164.477 Kentucky Postsecondary Textbook Accessibility Act.

(1) As used in this section, unless the context requires otherwise:

(a) "Alternative format" means any medium or format for the presentation of instructional materials other than standard print needed by a student with a disability for a reading accommodation, including but not limited to braille, large print texts, audio recordings, digital texts, and digital talking books;

(b) "Instructional material" means a textbook or other material published primarily for use by students in a course of study in which a student with a disability is enrolled that is required or essential to a student's success, as determined by the course instructor. "Instructional material" includes nontextual mathematics and science material to the extent that software is commercially available to permit the conversion of the electronic file of the material into a format that is compatible with assistive technologies such as speech synthesis software or braille translation software commonly used by students with disabilities;

(c) "Nonprinted instructional material" means instructional material in a format other than print, including instructional material that requires the availability of electronic equipment in order to be used as a learning resource, including but not limited to software programs, videodiscs, videotapes, and audio tapes;

(d) "Printed instructional material" means instructional material in book or other printed form;

(e) "Publisher" means an individual, firm, partnership, corporation, or other entity that publishes or manufactures instructional material used by students attending a public or independent postsecondary education institution in Kentucky;

(f) "State Repository for Alternative Format Instructional Materials" or "repository" means a consortium established or otherwise designated by the Council on Postsecondary Education under subsection (8) of this section to serve as a state repository for electronic files or alternative format instructional materials obtained from publishers, created by institutions, or received through other means;

(g) "Structural integrity" means the inclusion of all of the information provided in printed instructional material, including but not limited to the text of the material sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, and glossaries, but need not include nontextual elements such as pictures, illustrations, graphs, or charts; and

(h) "Working day" means a day that is not Saturday, Sunday, or a national holiday.

(2) The purpose of this section is to ensure, to the maximum extent possible, that all postsecondary students with a disability in Kentucky requiring reading accommodations, in accordance with Section 504 of the Rehabilitation Act, 29 U.S.C. sec. 794, or the Americans with Disabilities Act, 42 U.S.C. secs. 12101 et seq., including but not limited to students who are blind, are visually impaired, or

have a specific learning disability or other disability affecting reading, shall have access to instructional materials in alternative formats that are appropriate to their disability and educational needs.

(3) A publisher shall, upon fulfillment of the requirements of subsections (6) and (7) of this section, provide to a postsecondary education institution or to the State Repository for Alternative Format Instructional Materials, at no cost:

(a) Printed instructional material in an electronic format; and

(b) Nonprinted instructional material in an electronic format, when the technology is available to maintain the material's structural integrity.

(4) Instructional material provided by a publisher in electronic format shall:

(a) Maintain the structural integrity of the original instructional material, except as provided for in paragraph (b) subsection (3) of this section;

(b) Be compatible with commonly used braille translation and speech synthesis software;

(c) Include corrections and revisions as may be necessary; and

(d) Be in a format that is mutually agreed upon by the publisher and the requesting institution or the State Repository for Alternative Format Instructional Materials. If good-faith efforts fail to produce an agreement as to an electronic format that will preserve the structural integrity of the instructional material, the publisher shall provide the instructional material in XML (Extensible Markup Language), utilizing an appropriate document-type definition suitable for the creation of alternative format materials, and shall preserve as much of the structural integrity of the original instructional material as possible.

(5) The publisher shall transmit or otherwise send an electronic format version of requested instructional material within fifteen (15) working days of receipt of an appropriately completed request. Should this timetable present an undue burden for a publisher, the publisher shall submit within the fifteen (15) working day period a statement to the requesting entity certifying the expected date for transmission or delivery of the file.

(6) (a) To receive an electronic format version of instructional material, a written request shall be submitted to the publisher that certifies:

1. The instructional material has been purchased for use by a student with a disability by the student or the institution the student attends or is registered to attend;

2. The student has a disability that prevents the student from using the standard instructional material; and

3. The instructional material is for use by the student in connection with a course in which he or she is registered or enrolled.

