

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 386

Introduced by Assembly Member Ruskin

February 23, 2009

An act to amend Section 67302 of, *and to add Section 67302.5 to*, the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as amended, Ruskin. Public postsecondary education: instructional materials: disabled students.

~~(1) Existing~~

Existing law requires publishers and manufacturers of printed instructional material for use at public postsecondary educational 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 computer files or other 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 and digital media files, including 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.~~

~~The bill would additionally require publishers and manufacturers, as defined, to provide a captioned copy format of nonprinted instructional materials, as defined, or an electronic format of those materials and a license to create a captioned format of the materials, upon request by a public postsecondary educational institution, and would authorize the public postsecondary educational institution to create a captioned copy format, subject to prescribed conditions, if the publisher or manufacturer provides a license to create the captioned format or fails to provide the captioned copy respond to a request for a captioned format.~~

~~The bill would prescribe various requirements with respect to a public postsecondary educational institution's use and distribution of captioned formats of instructional materials.~~

~~The bill would also make conforming changes.~~

~~(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

1 students attending the University of California, the California State
2 University, or a California Community College, shall provide to
3 the university, college, or particular campus of the university or
4 college, for use by students attending the University of California,
5 the California State University, or a California Community College,
6 any printed instructional material in an electronic format mutually
7 agreed upon by the publisher or manufacturer and the college or
8 campus. Computer files or electronic versions of printed
9 instructional materials shall maintain the structural integrity of the
10 printed instructional material, be compatible with commonly used
11 braille translation and speech synthesis software, and include
12 corrections and revisions as may be necessary. The computer files
13 or electronic versions of the printed instructional material shall be
14 provided to the university, college, or particular campus of the
15 university or college at no additional cost and in a timely manner,
16 upon receipt of a written request that does all of the following:

17 (1) Certifies that the university, college, or particular campus
18 of the university or college has purchased the printed instructional
19 material for use by a student with a disability or that a student with
20 a disability attending or registered to attend that university, college,
21 or particular campus of the university or college has purchased the
22 printed instructional material.

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

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

29 (4) Is signed by the coordinator of services for students with
30 disabilities at the university, college, or particular campus of the
31 university or college or by the campus or college official
32 responsible for monitoring compliance with the Americans with
33 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the university,
34 college, or particular campus of the university or college.

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

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

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

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

13 (d) An individual, firm, partnership, or corporation that publishes
14 or manufactures nonprinted instructional materials for students
15 attending the University of California, the California State
16 University, or a California Community College shall provide
17 computer files or other electronic versions of the nonprinted
18 instructional materials for use by students attending the University
19 of California, the California State University, or a California
20 Community College, subject to the same conditions set forth in
21 subdivisions (a) and (b) for printed instructional materials, when
22 technology is available to convert these nonprinted instructional
23 materials to a format that maintains the structural integrity of the
24 nonprinted instructional materials that is compatible with braille
25 translation and speech synthesis software.

26 (e) For purposes of this section:

27 (1) "Instructional material or materials" means textbooks and
28 other materials written and published primarily for use by students
29 in postsecondary instruction that are required or essential to a
30 student's success in a course of study in which a student with a
31 disability is enrolled. The determination of which materials are
32 "required or essential to student success" shall be made by the
33 instructor of the course in consultation with the official making
34 the request pursuant to paragraph (4) of subdivision (a) in
35 accordance with guidelines issued pursuant to subdivision (i).
36 "Instructional material or materials" does not include nontextual
37 mathematics and science materials until the time software becomes
38 commercially available that permits the conversion of existing
39 electronic files of the materials into a format that is compatible

1 with braille translation software or alternative media for students
2 with disabilities.

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

5 (3) “Nonprinted instructional materials” means instructional
6 materials in formats other than print, and includes instructional
7 materials that require the availability of electronic equipment in
8 order to be used as a learning resource, including, but not
9 necessarily limited to, software programs, video disks, and video
10 and audio tapes.

11 (4) “Structural integrity” means all of the printed instructional
12 material, including, but not limited to, the text of the material,
13 sidebars, the table of contents, chapter headings and subheadings,
14 footnotes, indexes, glossaries, and bibliographies. “Structural
15 integrity” need not include nontextual elements such as pictures,
16 illustrations, graphs, or charts. If good faith efforts fail to produce
17 an agreement pursuant to subdivision (a) between the publisher or
18 manufacturer and the university, college, or particular campus of
19 the university or college, as to an electronic format that will
20 preserve the structural integrity of the printed instructional material,
21 the publisher or manufacturer shall provide the instructional
22 material in ASCII text and shall preserve as much of the structural
23 integrity of the printed instructional material as possible.

