

115TH CONGRESS
1ST SESSION

S. _____

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To authorize the creation of a commission to develop voluntary accessibility guidelines for electronic instructional materials and related technologies used in postsecondary education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Accessible Instruc-
5 tional Materials in Higher Education Act” or the “AIM
6 HIGH Act”.

7 **SEC. 2. COMMISSION STRUCTURE.**

8 (a) ESTABLISHMENT OF COMMISSION.—

1 (1) IN GENERAL.—

2 (A) DEVELOPMENT OF VOLUNTARY GUIDE-
3 LINES.—The Speaker of the House of Rep-
4 resentatives, the President pro tempore of the
5 Senate, and the Secretary of Education shall
6 establish an independent commission (referred
7 to in this Act as the “Commission”), comprised
8 of key stakeholders, to develop voluntary guide-
9 lines for accessible postsecondary electronic in-
10 structional materials and related technologies in
11 order—

12 (i) to ensure students with disabilities
13 are afforded the same educational benefits
14 provided to nondisabled students through
15 the use of postsecondary electronic instruc-
16 tional materials and related technologies;

17 (ii) to inform better the selection and
18 use of such materials and technologies at
19 institutions of higher education; and

20 (iii) to encourage entities that produce
21 such materials and technologies to make
22 accessible versions more readily available
23 in the market.

24 (B) REVIEW OF STANDARDS.—In devel-
25 oping the guidelines under subparagraph (A),

1 the Commission shall review applicable national
2 and international information technology acces-
3 sibility standards, which it will compile and an-
4 notate as an additional information resource for
5 institutions of higher education and companies
6 that service the higher education market.

7 (2) MEMBERSHIP.—

8 (A) STAKEHOLDER GROUPS.—The Com-
9 mission shall be composed of representatives
10 from the following categories:

11 (i) DISABILITY.—Communities of per-
12 sons with disabilities for whom the accessi-
13 bility of postsecondary electronic instruc-
14 tional materials and related technologies is
15 a significant factor in ensuring equal par-
16 ticipation in higher education, and non-
17 profit organizations that provide accessible
18 electronic materials to these communities.

19 (ii) HIGHER EDUCATION.—Higher
20 education leadership, which includes: uni-
21 versity presidents, provosts, deans, vice
22 presidents, deans of libraries, chief infor-
23 mation officers, and other senior institu-
24 tional executives.

1 (iii) INDUSTRY.—Relevant industry
2 representatives, meaning—

3 (I) developers of postsecondary
4 electronic instructional materials; and
5 (II) manufacturers of related
6 technologies.

7 (B) APPOINTMENT OF MEMBERS.—The
8 Commission members shall be appointed as fol-
9 lows:

10 (i) Six members, 2 from each category
11 described in subparagraph (A), shall be ap-
12 pointed by the Speaker of the House of
13 Representatives, 3 of whom shall be ap-
14 pointed on the recommendation of the ma-
15 jority leader of the House of Representa-
16 tives and 3 of whom shall be appointed on
17 the recommendation of the minority leader
18 of the House of Representatives, with the
19 Speaker ensuring that 1 developer of post-
20 secondary electronic instructional materials
21 and 1 manufacturer of related technologies
22 are appointed. In addition to the 6 mem-
23 bers, the Speaker shall also appoint 2 addi-
24 tional members, 1 student with a disability

1 and 1 faculty member from an institution
2 of higher education.

3 (ii) Six members, 2 from each cat-
4 egory described in subparagraph (A), shall
5 be appointed by the President pro tempore
6 of the Senate, 3 of whom shall be ap-
7 pointed on the recommendation of the ma-
8 jority leader of the Senate and 3 of whom
9 shall be appointed on the recommendation
10 of the minority leader of the Senate, with
11 the President pro tempore ensuring that 1
12 developer of postsecondary electronic in-
13 structional materials and 1 manufacturer
14 of related technologies are appointed. In
15 addition to the 6 members, the President
16 pro tempore shall also appoint 2 additional
17 members, 1 student with a disability and 1
18 faculty member from an institution of
19 higher education.

20 (iii) Three members, each of whom
21 shall possess extensive, demonstrated tech-
22 nical expertise in the development and im-
23 plementation of accessible postsecondary
24 electronic instructional materials, shall be
25 appointed by the Secretary of Education.

1 One of these members shall represent post-
2 secondary students with disabilities, 1 shall
3 represent higher education leadership, and
4 1 shall represent developers of postsec-
5 ondary electronic instructional materials.

