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FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 617

(Senator Zucker, *et al.*)

Education, Health, and Environmental Affairs

Local School Systems - Equivalent Access Standards - Digital Tools (Equivalent and Nonvisual Access Accountability Act for K-12 Education)

This bill requires each local school system to provide a student with disabilities access to digital tools that (1) provide equivalent access to and are independently usable by the student and (2) enable the student to acquire the same information, participate in the same interactions, and access the same services as a student without disabilities, with substantially equivalent ease of use. Each digital tool developed or purchased by a local board must include specifications for access for students with disabilities in accordance with technical standards issued under specified federal law or any other widely accepted and freely available technical standard. Each local school system must establish an evaluation process for digital tools being considered for development or purchase for conformity with the above requirements. The bill establishes certain procurement procedures regarding digital tools and civil penalties for vendors that fail to meet specified accessibility standards, after certain notification. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: None. The Maryland State Department of Education (MSDE), the Department of Disabilities (MDOD), and the Department of Information Technology (DoIT) can likely comply with the bill's requirements using existing resources, as discussed below. The Department of Commerce is relieved of certain responsibilities, but no impact on staffing is anticipated. No effect on revenues.

Local Effect: Beginning in FY 2023, expenditures for some local school systems may increase minimally. Any revenue increases for local boards of education due to civil penalties are also anticipated to be minimal.

Small Business Effect: Small businesses that provide digital tools and related services may incur additional costs in order to serve local public schools.

Analysis

Bill Summary: “Digital tool” means an online platform, an online course, specified information and communication technology services, digital content, or other digital technologies not requiring sight in an equally effective and integrated manner. “Equivalent access” means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means, so that a student with disabilities can access the same services as a student without disabilities with substantially equivalent ease of use.

The Secretary of Disabilities, rather than the Secretary of Commerce under current law, must ensure jointly with the State Superintendent of Schools that specifications used in all grants and procurement contracts for digital tools (rather than technology-based instructional products under current law) require equivalent access for students with disabilities in accordance with Section 508 of the federal Rehabilitation Act of 1973. Specifications used in all grants and procurement contracts for digital tools must give primary consideration to the pedagogical value of the digital tools.

The State Board of Education (SBE) and local school systems generally may not approve a contract that does not comply with equivalent access requirements. Following evaluation of digital tools, the State or local school system must, from among digital tools that offer pedagogical value, *prioritize* the available product that best meets equivalent access standards with the greatest functionality for students with disabilities. Beginning October 1, 2024, a local school system must *select*, from among digital tools that offer pedagogical value, the best product according to the standards described above. However, if a product meeting the requirements is not available, or practicable, the local school system must notify MSDE. After receiving notice, MSDE must consult with DoIT and MDOD to determine how to proceed. If, after consultation, MSDE determines that there is an available product that meets the equivalent access standard, the local school system must obtain that product. However, if MSDE determines there is no such available product, the local school system may, with MSDE’s approval, obtain a product that does not meet requirements but provides the best equivalent access functionality. Further, online platforms or content developed or purchased by a local board that is made available to students or to the public must comply with the most recent World Wide Web Consortium’s Web Content Accessibility Guidelines (WCAG).

Beginning September 1, 2023, an invitation for bids or request for proposals for a digital tool issued by SBE or a local school system must require a vendor to submit an accessibility conformance report explaining how the digital tool complies with Section 508 of the federal Rehabilitation Act of 1973. Local school systems must establish an evaluation process, including evaluation for nonvisual access by a specialist. A procurement contract

for a digital tool must require a vendor to indemnify SBE or a local system for liability and costs arising from the failure of the digital tool to meet accessibility standards.

If within 18 months of development or purchase a digital tool fails to meet access standards, the local school system must send written notice to the vendor of failure under the procurement contract. The vendor on receipt of the notice must at the vendor's expense modify the tool to meet the standards within an agreed timeframe. A vendor that continues to fail to meet the standards is subject to specified civil penalties and must indemnify SBE or a local board for liability resulting from use of the tool.

By October 1, 2023, and annually thereafter, each local school system must submit a report to MSDE on the accessibility of digital tools developed or purchased by the school system for use in the immediately preceding fiscal year. MSDE must compile, make available on its website, and annually update information received from local school systems. MSDE must also annually update, and monitor compliance with, requirements for accessibility of digital tools per Maryland regulations and annually report findings to the Governor and the General Assembly.

