



Frequently Asked Questions on the Accessible Instructional Materials in Higher Education Act

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Q: Aren't schools doing a good job of providing an accessible environment already?

A: Not exactly. In the last six years, there have been more than a dozen lawsuits over schools' use of inaccessible instructional materials, and the problem is escalating. The best way to curb the problem is to help institutions of higher education in their quest to comply with the mandate to use accessible material, which means giving direction for how to do so. Other than a handful of schools, the overwhelming majority of colleges and universities are still confused about how to accommodate students with disabilities in a digital world. Consequently, most resort to the ad-hoc accommodations model, a model that may have worked in the world of hardcopy print, but cannot meet the demands of the digital age. Just because a school has incorporated mainstream accessibility for facilities, like wheelchair ramps on campus, or provides accommodations, like the extra test time for students with learning disabilities, does not mean that the institution is necessarily meeting all legal requirements or has eliminated all artificial barriers to the success of students with disabilities.

Q: Why can't each state or each school create its own guidelines?

A: Equal access mandates are national mandates, and the instructional material market is a national market. This calls for national guidelines. Every state could develop individual guidelines, but no manufacturer would make multiple product lines, and there is no guarantee that federal agencies would even accept each state's criteria as sufficient. Furthermore, only Congress can authorize a legal safe harbor as contemplated by the AIM HE Act. Most importantly, blind students deserve equal access across the country, not just at a few select schools or in a few select states.

Q: Where did the idea for guidelines come from?

A: In 2008 Congress authorized the Advisory Commission on Accessible Instructional Material in Postsecondary Education for Students with Disabilities (AIM Commission). The AIM Commission examined the status of accessible educational technology and the impact it was having on students with disabilities and then developed recommendations for how to address the matter. The final report found that students with disabilities experience a daunting assortment of challenges, including blocked access to educational opportunities and even failure to graduate, solely because of inaccessible materials. The commission also found that "there is still persistent unmet need" and that steps must be taken to stimulate the creation of a viable accessible digital marketplace. Of the commission's nineteen recommendations, the first one calls for Congress to authorize the creation of accessibility guidelines.

Q: What do the schools think about this?

A: Schools recognize the need for and value of national guidelines to ensure compliance with national accessibility mandates. The legal obligation to provide accessible electronic instructional materials already exists; the AIM HE Act simply seeks to stimulate the marketplace by making accessible electronic instructional materials more readily available, a solution that schools recognize is necessary and practical. For this reason, the AIM HE Act has been endorsed by the

American Council on Education, Educause[®], and other leading organizations in the higher education community.

Q: Will colleges and universities have to follow the guidelines?

A: No, the guidelines are one hundred percent voluntary. Colleges and universities are indeed required under Titles II and III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act to provide equal access to students with disabilities, but these mandates lack criteria defining what accessibility means. The AIM HE Act creates the missing criteria in the form of voluntary guidelines and then rewards schools that follow those guidelines with a safe harbor from litigation. Offering safe harbor from litigation as an incentive means that the guidelines will offer one path to compliance with the law, but not the only path. Some schools may choose not to adopt the guidelines or to develop their own path to compliance, but they forfeit the legal protection of a safe harbor by choosing those alternate routes.

Q: How will this work – the guidelines will be created, and then schools will have to change all of the technology on campus?

A. No. The AIM HE Act does not require retrofitting; in fact, the accessibility guidelines the AIM HE Act creates are voluntary. Remember: schools are currently required to use accessible materials and will be required to do so regardless of whether the AIM HE Act passes. If a school needs to retrofit its materials or revise its procurement policies, it is because it is not complying with the equal access requirements of existing disability law. The mandate to use materials that are accessible to students with disabilities or provide accommodations to facilitate equivalent access is not altered, strengthened, or removed by the AIM HE Act.

Q: Does this mean schools will need to have something readily available for a student with a disability who does not even attend the school?

