

SHB 1089 - S COMM AMD

By Committee on Higher Education & Workforce Development

ADOPTED 04/11/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the knowledge,
4 skill, and ability to succeed both academically and later in a chosen
5 profession are accumulated through myriad sources, including
6 instructional materials. Therefore, it is the intent of the
7 legislature to ensure that students provided with instructional
8 materials pursuant to RCW 28B.10.916 be permitted to retain those
9 materials if they so desire.

10 **Sec. 2.** RCW 28B.10.916 and 2004 c 46 s 1 are each amended to read
11 as follows:

12 (1) An individual, firm, partnership or corporation that publishes
13 or manufactures instructional materials for students attending any
14 public or private institution of higher education in the state of
15 Washington shall provide to the public or private institution of higher
16 education, for use by students attending the institution, any
17 instructional material in an electronic format mutually agreed upon by
18 the publisher or manufacturer and the public or private institution of
19 higher education. Computer files or electronic versions of printed
20 instructional materials shall be provided; video materials must be
21 captioned or accompanied by transcriptions of spoken text; and audio
22 materials must be accompanied by transcriptions. These supplemental
23 materials shall be provided to the public or private institution of
24 higher education at no additional cost and in a timely manner, upon
25 receipt of a written request as provided in subsection (2) of this
26 section.

27 (2) A written request for supplemental materials must:

28 (a) Certify that a student with a print access disability attending
29 or registered to attend a public or participating private institution

1 of higher education has purchased the instructional material or the
2 public or private institution of higher education has purchased the
3 instructional material for use by a student with a print access
4 disability;

5 (b) Certify that the student has a print access disability that
6 substantially prevents him or her from using standard instructional
7 materials;

8 (c) Certify that the instructional material is for use by the
9 student in connection with a course in which he or she is registered or
10 enrolled at the public or private institution of higher education; and

11 (d) Be signed by the coordinator of services for students with
12 disabilities at the public or private institution of higher education
13 or by the college or campus official responsible for monitoring
14 compliance with the Americans with disabilities act of 1990 (42 U.S.C.
15 12101 et seq.) at the public or private institution of higher
16 education.

17 (3) An individual, firm, partnership or corporation specified in
18 subsection (1) of this section may also require that, in addition to
19 the requirements in subsection (2) of this section, the request include
20 a statement signed by the student agreeing to both of the following:

21 (a) He or she will use the instructional material provided in
22 specialized format solely for his or her own educational purposes; and

23 (b) He or she will not copy or duplicate the instructional material
24 provided in specialized format for use by others.

25 (4) A public or private institution of higher education that
26 provides a specialized format version of instructional material
27 pursuant to this section may not require that the student return the
28 specialized format version of the instructional material, except that
29 if the institution has determined that it is not required to allow the
30 student to retain the material under the Americans with disabilities
31 act or other applicable laws, and the material was translated or
32 transcribed into a specialized format at the expense of the institution
33 and the cost to reproduce a copy of the translation or transcription is
34 greater than one hundred dollars, the institution may require that the
35 student return the specialized format version.

36 (5) If a public or private institution of higher education provides
37 a student with the specialized format version of an instructional
38 material, the media must be copy-protected or the public or private

1 institution of higher education shall take other reasonable precautions
2 to ensure that students do not copy or distribute specialized format
3 versions of instructional materials in violation of the copyright
4 revision((s)) act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

5 ((+5+)) (6) For purposes of this section:

6 (a) "Instructional material or materials" means textbooks and other
7 materials that are required or essential to a student's success in a
8 postsecondary course of study in which a student with a disability is
9 enrolled. The determination of which materials are "required or
10 essential to student success" shall be made by the instructor of the
11 course in consultation with the official making the request in
12 accordance with guidelines issued pursuant to subsection ((+9+)) (10)
13 of this section. The term specifically includes both textual and
14 nontextual information.

