of the copyright and therefore believes that it is unable to fulfill the request, it must provide the requester the name of the person that, to the best of its knowledge, is able to fulfill the request.

Exception if Materials Are Commercially Available

The requirements of the Act do not apply if the instructional material in the particular format needed by a student with a disability is commercially available from the publisher of the material.

Exception For Members of a Nationwide Exchange Network

The requirements of the Act do not apply to a person that is a member of a nationwide exchange network that facilitates the delivery of instructional material in an alternative format to students with disabilities, if that material is delivered within seven days after a request for the material.

Creation of Material in an Alternative Format by the Institution of Higher Education

The Act 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:

- The publisher provides a copy of the instructional material in electronic format.
- The publisher grants permission to convert the instructional material into an alternative format.
- The publisher indicates that it does not intend to provide a copy of the instructional material in an 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.
- The publisher does not respond to a request within seven days after receipt of the request as required under the Act or does not fulfill the request within seven or 14 days after providing notice of its intent as required under the Act.

If an institution of higher education contracts with a third party to assist in creating an alternative format of instructional material, the contract must provide all of the following:

- That the electronic format from which the alternative format is created may not be further distributed by the third party.
- That any alternative format made from the electronic format may be provided only to the institution.
- That all files provided by the institution to the third party shall be returned to the institution.
- That the third party may not retain, and must destroy, any copies of its work product, including any interim work files.
- That both the institution and the publisher shall have the power to enforce the contractual provisions specified above

When Payment May be Required

The Act does not require a publisher to incur an investment that it cannot reasonably recoup. If a publisher has not previously produced a digital version of fully typeset and edited instructional material, including instructional material produced through a method that does not require the creation of a digital

file, the publisher may condition its provision of the instructional material in an alternative or electronic format on payment of reasonable compensation for the expense of creating that format.

USE OF INSTRUCTIONAL MATERIAL IN AN ALTERNATIVE OR ELECTRONIC FORMAT

Protection of Copyright

An institution of higher education that has a copy of instructional material in an alternative or electronic format must take reasonable precautions to ensure that the format is not distributed to any third parties, except as permitted under the Act. The institution must also, to the extent possible, maintain in effect all copy protection measures embedded in the alternative or electronic format by the publisher.

If an institution of higher education permits a student with a disability to directly use an electronic format version of instructional material, the disc or file of the electronic format version must be copy protected, or the institution of higher education must take reasonable precautions to ensure that the student does not copy or distribute the electronic format version in violation of the federal Copyright Act.

Subsequent Requests for the Same Material by an Institution of Higher Education

The Act requires an institution of higher education that has possession of a copy of instructional material in an alternative 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.

Sharing Materials With Other Institutions of Higher Education

The Act 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 Act, 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.

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