

AN ACT

relating to providing certain electronic copies of instructional material for blind and visually impaired students and students with dyslexia who are enrolled at public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.970 to read as follows:

Sec. 51.970. INSTRUCTIONAL MATERIAL FOR BLIND AND VISUALLY IMPAIRED STUDENTS AND STUDENTS WITH DYSLEXIA. (a) In this section:

(1) "Blind or visually impaired student" includes any student whose visual acuity is impaired to the extent that the student is unable to read the print in the standard instructional material used in a course in which the student is enrolled.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "Dyslexia" means a condition of dyslexia considered to be a disability under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(4) "Institution of higher education" has the meaning assigned by Section 61.003.

(5) "Instructional material" means a printed textbook

1 or other printed instructional material or a combination of a
2 printed book and supplementary printed instructional material
3 that:

4 (A) conveys information to or otherwise
5 contributes to the learning process of a student; and

6 (B) was published on or after January 1, 2004.

7 (6) "Special instructional material" means
8 instructional material in Braille, large print, audio format,
9 digital text, or any other medium or any apparatus that conveys
10 information to or otherwise contributes to the learning process of
11 a blind or visually impaired student or a student with dyslexia.

12 (b) This section applies only to instructional material
13 that is:

14 (1) written and published primarily for postsecondary
15 instruction of students; and

16 (2) required or essential for a student's success in a
17 course at an institution of higher education, as identified by the
18 instructor of the course for which the instructional material will
19 be used, in consultation with the person at the institution with
20 primary responsibility for services for students with disabilities
21 and in accordance with rules adopted under Subsection (i)(1).

22 (c) To assist the institution in producing special
23 instructional material, a publisher or manufacturer of
24 instructional material assigned by an institution of higher
25 education for use by students in connection with a course at the
26 institution shall provide to the institution on the institution's
27 request in accordance with this section a copy in an electronic

1 format of the instructional material. The publisher or
2 manufacturer, as applicable, shall provide the electronic copy not
3 later than the 15th business day after the date of receipt of the
4 request.

5 (d) A request made by an institution of higher education
6 under Subsection (c) must:

7 (1) certify that for each blind or visually impaired
8 student or student with dyslexia who will use specialized
9 instructional material based on the requested copy of the material
10 in an electronic format for a course in which the student is
11 enrolled at the institution, either the institution or the student
12 has purchased a printed copy of the instructional material; and

13 (2) be signed by the person at the institution with
14 primary responsibility for services for students with
15 disabilities.

16 (e) A publisher or manufacturer may require that a request
17 made by an institution of higher education under Subsection (c)
18 include from each student for whom the institution is making the
19 request a signed statement in which the student agrees:

20 (1) to use the requested electronic copy and related
21 special instructional material only for the student's own
22 educational purposes; and

23 (2) not to copy or otherwise distribute in a manner
24 that violates 17 U.S.C. Section 101 et seq. the requested
25 electronic copy or the instructional material on which the
26 requested electronic copy is based.

27 (f) Each electronic copy of instructional material must:

1 (1) be in a format that:

2 (A) except as provided by Subsection (g),
3 contains all of the information that is in the instructional
4 material, including any text, sidebar, table of contents, chapter
5 headings, chapter subheadings, footnotes, index, glossary, and
6 bibliography, and is approved by the publisher or manufacturer, as
7 applicable, and the institution of higher education as a format
8 that will contain that material; and

9 (B) is compatible with commonly used Braille
10 translation and speech synthesis software; and

11 (2) include any correction or revision available at
12 the time the electronic copy is provided.

13 (g) If the publisher or manufacturer and the institution of
14 higher education are not able to agree on a format as required by
15 Subsection (f)(1)(A), the publisher or manufacturer, as
16 applicable, shall provide the electronic copy of the instructional
17 material in a format that can be read by a word processing
18 application and that contains as much of the material specified by
19 that subsection as is practicable.

20 (h) The coordinating board may impose a reasonable
21 administrative penalty, not to exceed \$250 per violation, against a
22 publisher or manufacturer that knowingly violates this section.
23 The coordinating board shall provide for a hearing to be held, in
24 accordance with coordinating board rule, to determine whether a
25 penalty is to be imposed and the amount of any penalty. The
26 coordinating board shall base the amount of any penalty on:

27 (1) the seriousness of the violation;

- (2) any history of a previous violation;
- (3) the amount necessary to deter a future violation;
- (4) any effort to correct the violation; and
- (5) any other matter justice requires.

(i) The coordinating board, in consultation with an advocacy organization for persons who are blind or visually impaired, an advocacy organization for persons with dyslexia, representatives from one or more instructional material publishing companies or publishing associations, and institutions of higher education, shall adopt rules for administering this section, including rules that address:

(1) the method for identifying instructional material considered to be required or essential for a student's success in a course;

(2) the procedures and standards relating to distribution of electronic copies of instructional material under this section; and

(3) any other matter considered necessary or appropriate for the administration of this section.

(j) Notwithstanding any other provision of this section, a publisher or manufacturer is not required to comply with Subsection (c) or (f), as applicable, if the coordinating board, using procedures and criteria adopted by coordinating board rule and based on information provided by the publisher or manufacturer, determines that:

(1) compliance by the manufacturer or publisher would violate a law, rule, or regulation relating to copyrights; or

1 (2) the instructional material on which the requested
2 electronic copy is based is:

3 (A) out of print; or

4 (B) in a format that makes it impracticable to
5 convert the material into an electronic format.

6 SECTION 2. (a) Section 51.970, Education Code, as added by
7 this Act, applies beginning with requests for electronic copies of
8 printed instructional material assigned for use by students in the
9 2008 spring semester.

10 (b) Not later than November 1, 2007, the Texas Higher
11 Education Coordinating Board shall adopt rules as required by
12 Section 51.970(i), Education Code, as added by this Act.

13 SECTION 3. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 3382 was passed by the House on May 10, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3382 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3382 on May 27, 2007, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 3382

I certify that H.B. No. 3382 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3382 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor