

115TH CONGRESS  
1ST SESSION

# S. 2138

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.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2017

Ms. WARREN (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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 HIGH Act”.

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

8 (a) ESTABLISHMENT OF COMMISSION.—

1 (1) IN GENERAL.—

2 (A) DEVELOPMENT OF VOLUNTARY GUIDE-  
3 LINES.—The Speaker of the House of Rep-  
4 resentatives, the President pro tempore of the  
5 Senate, and the Secretary of Education shall  
6 establish an independent commission (referred  
7 to in this Act as the “Commission”), comprised  
8 of key stakeholders, to develop voluntary guide-  
9 lines for accessible postsecondary electronic in-  
10 structional materials and related technologies in  
11 order—

12 (i) to ensure students with disabilities  
13 are afforded the same educational benefits  
14 provided to nondisabled students through  
15 the use of postsecondary electronic instruc-  
16 tional materials and related technologies;

17 (ii) to inform better the selection and  
18 use of such materials and technologies at  
19 institutions of higher education; and

20 (iii) to encourage entities that produce  
21 such materials and technologies to make  
22 accessible versions more readily available  
23 in the market.

24 (B) REVIEW OF STANDARDS.—In devel-  
25 oping the guidelines under subparagraph (A),

1 the Commission shall review applicable national  
2 and international information technology acces-  
3 sibility standards, which it will compile and an-  
4 notate as an additional information resource for  
5 institutions of higher education and companies  
6 that service the higher education market.

7 (2) MEMBERSHIP.—

8 (A) STAKEHOLDER GROUPS.—The Com-  
9 mission shall be composed of representatives  
10 from the following categories:

11 (i) DISABILITY.—Communities of per-  
12 sons with disabilities for whom the accessi-  
13 bility of postsecondary electronic instruc-  
14 tional materials and related technologies is  
15 a significant factor in ensuring equal par-  
16 ticipation in higher education, and non-  
17 profit organizations that provide accessible  
18 electronic materials to these communities.

19 (ii) HIGHER EDUCATION.—Higher  
20 education leadership, which includes: uni-  
21 versity presidents, provosts, deans, vice  
22 presidents, deans of libraries, chief infor-  
23 mation officers, and other senior institu-  
24 tional executives.

1 (iii) INDUSTRY.—Relevant industry  
2 representatives, meaning—

3 (I) developers of postsecondary  
4 electronic instructional materials; and  
5 (II) manufacturers of related  
6 technologies.

7 (B) APPOINTMENT OF MEMBERS.—The  
8 Commission members shall be appointed as fol-  
9 lows:

10 (i) Six members, two from each cat-  
11 egory described in subparagraph (A), shall  
12 be appointed by the Speaker of the House  
13 of Representatives, three of whom shall be  
14 appointed on the recommendation of the  
15 majority leader of the House of Represent-  
16 atives and three of whom shall be ap-  
17 pointed on the recommendation of the mi-  
18 nority leader of the House of Representa-  
19 tives, with the Speaker ensuring that 1 de-  
20 veloper of postsecondary electronic instruc-  
21 tional materials and 1 manufacturer of re-  
22 lated technologies are appointed. In addi-  
23 tion to the 6 members, the Speaker shall  
24 also appoint 2 additional members, 1 stu-  
25 dent with a disability and 1 faculty mem-

1           ber from an institution of higher edu-  
2           cation.

3           (ii) Six members, two from each cat-  
4           egory described in subparagraph (A), shall  
5           be appointed by the President pro tempore  
6           of the Senate, three of whom shall be ap-  
7           pointed on the recommendation of the ma-  
8           jority leader of the Senate and three of  
9           whom shall be appointed on the rec-  
10          ommendation of the minority leader of the  
11          Senate, with the President pro tempore en-  
12          suring that 1 developer of postsecondary  
13          electronic instructional materials and 1  
14          manufacturer of related technologies are  
15          appointed. In addition to the 6 members,  
16          the President pro tempore 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          (iii) Three members, each of whom  
21          shall possess extensive, demonstrated tech-  
22          nical expertise in the development and im-  
23          plementation of accessible postsecondary  
24          electronic instructional materials, shall be  
25          appointed by the Secretary of Education.

1           One of these members shall represent post-  
2           secondary students with disabilities, one  
3           shall represent higher education leadership,  
4           and one shall represent developers of post-  
5           secondary electronic instructional mate-  
6           rials.