6 (C) ELIGIBILITY TO SERVE ON THE COM-
7 MISSION.—Federal employees are ineligible for
8 appointment to the Commission. An appointee
9 to a volunteer or advisory position with a Fed-
10 eral agency or related advisory body may be ap-
11 pointed to the Commission if the primary em-
12 ployment of such appointee is with a non-Fed-
13 eral entity and the appointee is not otherwise
14 engaged in financially compensated work on be-
15 half of the Federal Government, exclusive of
16 any standard expense reimbursement or grant-
17 funded activities.

18 (b) AUTHORITY AND ADMINISTRATION.—

19 (1) AUTHORITY.—The Commission's execution
20 of its duties shall be independent of the Secretary of
21 Education, the Attorney General, and the head of
22 any other agency or department of the Federal Gov-
23 ernment with regulatory or standard setting author-
24 ity in the areas addressed by the Commission.

25 (2) ADMINISTRATION.—

1 (A) STAFFING.—There shall be no perma-
2 nent staffing for the Commission.

3 (B) LEADERSHIP.—Commission members
4 shall elect a chairperson from among the 19 ap-
5 pointees to the Commission.

6 (C) ADMINISTRATIVE SUPPORT.—The
7 Commission shall be provided administrative
8 support, as needed, by the Secretary of Edu-
9 cation through the Office of Postsecondary
10 Education of the Department of Education.

11 **SEC. 3. DUTIES OF THE COMMISSION.**

12 (a) DEVELOPMENT OF VOLUNTARY GUIDELINES.—
13 Not later than 18 months after the date of enactment of
14 this Act, subject to a 6-month extension that it may exer-
15 cise at its discretion, the Commission shall—

16 (1) develop and issue voluntary guidelines for
17 accessible postsecondary electronic instructional ma-
18 terials and related technologies; and

19 (2) in developing the voluntary guidelines—

20 (A) establish a technical panel pursuant to
21 subsection (d) to support the Commission in de-
22 veloping the voluntary guidelines;

23 (B) develop criteria for determining which
24 materials and technologies constitute “postsec-
25 ondary electronic instructional materials” and

1 “related technologies” as defined in paragraphs
2 (5) and (6) of section 6;

3 (C) identify existing national and inter-
4 national accessibility standards that are rel-
5 evant to student use of postsecondary electronic
6 instructional materials and related technologies
7 at institutions of higher education;

8 (D) identify and address any unique peda-
9 gogical and accessibility requirements of post-
10 secondary electronic instructional materials and
11 related technologies that are not addressed, or
12 not adequately addressed, by the identified, rel-
13 evant existing accessibility standards;

14 (E) identify those aspects of accessibility,
15 and types of postsecondary electronic instruc-
16 tional materials and related technologies, for
17 which the Commission cannot produce guide-
18 lines or which cannot be addressed by existing
19 accessibility standards due to—

20 (i) inherent limitations of commer-
21 cially available technologies; or

22 (ii) the challenges posed by a specific
23 category of disability that covers a wide
24 spectrum of impairments and capabilities
25 which makes it difficult to assess the bene-

1 fits from particular guidelines on a cat-
2 egorical basis;

3 (F) ensure that the voluntary guidelines
4 are consistent with the requirements of section
5 504 of the Rehabilitation Act of 1973 (29
6 U.S.C. 794) and titles II and III of the Ameri-
7 cans with Disabilities Act of 1990 (42 U.S.C.
8 12131 et seq.; 42 U.S.C. 12181 et seq.);

9 (G) ensure that the voluntary guidelines
10 are consistent, to the extent feasible and appro-
11 priate, with the technical and functional per-
12 formance criteria included in the national and
13 international accessibility standards identified
14 by the commission as relevant to student use of
15 postsecondary electronic instructional materials
16 and related technologies;

17 (H) allow for the use of an alternative de-
18 sign or technology that results in substantially
19 equivalent or greater accessibility and usability
20 by individuals with disabilities than would be
21 provided by compliance with the voluntary
22 guidelines; and

23 (I) provide that where postsecondary elec-
24 tronic instructional materials or related tech-
25 nologies that comply fully with the voluntary

1 guidelines are not commercially available, or
2 where such compliance is not technically fea-
3 sible, the institution may select the product that
4 best meets the voluntary guidelines consistent
5 with the institution's business and pedagogical
6 needs.

