

BILL: Senate Bill 617
TITLE: Local School Systems - Equivalent Access Standards - Digital Tools
(Nonvisual Access Accountability Act for K-12 Education)
POSITION: SUPPORT WITH AMENDMENTS
DATE: February 16, 2022
COMMITTEE: Education, Health, and Environmental Affairs
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The Maryland Association of Boards of Education (MABE) supports Senate Bill 617 to ensure accessibility for disabled students, including vision-impaired students, to critically important digital tools and resources integral to their success whether in an in-person or virtual classroom. In this context, MABE is requesting several amendments to address serious concerns that the well-meaning intent of this bill not create confusion or unworkable procurement standards for school systems buying technology ranging from systemwide information technology platforms to individual instructional materials.

MABE joins all local school systems in the commitment to each student, regardless of disability, having access to challenging instruction from highly qualified professionals that addresses their unique learning needs and differences. MABE believes that current laws and regulations already establish a comprehensive array of standards, mandates, and dispute resolution processes to address the provision of accessible educational materials and technologies, including students who are blind or visually impaired. In addition, students receiving special education services are fully entitled to accommodations identified and addressed in their individualized education program (IEP), including any technology-based accommodations uniquely tailored to the individual student.

Maryland's boards and educators place a very high priority on ensuring that students receive high quality programs and instruction to meet the unique needs of every disabled student. Local boards of education recognize that the COVID-19 pandemic and resulting school closures presented unanticipated challenges for all students, families, and educators – and that sustaining high quality teaching and learning for students with disabilities was particularly difficult. However, MABE notes that the Fiscal and Policy Note describes the bill as requiring school system to “provide a student with disabilities access to digital tools that (1) are fully and equally accessible to and independently usable by the student.” This description, referring to one provision found late in the bill, does not reflect the much more complicated process of ensuring functional equivalency in the use of technology, and the procedures for determining any exceptions when this standard cannot be met.

Congress amended Section 508 of the Rehabilitation Act of 1973 in 1998 to strengthen requirements for accessibility to electronic and information technology (ICT) provided by the Federal Government. Section 508 mandates that Federal agencies “develop, procure, maintain, or use” ICT in a manner that ensures that Federal employees with disabilities have comparable access to, and use of, such information and data relative to other Federal employees.

Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to publicly available information and data. Since 2002, Maryland has had a 508 compliance provision in state law governing school system operations, which MSDE has been administering. Federal Section 508 standards were updated most recently in 2018.

In 2021, legislation was introduced in Maryland for the first time in a generation to address concerns with the quality of access for students with disabilities to learning technology during the COVID pandemic and shift to virtual learning. To facilitate the passage of this bill in 2022, and successful implementation of the new standards and procurement processes called for in the bill, MABE requests the following amendments.

Initially, the bill includes a confusing and overly broad definition of “digital tool” that would trigger the bill’s new accessibility standards and restrictive purchasing rules for an unworkable range of products and services. Again, the federal Section 508 standards on which the bill is based refer to information and communications technology (ICT) and requires federal agencies to comply with purchasing standards for such technology. By contrast, the federal use of the term “tool” refers to software tools used to create other software, or “authoring tools” used to create or convert content into other formats. MABE requests a thorough revision of the definition of the ICT intended to be covered in the bill’s definition of digital tools based on the input of state and local educators and information technology professionals.

The bill includes in the definition of “equivalent access,” a specific reference to “substantially equivalent ease of use.” This “ease of use” standard is not mirrored in the federal regulations and could not be objectively measured or applied. The term should be “equivalent accessibility” or “equivalent facilitation” and refer more appropriately to ensuring that substantially equivalent or greater accessibility and usability is provided to students with disabilities.

MABE certainly appreciates that this bill is most attentive to ensuring accessibility to blind and visually impaired persons. However, in the context of the legislature adopting a comprehensive set of accessibility reforms, the applicable federal regulations are much more inclusive. Federal regulations define “functional performance criteria” for persons without vision, with limited vision, without perception of color, without hearing, with limited hearing, without speech, with limited manipulation, with limited reach and strength, and with limited language, cognitive, and learning abilities. MABE requests that references throughout the bill are more consistent with federal standards when applicable.

As stated at the outset, MABE does endorse refining the statute to clarify the roles and responsibilities of MSDE and local school systems in ensuring accessibility for students with disabilities. The bill calls for an evaluation of “technology-based instructional products” and, beginning on October 1, 2024, the requirement that school systems purchase the available product that best meets the equivalent access standards and greatest functionality for equivalent access for students with disabilities. This provision appears to encapsulate the core mission of the legislation and should form the basis of further discussion on the definitions and standards described above. Similarly, MABE endorses the provisions referring to technology-based instructional products and requirements to use other technology to achieve the same instructional outcomes consistent with a student’s Individualize Education Program (IEP) or 504 Plan. MABE believes that these are meaningful requirements to ensure accessibility in a manner that is consistent with current law.

However, as mentioned earlier, following the requirements for accessibility and MSDE oversight, the bill includes a provision that would require that “a local school system shall provide a student with disabilities access to digital tools that: (i) are fully and equally accessible to and independently usable by a student with disabilities; and (ii) enable a student with disabilities to acquire the same information, participate in the same interactions, and access the same services as a student without disabilities, with substantially equivalent ease of use.” Again, the broadly undefined requirements of subsection (F)(2) do not appear to reflect the standards provided elsewhere in the bill, although essential to its successful implementation. For example, earlier in the bill, the accessibility standards are applied, prospectively, to “teacher-developed instructional materials.” Clearly, not all such materials could meet the “fully and equally accessible” standard proposed under subsection (F)(2).

Importantly, and of serious concern, the bill would also eliminate the provision of current law that allows local school systems to “obtain a product that does not meet the equivalent access standards but provides the best equivalent access functionality.” Instead, the bill would have the Maryland State Department of Education (MSDE) “ensure that another product is purchased that will offer an effective educational option.” MSDE’s review must be done in consultation with the Departments of Information Technology (DoIT) and Disabilities (MDOD). MABE appreciates the retention of some flexibility in cases of undue burden, but is concerned that this is not a workable agency review and decision-making process regarding local school system procurements.

The bill’s stringent requirement for compliance reports from prospective vendors appears reasonable, but only in so far as it refers to a much clearer revised definition of ICT intended to be covered. In addition, the requirement for an evaluation process to be conducted by a school employee who specializes in accessibility or specifically blind accessibility appears to mandate the hiring of a local school system equivalent of a federal 508 compliance officer. MABE does not believe such a requirement is necessary or cost effective. For example, an existing employee could conduct the review, but not be a specialist, or the school system or State could contract for compliance review services.

In 2021, when similar legislation was introduced, advocates urged an amendment to require that local school system contracts for ICT include an indemnification clause to put vendors on notice and hold them legally and financially responsible for noncompliant technology. Unfortunately, the bill includes this provision for the State Board, but not for local boards, and therefore, MABE requests an amendment to do so.

Lastly, near the very end of the bill, MSDE would be required to “annually update the requirements for accessibility of technology-based instructional products under COMAR.” This provision, if enacted, would make it impossible for school systems to develop the new procurement policies and related contracts for products and services mandated throughout this bill. Again, MABE urges as much clarity and consistency as possible in defining terms and standards throughout this important bill, aiming toward the goal of its successful implementation and benefits to the teaching and learning of students with disabilities.

For these reasons, MABE requests a favorable report on Senate Bill 617, with the amendments described above.