7           (C) ELIGIBILITY TO SERVE ON THE COM-  
8           MISSION.—Federal employees are ineligible for  
9           appointment to the Commission. An appointee  
10          to a volunteer or advisory position with a Fed-  
11          eral agency or related advisory body may be ap-  
12          pointed to the Commission if the primary em-  
13          ployment of such appointee is with a non-Fed-  
14          eral entity and the appointee is not otherwise  
15          engaged in financially compensated work on be-  
16          half of the Federal Government, exclusive of  
17          any standard expense reimbursement or grant-  
18          funded activities.

19          (b) AUTHORITY AND ADMINISTRATION.—

20           (1) AUTHORITY.—The Commission’s execution  
21          of its duties shall be independent of the Secretary of  
22          Education, the Attorney General, and the head of  
23          any other agency or department of the Federal Gov-  
24          ernment with regulatory or standard setting author-  
25          ity in the areas addressed by the Commission.

1 (2) ADMINISTRATION.—

2 (A) STAFFING.—There shall be no perma-  
3 nent staffing for the Commission.

4 (B) LEADERSHIP.—Commission members  
5 shall elect a chairperson from among the 19 ap-  
6 pointees to the Commission.

7 (C) ADMINISTRATIVE SUPPORT.—The  
8 Commission shall be provided administrative  
9 support, as needed, by the Secretary of Edu-  
10 cation through the Office of Postsecondary  
11 Education of the Department of Education.

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

13 (a) DEVELOPMENT OF VOLUNTARY GUIDELINES.—  
14 Not later than 18 months after the date of enactment of  
15 this Act, subject to a 6-month extension that it may exer-  
16 cise at its discretion, the Commission shall—

17 (1) develop and issue voluntary guidelines for  
18 accessible postsecondary electronic instructional ma-  
19 terials and related technologies; and

20 (2) in developing the voluntary guidelines—

21 (A) establish a technical panel pursuant to  
22 subsection (d) to support the Commission in de-  
23 veloping the voluntary guidelines;

24 (B) develop criteria for determining which  
25 materials and technologies constitute “postsec-

1           ondary electronic instructional materials” and  
2           “related technologies” as defined in paragraphs  
3           (5) and (6) of section 6;

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

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

15          (E) identify those aspects of accessibility,  
16          and types of postsecondary electronic instruc-  
17          tional materials and related technologies, for  
18          which the Commission cannot produce guide-  
19          lines or which cannot be addressed by existing  
20          accessibility standards due to—

21               (i) inherent limitations of commer-  
22               cially available technologies; or

23               (ii) the challenges posed by a specific  
24               category of disability that covers a wide  
25               spectrum of impairments and capabilities



1           which makes it difficult to assess the bene-  
2           fits from particular guidelines on a cat-  
3           egorical basis;

4           (F) ensure that the voluntary guidelines  
5           are consistent with the requirements of 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 of 1990 (42 U.S.C.  
9           12131 et seq.; 42 U.S.C. 12181 et seq.);

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

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

24          (I) provide that where postsecondary elec-  
25          tronic instructional materials or related tech-

1 nologies that comply fully with the voluntary  
2 guidelines are not commercially available, or  
3 where such compliance is not technically fea-  
4 sible, the institution may select the product that  
5 best meets the voluntary guidelines consistent  
6 with the institution's business and pedagogical  
7 needs.

8 (b) DEVELOPMENT OF ANNOTATED LIST OF INFOR-  
9 MATION TECHNOLOGY STANDARDS.—Not later than 18  
10 months after the date of enactment of this Act, subject  
11 to a 6-month extension that it may exercise at its discre-  
12 tion, the Commission shall, with the assistance of the tech-  
13 nical panel established under subsection (d), develop and  
14 issue an annotated list of information technology stand-  
15 ards intended to serve solely as a reference tool to inform  
16 any consideration of the relevance of such standards in  
17 higher education contexts.

18 (c) SUPERMAJORITY APPROVAL.—Issuance of the  
19 voluntary guidelines and annotated list of information  
20 technology standards shall require approval of not less  
21 than 75 percent (not less than fifteen of the 19 members)  
22 of the Commission.