7 (b) DEVELOPMENT OF ANNOTATED LIST OF INFOR-
8 MATION TECHNOLOGY STANDARDS.—Not later than 18
9 months after the date of enactment of this Act, subject
10 to a 6-month extension that it may exercise at its discre-
11 tion, the Commission shall, with the assistance of the tech-
12 nical panel established under subsection (d), develop and
13 issue an annotated list of information technology stand-
14 ards intended to serve solely as a reference tool to inform
15 any consideration of the relevance of such standards in
16 higher education contexts.

17 (c) SUPERMAJORITY APPROVAL.—Issuance of the
18 voluntary guidelines and annotated list of information
19 technology standards shall require approval of not less
20 than 75 percent (not less than 15 of the 19 members)
21 of the Commission.

22 (d) ESTABLISHMENT OF TECHNICAL PANEL.—Not
23 later than 1 month after the Commission's first meeting,
24 the Commission shall appoint and convene a panel of 12
25 technical experts, each of whom shall have extensive, dem-

1 onstrated technical experience in developing, researching,
2 or implementing accessible postsecondary electronic in-
3 structional materials or related technologies. The Commis-
4 sion has discretion to determine a process for nominating,
5 vetting, and confirming a panel of experts that fairly rep-
6 resents the stakeholder communities on the Commission.
7 The technical panel shall include a representative from the
8 United States Access Board.

9 **SEC. 4. PERIODIC REVIEW AND REVISION OF VOLUNTARY**
10 **GUIDELINES.**

11 Not later than 5 years after issuance of the voluntary
12 guidelines and annotated list of information technology
13 standards described in subsections (a) and (b) of section
14 3, and every 5 years thereafter, the Secretary of Edu-
15 cation shall publish a notice in the Federal Register re-
16 questing public comment about whether there is a need
17 to reconstitute the Commission to update the voluntary
18 guidelines and annotated list of information technology
19 standards to reflect technological advances, changes in
20 postsecondary electronic instructional materials and re-
21 lated technologies, or updated national and international
22 accessibility standards. The Secretary of Education shall
23 submit a report to Congress summarizing the public com-
24 ments and presenting the Secretary's decision on whether
25 to reconstitute the Commission based on those comments.

1 If the Secretary of Education decides to reconstitute the
2 Commission, the Secretary may implement that decision
3 30 days after the date on which the report was submitted
4 to Congress. That process shall begin with the Secretary
5 requesting the appointment of Commission members in ac-
6 cordance with section 2(a)(2)(B).

7 **SEC. 5. CONSTRUCTION.**

8 (a) **NONCONFORMING MATERIALS OR RELATED**
9 **TECHNOLOGIES.**—Nothing in this Act shall be construed
10 to require an institution of higher education to require,
11 provide, or both recommend and provide, postsecondary
12 electronic instructional materials or related technologies
13 that conform to the voluntary guidelines. However, wheth-
14 er or not an institution selects or uses nonconforming ma-
15 terials or related technologies, the institution shall comply
16 with existing obligations under section 504 of the Reha-
17 bilitation Act of 1973 (29 U.S.C. 794) and titles II and
18 III of the Americans with Disabilities Act of 1990 (42
19 U.S.C. 12131 et seq.; 42 U.S.C. 12181 et seq.) to provide
20 access to the educational benefit afforded by such mate-
21 rials and technologies through provision of appropriate
22 and reasonable modification, accommodation, and auxil-
23 iary aids or services.

24 (b) **RELATIONSHIP TO EXISTING LAWS AND REGU-**
25 **LATIONS.**—With respect to the Americans with Disabil-

ities Act of 1990 (42 U.S.C. 12101 et seq.) and the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), nothing in this Act may be construed—

(1) to authorize or require conduct prohibited under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, including the regulations issued pursuant to those laws;

(2) to expand, limit, or alter the remedies or defenses under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973;

(3) to supersede, restrict, or limit the application of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973; or

(4) to limit the authority of Federal agencies to issue regulations pursuant to the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973.

(c) VOLUNTARY NATURE OF THE PRODUCTS OF THE COMMISSION.—

(1) VOLUNTARY GUIDELINES.—

(A) INTENT.—It is the intent of Congress that use of the voluntary guidelines developed pursuant to this Act is and should remain voluntary. The voluntary guidelines shall not confer any rights or impose any obligations on

1 Commission participants, institutions of higher
2 education, or other persons.

3 (B) RESTRICTION.—

4 (i) IN GENERAL.—No department or
5 agency of the Federal Government may in-
6 corporate the voluntary guidelines devel-
7 oped pursuant to this Act, whether pro-
8 duced as a discrete document or electronic
9 resource, into regulations promulgated
10 under the Rehabilitation Act of 1973 (29
11 U.S.C. 701 et seq.), the Americans with
12 Disabilities Act of 1990 (42 U.S.C. 12101
13 et seq.), or any other Federal law or in-
14 strument.