24 (5) “Specialized format” means braille, audio, or digital text
25 that is exclusively for use by blind or other persons with
26 disabilities.

27 (f) Nothing in this section shall be construed to prohibit a
28 university, college, or particular campus of the university or college
29 from assisting a student with a disability by using the electronic
30 version of printed instructional material provided pursuant to this
31 section solely to transcribe or arrange for the transcription of the
32 printed instructional material into braille. In the event a
33 transcription is made, the campus or college shall have the right
34 to share the braille copy of the printed instructional material with
35 other students with disabilities.

36 (g) The Chancellor of the California Community Colleges, the
37 Chancellor of the California State University, and the President
38 of the University of California may each establish one or more
39 centers within their respective segments to process requests for
40 electronic versions of instructional materials pursuant to this

1 section. If a segment establishes a center or centers, each of the
2 following shall apply:

3 (1) The colleges or campuses designated as within the
4 jurisdiction of a center shall submit requests for instructional
5 material made pursuant to paragraph (4) of subdivision (a) to the
6 center, which shall transmit the request to the publisher or
7 manufacturer.

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

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

13 (4) If a publisher or manufacturer has responded to a request
14 for instructional materials by a center, or on behalf of all the centers
15 within a segment, all subsequent requests for these instructional
16 materials shall be satisfied by the center to which the request is
17 made.

18 (h) Nothing in this section shall be deemed to authorize any use
19 of instructional materials that would constitute an infringement of
20 copyright under the Copyright Revision Act of 1976, as amended
21 (17 U.S.C. Sec. 101 et seq.).

22 (i) The governing boards of the California Community Colleges,
23 the California State University, and the University of California
24 shall each adopt guidelines consistent with this section for its
25 implementation and administration. At a minimum, the guidelines
26 shall address all of the following:

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

29 (2) The determination of the availability of technology for the
30 conversion of nonprinted materials pursuant to subdivision (d) and
31 the conversion of mathematics and science materials pursuant to
32 paragraph (4) of subdivision (e).

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

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

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

39 (k) *This section does not apply to a request by an institution for*
40 *a captioned format, as defined in paragraph (1) of subdivision (a)*

1 of Section 67302.5, of an instructional material, as defined in
2 paragraph (4) of subdivision (a) of Section 67302.5.

3 SEC. 2. Section 67302.5 is added to the Education Code, to
4 read:

5 67302.5. (a) As used in this section, the following terms have
6 the following meanings:

7 (1) “Captioned” or “captioning” means the display of text
8 corresponding to, and synchronized with, the spoken-word audio
9 portion of instructional material.

10 (2) “Electronic format” means a computer file or other digital
11 medium that embodies instructional material, is not itself
12 captioned, but from which a captioned format may be created
13 using commercially available technology.

14 (3) “Institution” means the University of California, the
15 California State University, a California Community College, or
16 any campus or location of any of those institutions.

17 (4) “Instructional material” means any audiovisual work, as
18 that term is defined in Section 101 of Title 17 of the United States
19 Code, that is created and published primarily for use by students
20 in postsecondary instruction, and is required for a student’s success
21 in a course of study in which a student with a disability is enrolled.
22 The determination of which materials are “required for student
23 success” shall be made by the instructor of the course in
24 consultation with the official making the request pursuant to
25 subdivision (b) in accordance with guidelines issued pursuant to
26 subdivision (i).

27 (5) “Publisher” means any individual, firm, partnership, or
28 corporation that is engaged in the business, whether for profit or
29 not for profit, of selling instructional material in which it owns or
30 controls some or all of the copyright to that material. “Publisher”
31 does not include any entity that is a subdivision of any state or
32 other governmental body, other than the State of California.

33 (6) “Writing” includes facsimile transmission and e-mail.

34 (b) (1) A publisher that publishes instructional material used
35 by students attending, or by instructors for use in classroom
36 presentations at, the University of California, the California State
37 University, or a California Community College, shall, upon request
38 by an institution on behalf of a student or instructor at that
39 institution, do one of the following:

1 (A) Provide access to a captioned format of the instructional
2 material directly to the student or the instructor by providing an
3 Internet password, delivery of a disk or file, or in any other
4 appropriate manner.

5 (B) Provide to the institution a captioned format of the
6 instructional material.

7 (C) Provide to the institution an electronic format, if available,
8 of the instructional material, unless the institution already has an
9 electronic format in its possession, and a license permitting the
10 institution to create a captioned format of the material, to the
11 extent the publisher has the right to grant that license.