23 (d) ESTABLISHMENT OF TECHNICAL PANEL.—Not  
24 later than 1 month after the Commission's first meeting,  
25 the Commission shall appoint and convene a panel of 12

1 technical experts, each of whom shall have extensive, dem-  
2 onstrated technical experience in developing, researching,  
3 or implementing accessible postsecondary electronic in-  
4 structional materials or related technologies. The Commis-  
5 sion has discretion to determine a process for nominating,  
6 vetting, and confirming a panel of experts that fairly rep-  
7 resents the stakeholder communities on the Commission.  
8 The technical panel shall include a representative from the  
9 United States Access Board.

10 **SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY**  
11 **GUIDELINES.**

12 Not later than 5 years after issuance of the voluntary  
13 guidelines and annotated list of information technology  
14 standards described in subsections (a) and (b) of section  
15 3, and every 5 years thereafter, the Secretary of Edu-  
16 cation shall publish a notice in the Federal Register re-  
17 questing public comment about whether there is a need  
18 to reconstitute the Commission to update the voluntary  
19 guidelines and annotated list of information technology  
20 standards to reflect technological advances, changes in  
21 postsecondary electronic instructional materials and re-  
22 lated technologies, or updated national and international  
23 accessibility standards. The Secretary of Education shall  
24 submit a report to Congress summarizing the public com-  
25 ments and presenting the Secretary's decision on whether

1 to reconstitute the Commission based on those comments.  
2 If the Secretary of Education decides to reconstitute the  
3 Commission, the Secretary may implement that decision  
4 30 days after the date on which the report was submitted  
5 to Congress. That process shall begin with the Secretary  
6 requesting the appointment of Commission members in ac-  
7 cordance with section 2(a)(2)(B).

8 **SEC. 5. CONSTRUCTION.**

9 (a) **NONCONFORMING MATERIALS OR RELATED**  
10 **TECHNOLOGIES.**—Nothing in this Act shall be construed  
11 to require an institution of higher education to require,  
12 provide, or both recommend and provide, postsecondary  
13 electronic instructional materials or related technologies  
14 that conform to the voluntary guidelines. However, wheth-  
15 er or not an institution selects or uses nonconforming ma-  
16 terials or related technologies, the institution shall comply  
17 with existing obligations under section 504 of the Reha-  
18 bilitation Act of 1973 (29 U.S.C. 794) and titles II and  
19 III of the Americans with Disabilities Act of 1990 (42  
20 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.) to provide  
21 access to the educational benefit afforded by such mate-  
22 rials and technologies through provision of appropriate  
23 and reasonable modification, accommodation, and auxil-  
24 iary aids or services.

1 (b) RELATIONSHIP TO EXISTING LAWS AND REGU-  
2 LATIONS.—With respect to the Americans with Disabil-  
3 ities Act of 1990 (42 U.S.C. 12101 et seq.) and the Reha-  
4 bilitation Act of 1973 (29 U.S.C. 701 et seq.), nothing  
5 in this Act may be construed—

6 (1) to authorize or require conduct prohibited  
7 under the Americans with Disabilities Act of 1990  
8 and the Rehabilitation Act of 1973, including the  
9 regulations issued pursuant to those laws;

10 (2) to expand, limit, or alter the remedies or de-  
11 fenses under the Americans with Disabilities Act of  
12 1990 and the Rehabilitation Act of 1973;

13 (3) to supersede, restrict, or limit the applica-  
14 tion of the Americans with Disabilities Act of 1990  
15 and the Rehabilitation Act of 1973; or

16 (4) to limit the authority of Federal agencies to  
17 issue regulations pursuant to the Americans with  
18 Disabilities Act of 1990 and the Rehabilitation Act  
19 of 1973.

20 (c) VOLUNTARY NATURE OF THE PRODUCTS OF THE  
21 COMMISSION.—

22 (1) VOLUNTARY GUIDELINES.—

23 (A) INTENT.—It is the intent of Congress  
24 that use of the voluntary guidelines developed  
25 pursuant to this Act is and should remain vol-

1           untary. The voluntary guidelines shall not con-  
2           fer any rights or impose any obligations on  
3           Commission participants, institutions of higher  
4           education, or other persons.

5                   (B) RESTRICTION.—

6                       (i) IN GENERAL.—No department or  
7                       agency of the Federal Government may in-  
8                       corporate the voluntary guidelines devel-  
9                       oped pursuant to this Act, whether pro-  
10                      duced as a discrete document or electronic  
11                      resource, into regulations promulgated  
12                      under the Rehabilitation Act of 1973 (29  
13                      U.S.C. 701 et seq.), the Americans with  
14                      Disabilities Act of 1990 (42 U.S.C. 12101  
15                      et seq.), or any other Federal law or in-  
16                      strument.

