

ASSEMBLY BILL

No. 386

Introduced by Assembly Member Ruskin

February 23, 2009

An act to amend Section 67302 of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as introduced, Ruskin. Postsecondary education: instructional materials: disabled students.

(1) Existing law requires publishers and manufacturers of printed instructional material for use at public postsecondary institutions to provide the material, upon request, in an electronic format that is compatible with commonly used braille translation and speech synthesis software, when those materials are to be used by a student whose disability prevents him or her from using standard instructional materials and other requirements are met.

Existing law also requires publishers and manufacturers to provide electronic versions of nonprinted instructional materials, defined to include materials that require the availability of electronic equipment in order to be utilized, when technology is available to convert those nonprinted materials to a format that is compatible with braille translation or speech synthesis software.

This bill would expand the definition of nonprinted instructional materials to include audiovisual works, podcasts, and Web clips. This bill would define podcasts as an audio or video program in digital format delivered over the Internet for playback on a computer or portable digital device.

This bill would require that the electronic versions of nonprinted instructional materials be compatible with audiovisual captioning software for the deaf, in addition to braille translation and speech synthesis software for the blind.

(2) Existing law states that these provisions do not prohibit a postsecondary educational institution from assisting a disabled student by using the electronic version of printed instructional material provided pursuant to these provisions to transcribe the printed materials into braille.

This bill, in addition, would state that these provisions do not prohibit a postsecondary educational institution from assisting a disabled student by using the electronic version of printed and nonprinted instructional material to transcribe the materials into braille or captioning.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 67302 of the Education Code is amended
2 to read:
3 67302. (a) An individual, firm, partnership, or corporation
4 that publishes or manufactures printed instructional materials for
5 students attending the University of California, the California State
6 University, or a California Community College, shall provide to
7 the university, college, or particular campus of the university or
8 college, for use by students attending the University of California,
9 the California State University, or a California Community College,
10 any printed instructional material in an electronic format mutually
11 agreed upon by the publisher or manufacturer and the college or
12 campus. Computer files or electronic versions of printed
13 instructional materials shall maintain the structural integrity of the
14 printed instructional material, be compatible with commonly used
15 braille translation and speech synthesis software, and include
16 corrections and revisions as may be necessary. The computer files
17 or electronic versions of the printed instructional material shall be
18 provided to the university, college, or particular campus of the
19 university or college at no additional cost and in a timely manner,
20 upon receipt of a written request that does all of the following:
21 (1) Certifies that the university, college, or particular campus
22 of the university or college has purchased the printed instructional

1 material for use by a student with a disability or that a student with
2 a disability attending or registered to attend that university, college,
3 or particular campus of the university or college has purchased the
4 printed instructional material.

5 (2) Certifies that the student has a disability that prevents him
6 or her from using standard instructional materials.

7 (3) Certifies that the printed instructional material is for use by
8 the student in connection with a course in which he or she is
9 registered or enrolled at the university, college, or particular
10 campus of the university or college.

11 (4) Is signed by the coordinator of services for students with
12 disabilities at the university, college, or particular campus of the
13 university or college or by the campus or college official
14 responsible for monitoring compliance with the Americans with
15 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university,
16 college, or particular campus of the university or college.

17 (b) An individual, firm, partnership, or corporation specified in
18 subdivision (a) may also require that, in addition to the conditions
19 enumerated above, the request shall include a statement signed by
20 the student agreeing to both of the following:

21 (1) He or she will use the electronic copy of the printed
22 instructional material in specialized format solely for his or her
23 own educational purposes.

24 (2) He or she will not copy or duplicate the printed instructional
25 material for use by others.

26 (c) If a college or university permits a student to directly use
27 the electronic version of an instructional material, the disk or file
28 shall be copy-protected or the college or university shall take other
29 reasonable precautions to ensure that students do not copy or
30 distribute electronic versions of instructional materials in violation
31 of the Copyright Revisions Act of 1976, as amended (17 U.S.C.
32 Sec. 101 et seq.).

33 (d) An individual, firm, partnership, or corporation that publishes
34 or manufactures nonprinted instructional materials for students
35 attending the University of California, the California State
36 University, or a California Community College shall provide
37 computer files or other electronic versions of the nonprinted
38 instructional materials for use by students attending the University
39 of California, the California State University, or a California
40 Community College, subject to the same conditions set forth in

1 subdivisions (a) and (b) for printed instructional materials, when
2 technology is available to convert these nonprinted instructional
3 materials to a format that maintains the structural integrity of the
4 nonprinted instructional materials that is compatible with braille
5 translation—and, speech synthesis software, and *audiovisual*
6 *captioning software*.