12 (2) A publisher shall respond to a properly addressed request
13 that meets the requirements of subdivision (c) in the following
14 manner, as applicable:

15 (A) Within 10 calendar days after the receipt of the request, the
16 publisher shall provide to the institution a notice, in writing, as to
17 which of the three actions in paragraph (1) it intends to take.

18 (B) If the publisher does not possess an electronic format of the
19 instructional material, it shall advise the institution of that fact in
20 the notice provided pursuant to subparagraph (A).

21 (C) If the publisher lacks sufficient rights to distribute, or license
22 the institution to create, a captioned format of some or all of the
23 instructional material covered by the request, it shall advise the
24 institution of that fact in the notice provided pursuant to
25 subparagraph (A), and shall provide both of the following to the
26 institution, to the extent that the publisher is able to do so:

27 (i) An electronic format of the instructional material.

28 (ii) The name and contact information of the person that the
29 publisher believes to be capable of authorizing creation of a
30 captioned format of the instructional material. Any person
31 designated as capable of authorizing the creation of the captioned
32 format is the publisher of that material for purposes of this section.

33 (D) If the publisher notifies the institution that it will provide
34 an electronic format and a license permitting the institution to
35 create a captioned format, it shall provide the electronic format
36 and the license within seven calendar days of providing the notice
37 pursuant to subparagraph (A).

38 (E) If the publisher notifies the institution that it will provide a
39 captioned format of the requested material, the publisher shall
40 provide the captioned format as soon as it is possible to do so, but

1 not later than 14 calendar days after providing the notice pursuant
2 to subparagraph (A).

3 (3) If a publisher fails to respond to a request, as required by
4 paragraph (2), within 10 calendar days of receiving the request,
5 the institution shall be deemed to have received a license permitting
6 the institution to create a captioned format of the instructional
7 material.

8 (c) (1) A request pursuant to subdivision (b) shall include all
9 of the following:

10 (A) Certification that the institution or an instructor at that
11 institution has purchased the instructional material for use by
12 either: (i) a student with an auditory disability that prevents the
13 student from using the instructional material in a noncaptioned
14 format or (ii) for use in a class in which a student with such a
15 disability is enrolled, or that a student with such a disability
16 attending, or registered to attend, that institution has purchased
17 the instructional material.

18 (B) Certification that the student has an auditory disability that
19 prevents the student from using instructional material in
20 noncaptioned format.

21 (C) Certification that the instructional material is for use by
22 the student or an instructor in connection with a course in which
23 the student is registered or enrolled at the institution.

24 (D) The signature of the coordinator of services for students
25 with disabilities at the institution, or by an official responsible for
26 monitoring compliance with the Americans with Disabilities Act
27 of 1990 (42 U.S.C. 12101 et seq.) at the institution.

28 (E) At a minimum, an e-mail address and a fax number at which
29 the person signing the request may be contacted.

30 (2) A publisher may require, in addition to the requirements
31 enumerated in paragraph (1), a request to include a statement
32 signed by the student agreeing to both of the following:

33 (A) He or she will use the captioned format of the instructional
34 material solely for his or her own educational purposes.

35 (B) He or she will not distribute or reproduce the captioned
36 format for use by others.

37 (d) (1) Any institution possessing an electronic format of an
38 instructional material shall take reasonable precautions to ensure
39 that the electronic format is not distributed to any third party,
40 except as provided in paragraph (2) and subdivision (e), and shall,

1 to the extent possible, maintain in effect all copy-protection
2 measures embedded in any electronic format provided by a
3 publisher.

4 (2) An institution may retain an outside vendor to assist it in
5 the exercise of rights granted to it by a publisher or by this section,
6 and shall ensure, pursuant to an agreement that the publisher and
7 the institution shall both have the power to enforce, that the
8 electronic format is not further distributed and that any captioned
9 format made from it is provided only to the institution.

10 (e) (1) If a publisher provides to an institution a captioned
11 format of instructional materials, the institution shall provide the
12 captioned format to the student or instructor on whose behalf the
13 request was made and may retain a copy of that captioned format.

14 (2) Except as provided in paragraph (3), if a publisher grants
15 an institution a license to create a captioned format, the institution
16 shall provide a copy of the resulting captioned format to the
17 publisher, may retain a copy of the captioned format, and may
18 provide additional copies to any other of its students, any instructor
19 employed by the institution for classroom use, any student at any
20 other institution, or any other institution for classroom use, if the
21 institution collects and forwards to the publisher all institutional
22 and student certifications required under subdivision (b).