17                      (ii) APPLICATION.—The restriction  
18                      under clause (i)—

19                           (I) applies only to the voluntary  
20                           guidelines as a discrete document or  
21                           resource; and

22                           (II) imposes no limitation on  
23                           Federal use of standards or resources  
24                           to which the voluntary guidelines may  
25                           refer.

1 (2) ANNOTATED LIST.—

2 (A) INTENT.—It is the intent of Congress  
3 that use of the annotated list of information  
4 technology standards developed pursuant to this  
5 Act is and should remain voluntary. The anno-  
6 tated list of information technology standards  
7 shall not confer any rights or impose any obli-  
8 gations on Commission participants, institu-  
9 tions of higher education, or other persons.

10 (B) RESTRICTION.—

11 (i) IN GENERAL.—No department or  
12 agency of the Federal Government may in-  
13 corporate the annotated list of information  
14 technology standards developed pursuant  
15 to this Act, whether produced as a discrete  
16 document or electronic resource, into regu-  
17 lations promulgated under the Rehabilita-  
18 tion Act of 1973 (29 U.S.C. 701 et seq.),  
19 the Americans with Disabilities Act of  
20 1990 (42 U.S.C. 12101 et seq.), or any  
21 other Federal law or instrument.

22 (ii) APPLICATION.—The restriction  
23 under clause (i)—

24 (I) applies only to the annotated  
25 list of information technology stand-

1                   ards as a discrete document or re-  
2                   source; and

3                   (II) imposes no limitation on  
4                   Federal use of standards or resources  
5                   to which the annotated list of infor-  
6                   mation technology standards may  
7                   refer.

8 **SEC. 6. DEFINITIONS.**

9       In this Act:

10           (1) ANNOTATED LIST OF INFORMATION TECH-  
11           NOLOGY STANDARDS.—The term “annotated list of  
12           information technology standards” means a list of  
13           existing national and international accessibility  
14           standards relevant to student use of postsecondary  
15           electronic instructional materials and related tech-  
16           nologies, and to other types of information tech-  
17           nology common to institutions of higher education  
18           (such as institutional websites and class registration  
19           systems), annotated by the Commission to provide  
20           information about the applicability of such standards  
21           in higher education settings.

22           (2) DISABILITY.—The term “disability” has the  
23           meaning given such term in section 3 of the Ameri-  
24           cans with Disabilities Act of 1990 (42 U.S.C.  
25           12102).



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

5           (4) NONCONFORMING MATERIALS OR RELATED  
6 TECHNOLOGIES.—The term “nonconforming mate-  
7 rials or related technologies” means postsecondary  
8 electronic instructional materials or related tech-  
9 nologies that do not conform to the voluntary guide-  
10 lines developed pursuant to this Act.

11           (5) POSTSECONDARY ELECTRONIC INSTRUCC-  
12 TIONAL MATERIALS.—The term “postsecondary elec-  
13 tronic instructional materials” means digital cur-  
14 ricular content that is required, provided, or both  
15 recommended and provided by an institution of high-  
16 er education for use in a postsecondary instructional  
17 program.

18           (6) RELATED TECHNOLOGIES.—The term “re-  
19 lated technologies” refers to any software, applica-  
20 tion, learning management or content management  
21 system, or hardware that an institution of higher  
22 education requires, provides, or both recommends  
23 and provides for student access to and use of post-  
24 secondary electronic instructional materials in a  
25 postsecondary instructional program.

1           (7) TECHNICAL PANEL.—The term “technical  
2 panel” means a group of experts with extensive,  
3 demonstrated technical experience in the develop-  
4 ment and implementation of accessibility features for  
5 postsecondary electronic instructional materials and  
6 related technologies, established by the Commission  
7 pursuant to section 3(d), which assists the Commis-  
8 sion in the development of the voluntary guidelines  
9 and annotated list of information technology stand-  
10 ards authorized under this Act.

11           (8) VOLUNTARY GUIDELINES.—The term “vol-  
12 untary guidelines” means a set of technical and  
13 functional performance criteria developed by the  
14 Commission that provide specific guidance regarding  
15 both the accessibility and pedagogical functionality  
16 of postsecondary electronic instructional materials  
17 and related technologies not addressed, or not ade-  
18 quately addressed, by existing accessibility stand-  
19 ards.

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