

114TH CONGRESS
2D SESSION

H. R. 6122

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2016

Mr. ROE of Tennessee (for himself and Mr. COURTNEY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Accessible Instruc-
5 tional Materials in Higher Education Act” or the “AIM
6 HEA Act”.

7 **SEC. 2. COMMISSION STRUCTURE.**

8 (a) ESTABLISHMENT OF COMMISSION.—

1 (1) IN GENERAL.—The Speaker of the House of
2 Representatives, the President pro tempore of the
3 Senate, and the Secretary of Education shall estab-
4 lish an independent commission, comprised of key
5 stakeholders, to develop voluntary guidelines for ac-
6 cessible postsecondary electronic instructional mate-
7 rials and related technologies in order—

8 (A) to ensure students with disabilities are
9 afforded the same educational benefits provided
10 to nondisabled students through the use of elec-
11 tronic instructional materials and related tech-
12 nologies;

13 (B) to inform better the selection and use
14 of such materials and technologies at institu-
15 tions of higher education; and

16 (C) to encourage entities that produce such
17 materials and technologies to make accessible
18 versions more readily available in the market.

19 In fulfilling this duty, the commission shall review
20 applicable national and international information
21 technology accessibility standards, which it will com-
22 pile and annotate as an additional information re-
23 source for institutions of higher education and com-
24 panies that service the higher education market.

25 (2) MEMBERSHIP.—

1 (A) STAKEHOLDER GROUPS.—The com-
2 mission shall be composed of representatives
3 from the following categories:

4 (i) DISABILITY.—Communities of per-
5 sons with disabilities for whom the accessi-
6 bility of postsecondary electronic instruc-
7 tional materials and related technologies is
8 a significant factor in ensuring equal par-
9 ticipation in higher education, and non-
10 profit organizations that provide accessible
11 electronic materials to these communities.

12 (ii) HIGHER EDUCATION.—Higher
13 education leadership, which includes: uni-
14 versity presidents, provosts, deans, vice
15 presidents/deans of libraries, chief informa-
16 tion officers, and other senior institutional
17 executives.

18 (iii) INDUSTRY.—Relevant industry
19 representatives, meaning—

20 (I) developers of postsecondary
21 electronic instructional materials; and

22 (II) manufacturers of related
23 technologies.

1 (B) APPOINTMENT OF MEMBERS.—The
2 commission members shall be appointed as fol-
3 lows:

4 (i) 6 members, 2 from each category
5 described in subparagraph (A), shall be ap-
6 pointed by the Speaker of the House of
7 Representatives, 3 of whom shall be ap-
8 pointed on the recommendation of the ma-
9 jority leader of the House of Representa-
10 tives and 3 of whom shall be appointed on
11 the recommendation of the minority leader
12 of the House of Representatives, with the
13 Speaker ensuring that 1 developer of post-
14 secondary electronic instructional materials
15 and 1 manufacturer of related technologies
16 are appointed. The Speaker shall also ap-
17 point 2 additional members, 1 student with
18 a disability and 1 faculty member from an
19 institution of higher education.

20 (ii) 6 members, 2 from each category
21 described in subparagraph (A), shall be ap-
22 pointed by the President pro tempore of
23 the Senate, 3 of whom shall be appointed
24 on the recommendation of the majority
25 leader of the Senate and 3 of whom shall

1 be appointed on the recommendation of the
2 minority leader of the Senate, with the
3 President pro tempore ensuring that 1 de-
4 veloper of postsecondary electronic instruc-
5 tional materials and 1 manufacturer of re-
6 lated technologies are appointed. The
7 President pro tempore shall also appoint 2
8 additional members, 1 student with a dis-
9 ability and 1 faculty member from an insti-
10 tution of higher education.

11 (iii) 3 members, each of whom must
12 possess extensive, demonstrated technical
13 expertise in the development and imple-
14 mentation of accessible postsecondary elec-
15 tronic instructional materials, shall be ap-
16 pointed by the Secretary of Education. 1 of
17 these members shall represent postsec-
18 ondary students with disabilities, 1 shall
19 represent higher education leadership, and
20 1 shall represent developers of postsec-
21 ondary electronic instructional materials.

22 (C) ELIGIBILITY TO SERVE ON THE COM-
23 MISSION.—Federal employees are ineligible for
24 appointment to the commission. An appointee
25 to a volunteer or advisory position with a Fed-

1 eral agency or related advisory body may be ap-
2 pointed to the commission so long as his or her
3 primary employment is with a non-Federal enti-
4 ty and he or she is not otherwise engaged in fi-
5 nancially compensated work on behalf of the
6 Federal Government, exclusive of any standard
7 expense reimbursement or grant-funded activi-
8 ties.

9 (b) AUTHORITY AND ADMINISTRATION.—

10 (1) AUTHORITY.—The commission’s execution
11 of its duties shall be independent of the Secretary of
12 Education, the Attorney General, and the head of
13 any other agency or department of the Federal Gov-
14 ernment with regulatory or standard setting author-
15 ity in the areas addressed by the commission, none
16 of whom shall have any authority to review or revise
17 the voluntary guidelines or annotated list of informa-
18 tion technology standards produced by the commis-
19 sion under this Act.

20 (2) ADMINISTRATION.—

21 (A) STAFFING.—There shall be no perma-
22 nent staffing for the commission.

23 (B) LEADERSHIP.—Commission members
24 shall elect a chairperson from among the 19 ap-
25 pointees to the commission.

1 (C) ADMINISTRATIVE SUPPORT.—The
2 Commission shall be provided administrative
3 support, as needed, by the Secretary of Edu-
4 cation through the Office of Postsecondary
5 Education of the Department of Education.

6 **SEC. 3. DUTIES OF THE COMMISSION.**

7 (a) PRODUCE VOLUNTARY GUIDELINES.—Not later
8 than eighteen months after the date of enactment of this
9 Act, subject to a 6-month extension that it may exercise
10 at its discretion, the commission established in section 2
11 shall—

12 (1) develop and issue voluntary guidelines for
13 accessible postsecondary electronic instructional ma-
14 terials, and related technologies; and

15 (2) in developing the voluntary guidelines, the
16 commission shall—

17 (A) establish a technical panel pursuant to
18 subsection (d) to support the commission in de-
19 veloping the voluntary guidelines;

20 (B) develop criteria for determining which
21 materials and technologies constitute “postsec-
22 ondary electronic instructional materials” and
23 “related technologies” as defined in paragraphs
24 (5) and (6) of section 7;

1 (C) identify existing national and inter-
2 national accessibility standards that are rel-
3 evant to student use of postsecondary electronic
4 instructional materials and related technologies
5 at institutions of higher education;

6 (D) identify and address any unique peda-
7 gogical and accessibility requirements of post-
8 secondary electronic instructional materials and
9 related technologies that are not addressed, or
10 not adequately addressed, by the identified, rel-
11 evant existing accessibility standards;

12 (E) identify those aspects of accessibility,
13 and types of postsecondary instructional mate-
14 rials and related technologies, for which the
15 commission cannot produce guidelines or which
16 cannot be addressed by existing accessibility
17 standards due to—

18 (i) inherent limitations of commer-
19 cially available technologies; or

20 (ii) the challenges posed by a specific
21 category of disability that covers a wide
22 spectrum of impairments and capabilities
23 which makes it difficult to assess the bene-
24 fits from particular guidelines on a cat-
25 egorical basis;

1 (F) ensure that the voluntary guidelines
2 are consistent with the requirements of section
3 504 of the Rehabilitation Act of 1973 (29
4 U.S.C. 794) and titles II and III of the Ameri-
5 cans with Disabilities Act (42 U.S.C. 12131 et
6 seq.; 42 U.S.C. 12181 et seq.);

7 (G) ensure that the voluntary guidelines
8 are consistent, to the extent feasible and appro-
9 priate, with the technical and functional per-
10 formance criteria included in the national and
11 international accessibility standards identified
12 by the commission as relevant to student use of
13 postsecondary electronic instructional materials
14 and related technologies;

15 (H) allow for the use of an alternative de-
16 sign or technology that results in substantially
17 equivalent or greater accessibility and usability
18 by individuals with disabilities than would be
19 provided by compliance with the voluntary
20 guidelines; and

21 (I) provide that where electronic instruc-
22 tional materials, or related technologies, that
23 comply fully with the voluntary guidelines are
24 not commercially available, or where such com-
25 pliance is not technically feasible, the institution

1 may select the product that best meets the vol-
2 untary guidelines consistent with the institu-
3 tion's business and pedagogical needs.

