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HOUSE BILL 349

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

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AN ACT

**RELATING TO EDUCATION; ENACTING THE BRAILLE ACCESS ACT;
REQUIRING INSTRUCTIONAL MATERIALS TO BE PROVIDED IN BRAILLE;
PROVIDING A PRIVATE RIGHT OF ACTION; REPEALING THE BRAILLE
LITERACY ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Braille Access Act".

Section 2. PURPOSES. -- The purposes of the Braille Access
Act are to:

- A. enhance literacy;**
- B. increase braille proficiency;**
- C. improve employability for blind and visually
impaired students; and**
- D. reduce the cost of acquiring braille and other**

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[bracketed material] = delete

1 alternate accessible format materials.

2 Section 3. DEFINITIONS. -- As used in the Braille Access
3 Act:

4 A. "alternate accessible format" means one of
5 several alternatives to traditional print, including braille,
6 large print and computer text files;

7 B. "braille" means the tactile system of reading
8 and writing used by persons who are blind and visually
9 impaired, as defined by the braille authority of North America;

10 C. "department" means the state department of
11 public education;

12 D. "educational institution" means a public school
13 or public post-secondary educational institution;

14 E. "instructional materials" means textbooks and
15 other materials that are required or essential to success in a
16 course of study, including teacher's editions;

17 F. "structural integrity" means all of the printed
18 instructional materials, including the text of the material,
19 sidebars, table of contents, chapter headings and subheadings,
20 footnotes, indexes, glossaries and bibliographies. "Structural
21 integrity" need not include nontextual elements such as
22 pictures, illustrations, graphs or charts, though the publisher
23 should include a brief textual description of any such
24 nontextual element when it is practical to do so and mention of
25 the nontextual element when a description is not practical;

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1 G. "student" means a blind or visually handicapped
2 person accepted, enrolled or attending an educational
3 institution; and

4 H. "textbook" means a book, a system of
5 instructional materials or a combination of a book and
6 supplementary instructional material that conveys information
7 to the student or otherwise contributes to the learning
8 process, including electronic textbooks.

9 Section 4. INSTRUCTIONAL MATERIALS. --

10 A. A publisher that prints instructional materials
11 for students attending educational institutions shall provide,
12 upon request of the educational institution, any printed
13 instructional materials in a computer or electronic format
14 mutually agreed upon by the publisher and the educational
15 institution.

16 B. The formats used shall include any nationally
17 recognized or generally accepted standard for conversion of
18 publishing files to braille, such as DAISY/NISO XML.

19 C. If no nationally recognized or generally
20 accepted standard is appropriate, publishers shall provide the
21 file in another mutually agreed upon computer or electronic
22 format, such as Microsoft Word, ASCII text or LaTeX.

23 D. The educational institution may use the computer
24 or electronic version of printed instructional materials that
25 is provided pursuant to the Braille Access Act to transcribe or

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1 arrange for the transcription of the printed instructional
2 materials into an alternate accessible format. The educational
3 institution has the right to provide the alternate accessible
4 format copy of the printed instructional materials to students
5 as permitted by federal copyright law.

6 E. The computer or electronic version of the
7 printed instructional materials shall:

8 (1) comply with any applicable federal
9 standard;

10 (2) otherwise maintain the structural
11 integrity of the printed instructional materials; and

12 (3) include corrections and revisions as
13 necessary.

14 F. The publisher shall provide the computer or
15 electronic versions of the printed instructional materials to
16 the educational institution at no additional cost and within
17 ten business days after receipt of a written request that does
18 all of the following:

19 (1) certifies that the educational institution
20 or the student has purchased the printed instructional
21 materials for use by the student;

22 (2) certifies that the student is unable to
23 use printed instructional materials;

24 (3) certifies that the printed instructional
25 materials are for use by the student in connection with a

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1 course at the educational institution; and

2 (4) is signed by the:

3 (a) person responsible for providing
4 educational services pursuant to the federal Individuals with
5 Disabilities Education Act;

6 (b) coordinator of services for students
7 with disabilities at the educational institution;

8 (c) person responsible for monitoring
9 the educational institution's compliance with the federal
10 Americans with Disabilities Act of 1990 or Section 504 of the
11 federal Rehabilitation Act of 1973; or

12 (d) vocational rehabilitation counselor
13 responsible for providing services under an individualized plan
14 for employment created pursuant to the federal Rehabilitation
15 Act of 1973.

16 G. A publisher may require that the request include
17 a statement signed by the educational institution agreeing
18 that:

19 (1) the electronic copy of the printed
20 instructional materials will be used solely for the student's
21 educational purposes; and

22 (2) the student or educational institution
23 will not copy, publish or in any other way distribute the
24 printed instructional materials for use by anyone other than
25 the original student, except that the educational institution

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1 may provide the instructional materials to another qualifying
2 student who has signed a statement agreeing to the terms
3 contained in this section and unless it is otherwise permitted
4 by federal law.

5 H. A publisher who manufactures instructional
6 materials using any type of video or audio format, CD ROM or
7 other digital format for students attending educational
8 institutions shall, to the maximum extent practicable, upon
9 request, provide an accessible version of the instructional
10 materials or, if an accessible version is not available,
11 provide computer files or other electronic versions of the
12 instructional materials, subject to the same conditions and
13 limitations for printed instructional materials.

14 I. Nothing in the Braille Access Act shall be
15 deemed to authorize any use of instructional materials that
16 would constitute an infringement of copyright pursuant to
17 applicable federal copyright law.

18 Section 5. GUIDELINES. -- The department, in consultation
19 with representatives from educational institutions, shall adopt
20 guidelines consistent with the Braille Access Act for the
21 implementation and administration of that act. The guidelines
22 shall address all of the following:

23 A. the designation of instructional materials
24 deemed required or essential to student success;

25 B. definitions clarifying what constitutes

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1 nontextual mathematics or science instructional materials that
2 use mathematical notations and clarifying a publisher's
3 obligations in regard to such instructional materials;

4 C. definitions clarifying what is required to
5 maintain structural integrity and requirements for textual
6 descriptions of pictures, illustrations, graphs and charts;

7 D. requirements for approval and procurement of
8 textbooks that are available in a computer or electronic format
9 and procedures for suspension of publishers from the
10 procurement process if the publisher fails to comply with the
11 provisions of the Braille Access Act;

12 E. an administrative complaint process to be
13 followed for complaints against a publisher;

14 F. definitions clarifying what constitutes
15 "educational purposes"; and

16 G. any other matters the department deems necessary
17 or appropriate to carry out the purposes of the Braille Access
18 Act.

19 Section 6. PRIVATE RIGHT OF ACTION. -- A student who
20 contends that there has been a violation of the Braille Access
21 Act has the right to pursue a private right of action in the
22 district court if the student has exhausted the administrative
23 complaint process. Organizations representing the interests of
24 persons who are blind or who have other disabilities shall have
25 standing to assert any right afforded in the Braille Access Act

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1 and shall be subject to the same requirements and terms as a
2 student. Should the student or organization prevail in a
3 lawsuit, the student or organization shall be entitled to
4 injunctive relief and reasonable attorney fees and costs. No
5 other type of monetary damages shall be available. Attorney
6 fees and costs are not available during the administrative
7 complaint process.

8 Section 7. REPEAL. -- Sections 22-15-21 through 22-15-25
9 NMSA 1978 (being Laws 1993, Chapter 156, Sections 1 through 5)
10 are repealed.

11 Section 8. EFFECTIVE DATE. -- The effective date of the
12 provisions of this act is July 1, 2003.