15 (ii) APPLICATION.—The restriction
16 under clause (i)—

17 (I) applies only to the voluntary
18 guidelines as a discrete document or
19 resource; and

20 (II) imposes no limitation on
21 Federal use of standards or resources
22 to which the voluntary guidelines may
23 refer.

24 (2) ANNOTATED LIST.—

1 (A) INTENT.—It is the intent of Congress
2 that use of the annotated list of information
3 technology standards developed pursuant to this
4 Act is and should remain voluntary. The anno-
5 tated list of information technology standards
6 shall not confer any rights or impose any obli-
7 gations on Commission participants, institu-
8 tions of higher education, or other persons.

9 (B) RESTRICTION.—

10 (i) IN GENERAL.—No department or
11 agency of the Federal Government may in-
12 corporate the annotated list of information
13 technology standards developed pursuant
14 to this Act, whether produced as a discrete
15 document or electronic resource, into regu-
16 lations promulgated under the Rehabilita-
17 tion Act of 1973 (29 U.S.C. 701 et seq.),
18 the Americans with Disabilities Act of
19 1990 (42 U.S.C. 12101 et seq.), or any
20 other Federal law or instrument.

21 (ii) APPLICATION.—The restriction
22 under clause (i)—

23 (I) applies only to the annotated
24 list of information technology stand-

1 ards as a discrete document or re-
2 source; and

3 (II) imposes no limitation on
4 Federal use of standards or resources
5 to which the annotated list of infor-
6 mation technology standards may
7 refer.

8 **SEC. 6. DEFINITIONS.**

9 In this Act:

10 (1) ANNOTATED LIST OF INFORMATION TECH-
11 NOLOGY STANDARDS.—The term “annotated list of
12 information technology standards” means a list of
13 existing national and international accessibility
14 standards relevant to student use of postsecondary
15 electronic instructional materials and related tech-
16 nologies, and to other types of information tech-
17 nology common to institutions of higher education
18 (such as institutional websites and class registration
19 systems), annotated by the Commission to provide
20 information about the applicability of such standards
21 in higher education settings.

22 (2) DISABILITY.—The term “disability” has the
23 meaning given such term in section 3 of the Ameri-
24 cans with Disabilities Act of 1990 (42 U.S.C.
25 12102).

1 (3) INSTITUTION OF HIGHER EDUCATION.—The
2 term “institution of higher education” has the
3 meaning given such term in section 101 of the High-
4 er Education Act of 1965 (20 U.S.C. 1001).

5 (4) NONCONFORMING MATERIALS OR RELATED
6 TECHNOLOGIES.—The term “nonconforming mate-
7 rials or related technologies” means postsecondary
8 electronic instructional materials or related tech-
9 nologies that do not conform to the voluntary guide-
10 lines developed pursuant to this Act.

11 (5) POSTSECONDARY ELECTRONIC INSTRU-
12 TIONAL MATERIALS.—The term “postsecondary elec-
13 tronic instructional materials” means digital cur-
14 ricular content that is required, provided, or both
15 recommended and provided by an institution of high-
16 er education for use in a postsecondary instructional
17 program.

18 (6) RELATED TECHNOLOGIES.—The term “re-
19 lated technologies” refers to any software, applica-
20 tion, learning management or content management
21 system, or hardware that an institution of higher
22 education requires, provides, or both recommends
23 and provides for student access to and use of post-
24 secondary electronic instructional materials in a
25 postsecondary instructional program.

1 (7) TECHNICAL PANEL.—The term “technical
2 panel” means a group of experts with extensive,
3 demonstrated technical experience in the develop-
4 ment and implementation of accessibility features for
5 postsecondary electronic instructional materials and
6 related technologies, established by the Commission
7 pursuant to section 3(d), which assists the Commis-
8 sion in the development of the voluntary guidelines
9 and annotated list of information technology stand-
10 ards authorized under this Act.

11 (8) VOLUNTARY GUIDELINES.—The term “vol-
12 untary guidelines” means a set of technical and
13 functional performance criteria developed by the
14 Commission that provide specific guidance regarding
15 both the accessibility and pedagogical functionality
16 of postsecondary electronic instructional materials
17 and related technologies not addressed, or not ade-
18 quately addressed, by existing accessibility stand-
19 ards.