Current Law: The State Superintendent and the Secretary of Commerce must jointly ensure that specifications used in all grants and procurement contracts for technology-based instructional products require equivalent access for students with disabilities, including blindness, in accordance with the technical standards for electronic and information technology issued under Section 508 of the federal Rehabilitation Act of 1973.

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an individualized family service plan (IFSP) or individualized education program (IEP) specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland's Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities from age 3 through 21. Local school systems are required to make a free appropriate public education available to students with disabilities from age 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

504 Plans

Under Section 504 of the federal Rehabilitation Act of 1973, an organization that receives federal money, including public and many private schools, may not discriminate against a person on the basis of a disability. Section 504 requires schools to make a "reasonable

“accommodation” for students with disabilities to allow them to participate in school and school-related activities. Section 504 plans can be created to help students with disabilities receive accommodations that are not covered by their IEP. Students with disabilities who do not need an IEP may still receive accommodations through a Section 504 plan. For example, a student who has diabetes may have a Section 504 plan that includes a schedule for getting medication. A student who uses a wheelchair may have a Section 504 plan that provides for special transportation during field trips.

Blind Children

MSDE, each local board of education, and the Maryland School for the Blind must work together to meet the educational needs of blind children. Other than a child whose physical condition makes the child’s instruction inexpedient or impracticable, each blind child must attend a school or classes for the blind during the school year unless the child otherwise is receiving regular, thorough instruction during the school year in studies usually taught in the public schools to children of the same age.

Accessible Educational Materials

The Code of Maryland Regulations directs school systems to develop policies and procedures for the purchase and acquisition of accessible textbooks and supplemental curricular resources, in print and digital formats, that support teaching and learning in and out of the classroom. This includes (among other things) policies and procedures related to the selection and availability of equitable print- and technology-based educational materials, including printed and electronic textbooks and related materials, in order to meet the needs of all students. Each local board must annually train special education directors, principals, and other purchase specialists on the policies and procedures for purchasing and using accessible teaching and learning materials to ensure enforcement of the policies and procedures. Each local board of education and public agency must comply with WCAG when purchasing or selecting digital learning resources to provide equitable learning opportunities for all students.

Federal Accessibility Law and Standards

The federal Rehabilitation Act of 1973 requires access to programs and activities that are funded by federal agencies and to federal employment. Later amendments to the Act, under Section 508, strengthened requirements for access to electronic and information technology in the federal sector. Section 508 incorporates WCAG. The law also established the Access Board, an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards.

The Americans with Disabilities Act (ADA) requires State and local government agencies to ensure that all electronic and information technology is accessible to individuals with disabilities. It establishes a right for such individuals to file civil lawsuits for noncompliance, even when the noncompliance is not intentional. The ADA Standards are based on minimum guidelines set by the Access Board.

State Expenditures: Under current law, the State Superintendent and the Secretary of Commerce must jointly ensure that specifications used in all grants and procurement contracts for technology-based instructional products require equivalent access for students with disabilities, including blindness. Under current practice, MSDE takes primary responsibility for ensuring compliance, with the Department of Commerce serving in an advisory capacity with existing staff. This analysis assumes a similar division of labor going forward, with MDOD and DoIT providing advisory support to MSDE, which they can do with existing staff. To the extent that MSDE requires or requests more substantial assistance, MDOD and/or DoIT may require up to two additional positions to meet the bill's requirements.

Local Fiscal Effect: Beginning in fiscal 2023, expenditures for some local school systems may increase. The fiscal impact is assumed to be minimal based upon local school system responses. Any increase in revenues for local public schools, beginning in fiscal 2023, in the form of civil penalties assessed by local boards of education on vendors, is also assumed to be minimal.

Baltimore City Public Schools anticipates the need to hire one staff specialist, at an annual cost of approximately \$113,000 for salaries and benefits, to support vendors with the completion of the required form, coordinate required reviews, and monitor vendor progress on remedies required by the legislation. Prince George's County Public Schools anticipates no fiscal impact under the bill and advises that its digital tools approval and adoption process already includes a team of evaluators, made up of content and special education specialists, instructional technology specialists, and information technology representatives who are responsible for reviewing the tools based on compliance to WCAG standards, screen reader and internal network compatibility, configuration, and data security.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 547 (Delegate Guyton, *et al.*) - Ways and Means.

Information Source(s): Baltimore City Public Schools; Prince George's County Public Schools; Department of Commerce; Maryland State Department of Education; Maryland School for the Deaf; Maryland Department of Disabilities; Department of General Services; Access Board; Department of Legislative Services

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