4 (b) PRODUCE ANNOTATED LIST OF INFORMATION
5 TECHNOLOGY STANDARDS.—Not later than 18 months
6 after the date of the enactment of this Act, subject to a
7 6-month extension that it may exercise at its discretion,
8 the commission established in section 2 shall, with the as-
9 sistance of the technical panel established under sub-
10 section (d), develop and issue an annotated list of informa-
11 tion technology standards.

12 (c) SUPERMAJORITY APPROVAL.—Issuance of the
13 voluntary guidelines and annotated list of information
14 technology standards shall require approval of at least 75
15 percent (at least 15) of the 19 members of the commis-
16 sion.

17 (d) ESTABLISHMENT OF TECHNICAL PANEL.—Not
18 later than 1 month after the Commission's first meeting,
19 it shall appoint and convene a panel of 12 technical ex-
20 perts, each of whom shall have extensive, demonstrated
21 technical experience in developing, researching, or imple-
22 menting accessible postsecondary electronic instructional
23 materials, or related technologies. The commission has
24 discretion to determine a process for nominating, vetting,
25 and confirming a panel of experts that fairly represents

1 the stakeholder communities on the commission. The tech-
2 nical panel shall include a representative from the United
3 States Access Board.

4 **SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY**
5 **GUIDELINES.**

6 Not later than 5 years after issuance of the voluntary
7 guidelines and annotated list of information technology
8 standards described in subsections (a) and (b) of section
9 3, and every 5 years thereafter, the Secretary of Edu-
10 cation shall publish a notice in the Federal Register re-
11 questing public comment about whether there is a need
12 to reconstitute the commission to update the voluntary
13 guidelines and annotated list of information technology
14 standards to reflect technological advances, changes in
15 postsecondary electronic instructional materials and re-
16 lated technologies, or updated national and international
17 accessibility standards. The Secretary shall then submit
18 a report and recommendation to Congress regarding
19 whether the commission should be reconstituted.

20 **SEC. 5. SAFE HARBOR PROTECTIONS.**

21 (a) **SAFE HARBOR FOR CONFORMING POSTSEC-**
22 **ONDARY ELECTRONIC INSTRUCTIONAL MATERIALS AND**
23 **RELATED TECHNOLOGIES.**—An institution of higher edu-
24 cation that requires, provides, or both recommends and
25 provides, postsecondary electronic instructional materials

1 or related technologies that conform to the voluntary
2 guidelines shall be deemed in compliance with, and qualify
3 for a safe harbor from liability in relation to, its obliga-
4 tions under section 504 of the Rehabilitation Act of 1973
5 (29 U.S.C. 794) and titles II and III of the Americans
6 with Disabilities Act (42 U.S.C. 12131 et seq.; 42 U.S.C.
7 12181 et seq.) with respect to its selection of such mate-
8 rials or technologies.

9 (b) LIMITED SAFE HARBOR FOR NON-CONFORMING
10 POSTSECONDARY ELECTRONIC INSTRUCTIONAL MATE-
11 RIALS OR RELATED TECHNOLOGIES.—An institution of
12 higher education that requires, provides, or both rec-
13 ommends and provides, postsecondary electronic instruc-
14 tional materials or related technologies that do not fully
15 conform with the voluntary guidelines, but which institu-
16 tion otherwise complies with all requirements set forth in
17 paragraphs (1), (2), and (3), will qualify for a limited safe
18 harbor from monetary liability under section 504 of the
19 Rehabilitation Act of 1973 (29 U.S.C. 794) and titles II
20 and III of the Americans with Disabilities Act (42 U.S.C.
21 12131 et seq.; 42 U.S.C. 12181 et seq.), with available
22 remedies under section 505 of the Rehabilitation Act of
23 1973 (29 U.S.C. 794a), section 103 of Americans with
24 Disabilities Act of 1990 (42 U.S.C. 12133), and section
25 308 of such Act (42 U.S.C. 12188) limited to declaratory

