



NATIONAL FEDERATION OF THE BLIND

MARYLAND

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Subject: Favorable HB547
To: House Ways and Means Committee
From: Members of the National Federation of the Blind of Maryland
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THE PROBLEM

To understand the problem, please go to <https://youtu.be/J7tOr2YeoXM> .

Blind students in grades K-12 cannot access their educational content because 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 Maryland General Assembly should enact HB547, legislation that provides accountability for accessibility by both local school systems and the MSDE. This legislation will include procurement procedures that force local school systems to comply with Section 508 of the Rehabilitation Act. This bill will create a penalty for non-compliance by developers. The MSDE will be required to 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.

BACKGROUND

Blind students encounter accessibility problems whether their instruction is in-person or virtual. Accessibility problems are exacerbated during this pandemic because of the need to shift between in-person instruction and virtual instruction. The trend in K-12 education today is to make greater use of computers and interactive instructional technologies. Students are expected to use technology to access digital content, complete and submit their homework, participate in class discussions, complete pop quizzes and tests, or check their grades. Blind students can no longer perform these tasks independently when instructional technologies are inaccessible. In other words, inaccessible technologies shut blind students out of their education. Additionally, blind parents and blind teachers cannot help students who must 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

- 1. By ensuring accountability, the proposed legislation will prevent local school systems and the MSDE from overlooking or ignoring accessibility requirements.** This legislation will require local school systems to establish a process to evaluate the accessibility of ICT and digital content that it is considering for purchase. A local school system employee, knowledgeable in accessibility and the web content accessibility guidelines must be involved in this evaluation. When selecting the product, the local school system shall “prioritize the available product that best meets the specifications and has the greatest functionality for accessibility standards for students with disabilities, including blindness”. The legislation will also close an accessibility loophole by also requiring teacher prepared material to be accessible.

The proposed legislation strengthens the role of MSDE in monitoring the compliance of accessibility in the local school systems. The legislation will require 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.

2. **The proposed legislation introduces vendor accountability at the beginning of the procurement process.** Local school systems will be required to include in a procurement contract, for ICT or digital content, an indemnification clause making the vendor liable if the product does not meet the accessibility standards. The legislation clearly informs the vendor of accessibility requirements by getting the vendors attention in the request for proposals or bids.

In this legislation, the local school system must require the vendor to provide specific information of how the vendor intends to achieve accessibility in the product or software. For instance, the legislation will stipulate that “Beginning on September 1, 2023, an invitation for bids or request for proposals for a digital tool issued by the State or County board shall require a vendor to submit an accessibility conformance report” or Voluntary Product Accessibility Template (VPAT). 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 an Accessibility Conformance Report or VPAT will help the developers in the long run.

3. **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.
4. **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

The use of inaccessible ICT and digital content by local school systems has denied full and equal participation to blind students in K-12 education. 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. HB547 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 taxpayers and productive members of society. Please vote in favor of HB547.