(b) A publisher may also require a statement signed by the student or, if the student is a minor, the student's parent or legal guardian, agreeing that the student will:

1. Use the electronic copy of the instructional material solely for his or her own educational purposes; and
2. Not copy or distribute the instructional material for use by others.

(7) The request for an electronic format version of instructional material shall be prepared and signed by:

(a) The coordinator of services for students with a disability at the institution;

(b) A representative of the Office for the Blind;

(c) A representative of the Office of Vocational Rehabilitation; or

(d) A representative of the State Repository for Alternative Format Instructional Materials.

(8) The Council on Postsecondary Education may, to the extent funds are available, establish or otherwise designate a consortium to be called the State Repository for Alternative Format Instructional Materials to serve as a state repository for electronic files and alternative format materials for the purpose of facilitating the timely access of appropriate alternative instructional materials by postsecondary students with a disability.

(9) The Council on Postsecondary Education may promulgate administrative regulations governing the implementation and administration of this section.

(10) The council shall work with representatives of each postsecondary institution to develop policies and procedures designed to ensure to the maximum extent possible that students with disabilities have access to instructional materials in appropriate alternative formats within the first week of class.

(11) The council, in consultation with appropriate entities, including but not limited to the Office for the Blind, the Kentucky Assistive Technology Service Network, Recording for the Blind and Dyslexic, and the Kentucky Association on Higher Education and Disability, shall include within its annual status report on postsecondary education in Kentucky a continuing assessment of the need for statewide technical assistance, training, and other supports designed to increase the availability and effective use of alternative format instructional materials.

(12) The State Repository for Alternative Format Instructional Materials or the council may receive electronic files and alternative format materials from:

(a) Publishers;

(b) Postsecondary education institutions that have created alternative materials for use by a student with a disability;

(c) The Kentucky Department of Education, receiving electronic files from publishers under the requirements of KRS 156.027; or

(d) Other sources.

(13) The repository or the council shall, upon receipt of documents as set forth in subsection (6) of this section, provide at no cost copies of electronic files and alternative format materials to:

(a) Postsecondary education institutions in Kentucky; and

(b) The Kentucky Department of Education, to assist in the implementation of the requirements of KRS 156.027.

(14) The repository shall provide to a publisher, upon request:

(a) A summary of all electronic or alternative format versions of instructional material from that publisher provided to students, postsecondary education institutions, and the Kentucky Department of Education from its holdings; and

(b) Copies of requests and related certification documents received for instructional materials from that publisher.

(15) The repository or the council may submit requests for electronic files to publishers on behalf of institutions.

(16) (a) A postsecondary education institution or an educational instructor, assistant, or tutor may assist a student with a disability by using the electronic format version of instructional material as provided by this section solely to transcribe or arrange for the conversion of the instructional material into an alternative format, or to otherwise assist the student.

(b) If an alternative format version of instructional material is created, an institution may, for the purpose of providing the version to other students with disabilities, share that version with:

1. The repository;

2. A Kentucky postsecondary education institution serving a student with a disability; and

3. An authorized entity as defined under 17 U.S.C. sec. 121 that commonly provides alternative format materials for use by students in Kentucky institutions.

(17) The disk or file of an electronic format version of instructional material used directly by a student shall be copy-protected, or reasonable precautions shall be taken by the institution to ensure that the student does not copy or distribute the electronic format version in violation of the Copyright Revisions Act of 1976, as amended, 17 U.S.C. secs. 101 et seq.

(18) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended, 17 U.S.C. secs. 101 et seq.

(19) Nothing in this section shall absolve covered entities from the obligation to provide equivalent access to information technology and software as set forth in KRS 61.982.

(20) A publisher shall be considered a place of public accommodation for the purposes of KRS 344.130. Failure to comply with the requirements of this section shall be an unlawful practice of discrimination on the basis of disability for the purposes of KRS 344.120.

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