1 and injunctive relief, and for a prevailing party other than
2 the United States, a reasonable attorney’s fee, if the insti-
3 tution—

4 (1) documented its efforts to incorporate and
5 use the voluntary guidelines in its policies and prac-
6 tices regarding its selection or procurement of post-
7 secondary electronic instructional materials and re-
8 lated technologies. These efforts may include estab-
9 lishment of a written policy regarding the institu-
10 tion’s use of the voluntary guidelines, identifying the
11 official(s) authorized to approve the selection of non-
12 conforming postsecondary electronic instructional
13 materials or related technologies, and procedures
14 used by the official(s) when making such authoriza-
15 tions;

16 (2) documented instances where non-con-
17 forming postsecondary electronic instructional mate-
18 rials or related technologies are selected or procured,
19 including an explanation of—

20 (A) the process utilized for identifying ac-
21 cessible options in the marketplace;

22 (B) the options considered, if any are
23 available;

24 (C) the choice the institution ultimately
25 made and why;

1 (D) what auxiliary aid or service, reason-
2 able modification, or other method the institu-
3 tion will utilize to ensure that affected students
4 within categories of disability are afforded the
5 rights to which they are entitled under section
6 504 of the Rehabilitation Act of 1973 (29
7 U.S.C. 794) and titles II and III of the Ameri-
8 cans with Disabilities Act (42 U.S.C. 12131 et
9 seq.; 42 U.S.C. 12181 et seq.), including an
10 equally effective opportunity to receive the same
11 educational benefit as afforded to non-disabled
12 students; and

13 (E) where a student, or students, with dis-
14 abilities are affected by non-conforming instruc-
15 tional materials or related technologies, what
16 auxiliary aid or service, reasonable modification,
17 or other method the institution is using to en-
18 sure the student or students are afforded the
19 rights described in subparagraph (D); and

20 (3) posted a link to an accessible copy of the
21 voluntary guidelines and annotated list of informa-
22 tion technology standards on a publicly available
23 page of its website.

1 **SEC. 6. CONSTRUCTION.**

2 (a) NON-CONFORMING POSTSECONDARY ELEC-
3 TRONIC INSTRUCTIONAL MATERIALS OR RELATED TECH-
4 NOLOGIES.—Nothing in this Act shall be construed to re-
5 quire an institution of higher education to require, pro-
6 vide, or both recommend and provide, postsecondary elec-
7 tronic instructional materials or related technologies that
8 conform to the voluntary guidelines. However, an institu-
9 tion that selects or uses non-conforming postsecondary
10 electronic instructional materials or related technologies
11 must otherwise comply with existing obligations under sec-
12 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C.
13 794) and titles II and III of the Americans with Disabil-
14 ities Act (42 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et
15 seq.) to provide access to the educational benefit afforded
16 by such materials and technologies through provision of
17 appropriate and reasonable modification, accommodation,
18 and auxiliary aids or services.

19 (b) RELATIONSHIP TO EXISTING LAWS AND REGU-
20 LATIONS.—With respect to the Americans with Disabil-
21 ities Act of 1990 (42 U.S.C. 12101 et seq.) and the Reha-
22 bilitation Act of 1973 (29 U.S.C. 701 et seq.), except as
23 provided in section 5, nothing in this Act may be con-
24 strued—

1 (1) to authorize or require conduct prohibited
2 under such Acts, including the regulations issued
3 pursuant to those laws;

4 (2) to expand, limit, or alter the remedies or de-
5 fenses under such Acts;

6 (3) to supersede, restrict, or limit the applica-
7 tion of such Acts; or

8 (4) to limit the authority of Federal agencies to
9 issue regulations pursuant to such Acts.