7 (e) For purposes of this section:

8 (1) “Instructional material or materials” means textbooks and
9 other materials written and published primarily for use by students
10 in postsecondary instruction that are required or essential to a
11 student’s success in a course of study in which a student with a
12 disability is enrolled. The determination of which materials are
13 “required or essential to student success” shall be made by the
14 instructor of the course in consultation with the official making
15 the request pursuant to paragraph (4) of subdivision (a) in
16 accordance with guidelines issued pursuant to subdivision (i).
17 “Instructional material or materials” does not include nontextual
18 mathematics and science materials until the time software becomes
19 commercially available that permits the conversion of existing
20 electronic files of the materials into a format that is compatible
21 with braille translation software, *audiovisual captioning software*,
22 or alternative media for students with disabilities.

23 (2) “Printed instructional material or materials” means
24 instructional material or materials in book or other printed form.

25 (3) “Nonprinted instructional materials” means instructional
26 materials in formats other than print, and includes instructional
27 materials that require the availability of electronic equipment in
28 order to be used as a learning resource, including, but not
29 necessarily limited to, software programs, video disks, *audiovisual*
30 *works*, *digital media files* (including “podcasts” and “Web clips”),
31 and video and audio tapes. *For purposes of this paragraph,*
32 *“podcast” means an audio or video program in digital format*
33 *delivered over the Internet for playback on a computer or portable*
34 *digital device*.

35 (4) “Structural integrity” means all of the printed instructional
36 material, including, but not limited to, the text of the material,
37 sidebars, the table of contents, chapter headings and subheadings,
38 footnotes, indexes, glossaries, and bibliographies. “Structural
39 integrity” need not include nontextual elements such as pictures,
40 illustrations, graphs, or charts. If good faith efforts fail to produce

1 an agreement pursuant to subdivision (a) between the publisher or
2 manufacturer and the university, college, or particular campus of
3 the university or college, as to an electronic format that will
4 preserve the structural integrity of the printed instructional material,
5 the publisher or manufacturer shall provide the instructional
6 material in ASCII text and shall preserve as much of the structural
7 integrity of the printed instructional material as possible.

8 (5) "Specialized format" means braille, *captioned audiovisual*
9 *works*, audio, or digital text that is exclusively for use by blind,
10 *deaf*, or other persons with disabilities.

11 (f) Nothing in this section shall be construed to prohibit a
12 university, college, or particular campus of the university or college
13 from assisting a student with a disability by using the electronic
14 version of printed *or nonprinted* instructional material provided
15 pursuant to this section solely to transcribe or arrange for the
16 transcription of the printed *or nonprinted* instructional material
17 into braille *or captioning*. In the event a transcription is made, the
18 campus or college shall have the right to share the braille *or*
19 *captioned* copy of the printed *or nonprinted* instructional material
20 with other students with disabilities.

21 (g) The Chancellor of the California Community Colleges, the
22 Chancellor of the California State University, and the President
23 of the University of California may each establish one or more
24 centers within their respective segments to process requests for
25 electronic versions of instructional materials pursuant to this
26 section. If a segment establishes a center or centers, each of the
27 following shall apply:

28 (1) The colleges or campuses designated as within the
29 jurisdiction of a center shall submit requests for instructional
30 material made pursuant to paragraph (4) of subdivision (a) to the
31 center, which shall transmit the request to the publisher or
32 manufacturer.

33 (2) If there is more than one center, each center shall make every
34 effort to coordinate requests within its segment.

35 (3) The publisher or manufacturer of instructional material shall
36 be required to honor and respond to only those requests submitted
37 through a designated center.

38 (4) If a publisher or manufacturer has responded to a request
39 for instructional materials by a center, or on behalf of all the centers
40 within a segment, all subsequent requests for these instructional

1 materials shall be satisfied by the center to which the request is
2 made.

3 (h) Nothing in this section shall be deemed to authorize any use
4 of instructional materials that would constitute an infringement of
5 copyright under the Copyright Revision Act of 1976, as amended
6 (17 U.S.C. Sec. 101 et seq.).

7 (i) The governing boards of the California Community Colleges,
8 the California State University, and the University of California
9 shall each adopt guidelines consistent with this section for its
10 implementation and administration. At a minimum, the guidelines
11 shall address all of the following:

12 (1) The designation of materials deemed “required or essential
13 to student success.”

14 (2) The determination of the availability of technology for the
15 conversion of nonprinted materials pursuant to subdivision (d) and
16 the conversion of mathematics and science materials pursuant to
17 paragraph (4) of subdivision (e).

18 (3) The procedures and standards relating to distribution of files
19 and materials pursuant to subdivisions (a) and (b).

20 (4) Other matters as are deemed necessary or appropriate to
21 carry out the purposes of this section.

22 (j) Failure to comply with the requirements of this section shall
23 be a violation of Section 54.1 of the Civil Code.