



**NATIONAL FEDERATION
OF THE BLIND**
MARYLAND

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Subject: Favorable with Amendments SB921
To: Senate Education, Health, and Environmental Affairs Committee
From: Members of the National Federation of the Blind of Maryland
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THE PROBLEM

Because of COVID-19, most schools in Maryland have shifted from in-person to virtual instruction. Blind students in grades K-12 cannot access their educational content since local school systems use inaccessible instructional technologies. Although federal and state laws require the accessibility of information and communication technology (ICT), digital content and services such as educational apps and websites, local school systems and the Maryland State Department of Education (MSDE) have not enforced the requirement for developers to ensure accessibility before purchasing and implementing technologies and have not prohibited staff members from using inaccessible materials that they find on their own. Local school systems and MSDE have no accountability for accessibility. Consequently, blind students are denied the opportunity to fully participate in their education.

PROPOSED ACTION

The Senate Education, Health, and Environmental Affairs Committee should vote in favor of SB921 with the sponsor amendments. This legislation includes procurement procedures that force local school systems to comply with Section 508 of the Rehabilitation Act. There is a penalty for non-compliance by developers. The MSDE will annually publicize the record of accessibility compliance by all jurisdictions on its website. The need for action is urgent. Barriers to full participation in education that blind students face must be eliminated.

AMENDMENT

Amendment 1: On page 3, in line 18, after “TOOL” insert “UNLESS THE CONTRACT INCLUDES A CLAUSE THAT INDEMNIFIES THE STATE FOR LIABILITY RESULTING FROM THE USE OF A DIGITAL TOOL”; in the same line, strike “REQUIREMENTS” and substitute “ACCESSIBILITY STANDARDS”; in line 19, after “SECTION” insert “, INCLUDING NONVISUAL ACCESS”; and strike beginning with “A” in line 29 down through the second “IN” in line 30 and substitute “THE BLINDNESS SPECIALIST IN THE EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES DIVISION OF”.

These sponsor amendments will enhance SB921. Requiring a vendor to include an indemnification clause in the contract for ICT will increase the vendor’s commitment to accessibility. Taxpayers should not pay for inaccessible products or mistakes that vendors may make. Changing the consultant from a person in the Division of Rehabilitation Services to the Blindness Specialist in the Division of Early Intervention and Special Education Services, which is part of the Maryland State Department of Education, is appropriate. The Division of Early Intervention and Special Education Services works with K-12 students, while the Division of Rehabilitation Services primarily works with adults to prepare them for the world of work.

BACKGROUND

Blind students have increasingly encountered accessibility problems in the classroom as more and more ICTs are implemented into daily instructional use, and virtual instruction necessitated by COVID-19 has further exacerbated these problems. Blind students cannot access their instruction and digital content, complete and submit their homework, participate in virtual class discussions, complete pop quizzes and tests, or check their grades. In other words, inaccessible technologies shut blind students out of their education. Additionally, blind parents and blind teachers cannot help students who use these technologies. Federal laws such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act have required elementary and secondary schools to use accessible ICT to provide students with disabilities full and equal access to programs. Since 2002, Maryland law has also required that online instruction must be accessible to students with disabilities. Since these laws have existed for decades, why does this problem remain?

Screen access software makes electronic information accessible by rendering information in either a text-to-speech, magnified, or refreshable Braille format. These screen access devices will work only if websites, document formats, or other hardware and software are designed and coded to accommodate nonvisual access. The methods for nonvisual access are well known and well documented. The first publicly available accessibility guidelines were published in 1995 and have been updated periodically. These guidelines have been incorporated into Section 508 requirements of the Rehabilitation Act of 1973. The law requires accessibility, and developers already know how to provide accessibility. What is missing is accountability and enforcement.

BENEFITS OF THE PROPOSED LEGISLATION

By ensuring accountability, the proposed legislation will prevent local school systems and the MSDE from overlooking or ignoring accessibility requirements. Making a member of the vision department part of the local school system's procurement team – as stipulated by this legislation – will ensure that accessibility requirements are part of every request for proposals for educational ICT. The legislation also requires the MSDE to annually publish the progress of all local school systems concerning accessibility on its website. Making this information publicly available demonstrates that accessibility is a priority for the MSDE. Publishing this information on the website is also a valuable accountability tool because it allows the public to demand explanations.

The proposed legislation introduces vendor accountability at the beginning of the procurement process. The proposed legislation will spell out accessibility requirements at the beginning of the procurement process by requiring vendors to submit an Accessibility Conformance Report including a Voluntary Product Accessibility Template (VPAT) as part of their ICT proposals. The VPAT is a document that explains how ICT products such as software, hardware, electronic content, and support documentation meet (conform to) the Revised Section 508 Standards for ICT accessibility. Vendors are familiar with VPATs since they are already required by many federal government entities. Accessibility is less expensive and more effective if it is designed during the initial development of ICT. Thus, requiring a VPAT in the Accessibility Conformance Report will help the developers in the long run.

The proposed legislation enhances vendor accountability for accessibility by creating consequences. Currently, a vendor has no incentive to comply with procurement accessibility requirements. Strengthening the procurement law by providing for vendor penalties will demonstrate the importance of the requirement to the vendor. Charging any vendor to remediate the product so it contains nonvisual access components will also save money for the local school systems. The proposed legislation states that local school systems shall notify vendors of any access barriers found upon a determination within eighteen months from procurement or latest upgrade. The vendor will be required to remediate said barriers at its own expense. Should that vendor fail to remediate the access barrier within twelve months from the date of notice, a civil penalty shall be applied. For the first offense, the fine shall not exceed \$5,000. For a subsequent offense, the fine shall not exceed \$10,000. No vendor should object to this requirement because it has a year to fix the problem before any penalty is invoked. The vendor shall indemnify the local school system for liability resulting from the use of information technology that does not meet the nonvisual access standards. In the long run, such a penalty will allow full accountability and enforcement of the contract while saving local school systems money.

Precedent for a civil penalty against vendors for noncompliance with accessibility laws already exists in Maryland with the enactment of HB1088/SB286 in 2018. Assessing a civil penalty on vendors for noncompliance with accessibility requirements has not had a detrimental effect on other agencies in the executive branch of government. The legislature should demand the same accountability for accessible education that it demands from the rest of the executive branch.

CONCLUSION

Please give a favorable report, which includes the sponsor amendments, to SB921. This bill is necessary because the use of virtual instruction by local school systems has denied full and equal participation to blind students in K-12 education. SB921 is also necessary for in-person instruction because education in the classroom is becoming increasingly dependent on digital tools. Although accessibility to ICT is required by state and federal laws, it does not occur because there is no accountability or enforcement by local school systems and the MSDE. There are no consequences for vendors who fail to deliver accessible ICT. The proposed legislation will reduce accessibility barriers by establishing methods of enforcement and accountability. Blind students deserve the same opportunities for full participation in education that are afforded to non-disabled students. This legislation will fulfill the demand that accessibility must become a reality. If blind students have the opportunity to obtain a quality education, they will be able to become successful tax payers and productive members of society.