23 (3) The institution shall cease to distribute additional copies of
24 a captioned format to any other institution if either of the following
25 occurs:

26 (A) The institution receives notice that a captioned format has
27 become commercially available from the publisher or other
28 copyright owner of the instructional material. However, if this
29 occurs, the institution may continue to allow its own instructors
30 to use any captioned format that the institution previously created.

31 (B) The publisher, or other copyright owner, of the instructional
32 material notifies the institution that the institution's captioned
33 format contains material errors or omissions.

34 (f) (1) The Chancellor of the California Community Colleges,
35 the Chancellor of the California State University, and the President
36 of the University of California may each designate an office, or
37 may by agreement designate a single office, to maintain a registry
38 of publisher contact information. A registry office designated
39 pursuant to this subdivision may be a center described in
40 subdivision (g) of this section or subdivision (g) of Section 67302.

1 (2) A publisher intending to sell instructional materials in the
2 state shall provide to the office designated pursuant to paragraph
3 (1) the name and contact information of its office or employee
4 designated to handle requests made under this section, or an
5 Internet Web site containing that information. If a publisher fails
6 to provide that information, a request under subdivision (b) may
7 be sent to a publisher at the address of its primary place of
8 business, to the attention of its rights and permissions department.

9 (g) The Chancellor of the California Community Colleges, the
10 Chancellor of the California State University, and the President
11 of the University of California may each establish one or more
12 centers within their respective segments to process requests
13 pursuant to this section. A center under this subdivision may be a
14 center established under subdivision (g) of Section 67302. All of
15 the following requirements apply with respect to any center
16 established or designated for the purposes of this subdivision:

17 (1) The institutions designated as within the jurisdiction of a
18 center shall submit all requests made under this section to the
19 center, which shall transmit these requests to publishers.

20 (2) Each center shall make every effort to coordinate requests
21 within its segment.

22 (3) A publisher shall not be required to respond to requests
23 from institutions that a center has been designated to represent,
24 unless those requests are communicated through the center.

25 (4) The center shall, in handling all electronic formats and
26 captioned formats for the benefit of students enrolled in the
27 institutions the center represents, have the same rights and
28 obligations arising under subdivisions (d) and (e) as the institutions
29 on whose behalf it acts.

30 (h) Access to a captioned format, a captioned format, an
31 electronic format, or a license to create a captioned format
32 pursuant to subdivision (b) shall be provided free of any fee or
33 royalty that is additional to the initial purchase of the instructional
34 material by the student, the instructor, or the institution.

35 (i) (1) The Board of Governors of the California Community
36 Colleges and the Trustees of the California State University shall,
37 and the Regents of the University of California are requested, to
38 adopt guidelines consistent with this section for its implementation
39 and administration. At a minimum, the guidelines shall address
40 all of the following:

1 (A) *The designation of materials deemed “required for student*
2 *success.”*

3 (B) *The procedures and standards relating to distribution of*
4 *files and materials pursuant to subdivisions (b), (d), and (e).*

5 (C) *The possibility of involving outside networks or partnerships*
6 *between publishers and institutions to provide for access to*
7 *instructional materials for students with disabilities and to facilitate*
8 *the issuance of licenses by publishers under subparagraph (C) of*
9 *paragraph (1), and paragraph (3), of subdivision (b).*

10 (D) *Other matters as are deemed necessary or appropriate to*
11 *carry out the purposes of this section.*

12 (2) *For purposes of paragraph (1) the Board Governors of the*
13 *California Community Colleges and the Trustees of the California*
14 *State University shall, and the University of California is requested,*
15 *from time-to-time, in the reasonable discretion of the respective*
16 *governing body, to convene an advisory group, at least one-third*
17 *of the membership of which shall be representatives designated*
18 *by publishers as having a substantial volume of transactions with*
19 *institutions under this section.*

20 (j) *Nothing in this section shall be construed to require a*
21 *publisher to produce or deliver an electronic format of*
22 *instructional material if the publisher offers that instructional*
23 *material for sale only in a form that is not computer-readable.*

24 (k) *Nothing in this section shall be construed as vesting any*
25 *copyright or copyright interest in any captioned format in any*
26 *person or entity other than the publisher.*

27 (l) *Nothing in this section shall be construed to authorize any*
28 *use of instructional materials that would violate the takings clause*
29 *of the Fifth Amendment to the United States Constitution or would*
30 *constitute an infringement of copyright under the Copyright*
31 *Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).*

32 (m) *This section exclusively governs requests for captioned*
33 *formats of instructional materials and Section 67302 does not*
34 *apply to requests for captioned formats of instructional materials.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, April 28, 2009 (JR11)**

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