A: Schools will not “have” to do anything that they are not already required to do when it comes to students with disabilities. The AIM HE Act will make it easier for schools to identify which items are accessible to those students and which are not and will hopefully shift the paradigm from the ad-hoc accommodations model to a mainstream access approach. Widespread use of AIM HE Act-compliant material will create a situation in which the arrival of a student with a particular disability does not call for any reaction because the school will already be deploying fully and inherently accessible material across the campus.

Q: Will guidelines inhibit innovation and discourage schools from using new technology because it is not accessible?

A. No. First, accessibility and innovation are not mutually exclusive; in fact, the very first digital book was developed with accessibility in mind! Some of the most innovative products on the market (e.g., Apple devices) are the most accessible, and we expect the AIM HE Act guidelines to stimulate more production of those kinds of materials. Since the passage of the ADA, we have seen the mainstream benefits of universal design and accessibility. Curb cuts that were originally

designed for people with physical disabilities now benefit parents with strollers and travelers with luggage. Similarly, stimulating accessible technology will only enhance innovation, because an increase in the former will generate benefits for all well beyond the intended scope.

Q: What about the ADA and the Rehabilitation Act? How do these guidelines affect existing disability law?

A: The AIM HE Act rule of construction is very clear regarding the voluntary guidelines' relationship with existing disability law. Nothing in the AIM HE Act may be construed to supersede or restrict the applicability of the ADA, the Rehabilitation Act, or their respective regulations. Nor do the voluntary guidelines expand, limit, or alter the remedies or defenses under such acts. The development of the guidelines also does not prevent federal agencies from issuing regulations under the ADA, the Rehabilitation Act, or any other federal law. In short, the voluntary guidelines do not in any way expand, restrict, or limit existing disability laws, their legal recourses or protections. The goal of the commission is not to change the existing legal framework, but rather to work to develop voluntary accessibility guidelines within this framework, which will ensure that institutions of higher education are fully compliant with existing legal requirements.

Q: What about those instances in which accessible digital options are not yet available? What are schools expected to do then?

A: Again, schools are already required to provide equal access to students with disabilities under Titles II and III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The AIM HE Act encourages institutions to use only technology that conforms to the voluntary guidelines by providing a safe harbor from litigation under existing disability law. However, for those instances in which accessible digital solutions are not yet available, instances that will diminish as schools increase the demand for accessible instructional materials, schools can qualify for a limited safe harbor under the AIM HE Act. In order to qualify for the limited safe harbor, schools must comply with existing disability law and meet several requirements as described by the AIM HE Act. The limited safe harbor does not mean that a student loses the right to demand accessibility through litigation, but rather that litigation under the limited safe harbor is restricted to declaratory and injunctive relief as well as attorney's fees. Monetary damages are not awarded under this defense, aligning with Title III of the ADA, which has no monetary damages component.

Q: How much is this going to cost?

A: There is no score, but the bill will likely call for a very small number, less than \$100,000, to fund the commission's development of the guidelines. We do not anticipate the development of guidelines will be an expensive endeavor. Not only is this a modest undertaking, but the amount expended will be miniscule compared to the amount taxpayers are currently investing in enforcement actions, investigations, and litigation against schools that are failing to comply with existing access requirements. Worse, every time a blind student changes majors, delays his or her education, or drops out of school, society loses an asset. The unemployment rate for Americans with disabilities currently hovers around sixty percent, and many unemployed individuals with disabilities rely on government assistance for survival. There is no way to measure the untapped talent and lost productivity that results when an entire population fails to reach its

potential, but tangible change can be made with a small investment to propagate meaningful guidelines.

Q: Who are the sponsor and the lead cosponsor for the AIM HE Act?

A: The AIM HE Act is being sponsored in the US House of Representatives by Congressman Phil Roe, (R-TN) along with Congressman Joe Courtney, (D-CT) as the lead cosponsor. We are actively working with Senate offices to identify a sponsor and lead cosponsor in that chamber for this critical piece of legislation.

Q: Where can I learn more about the Accessible Instructional Materials in Higher Education Act?

A: To learn more visit: https://nfb.org/aim_he.