10 (c) VOLUNTARY NATURE OF THE PRODUCTS OF THE
11 COMMISSION.—

12 (1) VOLUNTARY GUIDELINES.—It is the intent
13 of the Congress that use of the voluntary guidelines
14 developed pursuant to this Act is and should remain
15 voluntary. The voluntary guidelines shall not confer
16 any rights or impose any obligations on commission
17 participants, institutions of higher education, or
18 other persons, except for the legal protections set
19 forth in section 5. Thus, no department or agency
20 of the Federal Government may incorporate the vol-
21 untary guidelines, whether produced as a discrete
22 document or electronic resource, into regulations
23 promulgated under any Federal law. This restriction
24 applies only to the voluntary guidelines as a discrete
25 document or resource; it imposes no limitation on

1 Federal use of standards or resources to which the
2 voluntary guidelines may refer.

3 (2) ANNOTATED LIST.—It is the intent of Con-
4 gress that use of the annotated list of information
5 technology standards developed pursuant to this Act
6 is and should remain voluntary. The Annotated List
7 shall not confer any rights or impose any obligations
8 on Commission participants, institutions of higher
9 education, or other persons. Thus, no department or
10 agency of the Federal Government may incorporate
11 the Annotated List, whether produced as a discrete
12 document or electronic resource into regulations pro-
13 mulgated under the Rehabilitation Act, the Ameri-
14 cans with Disabilities Act, or any other Federal law
15 or instrumentality. This provision applies only to the
16 Annotated List as a discrete document or resource;
17 it imposes no limitation on Federal use of standards
18 or resources to which the Annotated List may refer.

19 **SEC. 7. DEFINITIONS.**

20 In this Act:

21 (1) ANNOTATED LIST OF INFORMATION TECH-
22 NOLOGY STANDARDS.—The term “annotated list of
23 information technology standards” means a list of
24 existing national and international accessibility
25 standards relevant to student use of postsecondary

1 electronic instructional materials and related tech-
2 nologies, and to other types of information tech-
3 nology common to institutions of higher education
4 (such as institutional websites and class registration
5 systems), annotated by the commission established
6 pursuant to section 2 to provide information about
7 the applicability of such standards in higher edu-
8 cation settings. The annotated list of information
9 technology standards is intended to serve solely as a
10 reference tool to inform any consideration of the rel-
11 evance of such standards in higher education con-
12 texts.

13 (2) DISABILITY.—The term “disability” has the
14 meaning given such term in section 3 of the Ameri-
15 cans with Disabilities Act of 1990 (42 U.S.C.
16 12102).

17 (3) INSTITUTION OF HIGHER EDUCATION.—The
18 term “institution of higher education” has the
19 meaning given such term in section 101 of the High-
20 er Education Act of 1965 (20 U.S.C. 1001).

21 (4) NON-CONFORMING POSTSECONDARY ELEC-
22 TRONIC INSTRUCTIONAL MATERIALS OR RELATED
23 TECHNOLOGIES.—The term “non-conforming mate-
24 rials or related technologies” means postsecondary
25 electronic instructional materials or related tech-

1 nologies that do not conform to the voluntary guide-
2 lines to be developed pursuant to this Act.

3 (5) POSTSECONDARY ELECTRONIC INSTRU-
4 TIONAL MATERIALS.—The term “postsecondary elec-
5 tronic instructional materials” means digital cur-
6 ricular content that is required, provided, or both
7 recommended and provided by an institution of high-
8 er education for use in a postsecondary instructional
9 program.

10 (6) RELATED TECHNOLOGIES.—The term “re-
11 lated technologies” refers to any software, applica-
12 tions, learning management or content management
13 systems, and hardware that an institution of higher
14 education requires, provides, or both recommends
15 and provides for student access to and use of post-
16 secondary electronic instructional materials in a
17 postsecondary instructional program.

18 (7) TECHNICAL PANEL.—The term “technical
19 panel” means a group of experts with extensive,
20 demonstrated technical experience in the develop-
21 ment and implementation of accessibility features for
22 postsecondary electronic instructional materials and
23 related technologies, established by the Commission
24 pursuant to section 3(d), which will assist the com-
25 mission in the development of the voluntary guide-

1 lines and annotated list of information technology
2 standards authorized under this Act.

3 (8) VOLUNTARY GUIDELINES.—The term “vol-
4 untary guidelines” means a set of technical and
5 functional performance criteria to be developed by
6 the commission established pursuant to section 2
7 that provide specific guidance regarding both the ac-
8 cessibility and pedagogical functionality of postsec-
9 ondary electronic instructional materials and related
10 technologies not addressed, or not adequately ad-
11 dressed, by existing accessibility standards.

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