15 (b) "Print access disability" means a condition in which a person's
16 independent reading of, reading comprehension of, or visual access to
17 materials is limited or reduced due to a sensory, neurological,
18 cognitive, physical, psychiatric, or other disability recognized by
19 state or federal law. The term is applicable, but not limited to,
20 persons who are blind, have low vision, or have reading disorders or
21 physical disabilities.

22 (c) "Structural integrity" means all instructional material,
23 including but not limited to the text of the material, sidebars, the
24 table of contents, chapter headings and subheadings, footnotes,
25 indexes, glossaries, graphs, charts, illustrations, pictures,
26 equations, formulas, and bibliographies. Structural order of material
27 shall be maintained. Structural elements, such as headings, lists, and
28 tables must be identified using current markup and tools. If good
29 faith efforts fail to produce an agreement between the publisher or
30 manufacturer and the public or private institution of higher education,
31 as to an electronic format that will preserve the structural integrity
32 of instructional materials, the publisher or manufacturer shall provide
33 the instructional material in a verified and valid HTML format and
34 shall preserve as much of the structural integrity of the instructional
35 materials as possible.

36 (d) "Specialized format" means Braille, audio, or digital text that
37 is exclusively for use by blind or other persons with print access
38 disabilities.

1 ~~((+6))~~ (7) Nothing in this section is to be construed to prohibit
2 a public or private institution of higher education from assisting a
3 student with a print access disability through the use of an electronic
4 version of instructional material gained through this section or by
5 transcribing or translating or arranging for the transcription or
6 translation of the instructional material into specialized formats that
7 provide persons with print access disabilities the ability to have
8 increased independent access to instructional materials. If such
9 specialized format is made, the public or private institution of higher
10 education may share the specialized format version of the instructional
11 material with other students with print access disabilities for whom
12 the public or private institution of higher education is authorized to
13 request electronic versions of instructional material. The addition of
14 captioning to video material by a Washington public or private
15 institution of higher education does not constitute an infringement of
16 copyright.

17 ~~((+7))~~ (8) A specialized format version of instructional materials
18 developed at one public or private institution of higher education in
19 Washington state may be shared for use by a student at another public
20 or private institution of higher education in Washington state for whom
21 the latter public or private institution of higher education is
22 authorized to request electronic versions of instructional material.

23 ~~((+8))~~ (9) Nothing in this section shall be deemed to authorize
24 any use of instructional materials that would constitute an
25 infringement of copyright under the copyright revision act of 1976, as
26 amended (17 U.S.C. Sec. 101 et seq.).

27 ~~((+9))~~ (10) The governing boards of public and participating
28 private institutions of higher education in Washington state shall each
29 adopt guidelines consistent with this section for its implementation
30 and administration. At a minimum, the guidelines shall address all of
31 the following:

32 (a) The designation of materials deemed "required or essential to
33 student success";

34 (b) The determination of the availability of technology for the
35 conversion of materials pursuant to subsection ~~((+4))~~ (5) of this
36 section and the conversion of mathematics and science materials
37 pursuant to subsection ~~((+5))~~ (6)(c) of this section;

1 (c) The procedures and standards relating to distribution of files
2 and materials pursuant to this section;

3 (d) The guidelines shall include procedures for granting exceptions
4 when it is determined that an individual, firm, partnership or
5 corporation that publishes or manufactures instructional materials is
6 not technically able to comply with the requirements of this section;
7 and

8 (e) Other matters as are deemed necessary or appropriate to carry
9 out the purposes of this section.

10 ((+10+)) (11) A violation of this chapter constitutes an unfair
11 practice under chapter 49.60 RCW, the law against discrimination. All
12 rights and remedies under chapter 49.60 RCW, including the right to
13 file a complaint with the human rights commission and to bring a civil
14 action, apply."

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15 On page 1, line 2 of the title, after "version;" strike the
16 remainder of the title and insert "amending RCW 28B.10.916; and
17 creating a new section."

EFFECT: A public or private institution of higher education must first determine that it is not required to allow a student to retain the specialized format under the Americans with Disabilities Act before requiring a student to return a specialized format that the institution translated or transcribed at its expense and costs more than \$100 to reproduce.

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