

Chapter 215

(Senate Bill 617)

AN ACT concerning

Local School Systems – Equivalent Access Standards – Digital Tools
~~(Nonvisual (Equivalent and Nonvisual Access Accountability Act for K–12~~
Education)

FOR the purpose of requiring a local school system to provide equivalent access to digital tools for students with disabilities, including the development, purchase, and provision of certain digital tools; requiring the Secretary of Disabilities, rather than the Secretary of Commerce, to ensure jointly with the State Superintendent of Schools that certain specifications are used in certain grants and procurement contracts; requiring a procurement contract for a digital tool to require a vendor to indemnify the State Board of Education or a local school system for certain liabilities and costs; requiring a vendor who provided a local school system with a digital tool that fails to meet certain standards to modify the digital tool at the vendor’s expense to meet certain equivalent access standards within a certain period of time; and generally relating to equivalent access standards for digital tools developed or purchased by local school systems.

BY repealing and reenacting, with amendments,
 Article – Education
 Section 7–910
 Annotated Code of Maryland
 (2018 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Education

7–910.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DIGITAL TOOL” MEANS:

(I) AN ONLINE PLATFORM;

(II) ~~A~~ AN ONLINE COURSE;

(III) INFORMATION AND COMMUNICATION TECHNOLOGY SERVICES, INCLUDING SOFTWARE AND OPERATING SYSTEMS, THAT ARE DIRECTLY CONNECTED TO STUDENT INSTRUCTION;

(IV) DIGITAL CONTENT; OR

(V) OTHER DIGITAL TECHNOLOGIES NOT REQUIRING SIGHT IN AN EQUALLY EFFECTIVE AND INTEGRATED MANNER.

(3) (I) “EQUIVALENT ACCESS” MEANS THE ABILITY TO RECEIVE, USE, AND MANIPULATE INFORMATION AND OPERATE CONTROLS NECESSARY TO ACCESS AND USE INFORMATION TECHNOLOGY, INCLUDING BY NONVISUAL MEANS, SO THAT A STUDENT WITH DISABILITIES CAN ACCESS THE SAME SERVICES AS A STUDENT WITHOUT DISABILITIES WITH SUBSTANTIALLY EQUIVALENT EASE OF USE.

(II) “EQUIVALENT ACCESS” INCLUDES:

- 1. KEYBOARD CONTROLS USED FOR INPUT AND SYNTHESIZED SPEECH;**
- 2. BRAILLE; AND**
- 3. OTHER AUDIBLE OR TACTILE MEANS USED FOR OUTPUT.**

(4) “NONVISUAL ACCESS” MEANS THE ABILITY TO RECEIVE, USE, AND MANIPULATE INFORMATION AND OPERATE CONTROLS NECESSARY TO ACCESS INFORMATION AND COMMUNICATIONS TECHNOLOGY THROUGH KEYBOARD CONTROLS, SYNTHESIZED SPEECH, BRAILLE, OR OTHER METHODS NOT REQUIRING SIGHT.

[(a)] (B) (1) The State Superintendent and the Secretary of [Commerce] ~~DISABILITIES~~ jointly shall ensure that specifications used in all grants and procurement contracts for ~~technology-based instructional products~~ **DIGITAL TOOLS require equivalent access for students with disabilities, including blindness, in accordance with the technical standards for electronic and information technology issued under subsection (a)(2) of Section 508 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794d(a)(2).**

(2) SPECIFICATIONS USED IN ALL GRANTS AND PROCUREMENT CONTRACTS FOR DIGITAL TOOLS SHALL GIVE PRIMARY CONSIDERATION TO THE PEDAGOGICAL VALUE OF THE DIGITAL TOOLS.

[(b)] (C) (1) ~~This subsection [does not apply] APPLIES to teacher-developed instructional materials [until fiscal year 2005].~~

~~(2)~~ Invitations for bids, requests for proposals, procurement contracts, grants, or modifications to contracts or grants issued by the State or any local school system shall include notice of the equivalent access requirement whenever funds awarded may be used to develop or obtain ~~technology-based instructional products~~ DIGITAL TOOLS.

~~(3)~~ **(2) (I) BEGINNING SEPTEMBER 1, 2023, AN INVITATION FOR BIDS OR REQUEST FOR PROPOSALS FOR A DIGITAL TOOL ISSUED BY THE STATE BOARD OR A LOCAL SCHOOL SYSTEM SHALL REQUIRE A VENDOR TO SUBMIT AN ACCESSIBILITY CONFORMANCE REPORT THAT INCLUDES A VOLUNTARY PRODUCT ACCESSIBILITY TEMPLATE.**

(II) THE ACCESSIBILITY CONFORMANCE REPORT REQUIRED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL EXPLAIN HOW INFORMATION AND COMMUNICATION TECHNOLOGY PRODUCTS, INCLUDING SOFTWARE, ~~HARDWARE,~~ ELECTRONIC CONTENT, AND SUPPORT DOCUMENTATION, CONFORM TO THE MOST RECENT SECTION 508 STANDARDS FOR INFORMATION TECHNOLOGY ACCESSIBILITY UNDER THE FEDERAL REHABILITATION ACT OF 1973.

~~(4)~~ **(3) (I) A LOCAL SCHOOL SYSTEM SHALL ESTABLISH A PROCESS TO EVALUATE A DIGITAL TOOL BEING CONSIDERED FOR DEVELOPMENT OR PURCHASE FOR CONFORMITY WITH THE REQUIREMENTS OF THIS SECTION.**

(II) THE EVALUATION PROCESS ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE EVALUATION OF THE DIGITAL TOOL FOR EQUIVALENT ACCESS AND NONVISUAL ACCESS BY AN EMPLOYEE OR A CONTRACTOR OF THE LOCAL SCHOOL SYSTEM WHO:

1. SPECIALIZES IN ACCESSIBILITY AND WEB CONTENT ACCESSIBILITY GUIDELINES; OR

2. IS A BLINDNESS SPECIALIST WHO IS KNOWLEDGEABLE IN ACCESSIBILITY.

~~(III)~~ ~~(5)~~ **(4) A PROCUREMENT CONTRACT FOR A DIGITAL TOOL SHALL REQUIRE A VENDOR TO INDEMNIFY THE STATE BOARD OR A LOCAL SCHOOL SYSTEM FOR LIABILITY AND COSTS ARISING FROM THE FAILURE OF THE DIGITAL TOOL TO MEET THE REQUIREMENTS OF THIS SECTION.**

~~(5)~~ ~~(6)~~ **(5) EXCEPT AS PROVIDED IN SUBSECTION (E)(2) OF THIS SECTION, THE STATE BOARD OR A LOCAL SCHOOL SYSTEM MAY NOT APPROVE A PROCUREMENT CONTRACT FOR A DIGITAL TOOL THAT FAILS TO MEET THE REQUIREMENTS OF THIS SECTION.**

[(c)] (D) The State and each local school system shall also ensure that the equivalent access standards are included in guidelines used for design specifications for and evaluation and selection of ~~technology-based instructional products~~ **DIGITAL TOOLS**.

[(d)] (E) (1) (I) Following an evaluation of ~~technology-based instructional products~~ **DIGITAL TOOLS**, the State or local school system shall, ***FROM AMONG DIGITAL TOOLS THAT OFFER PEDAGOGICAL VALUE***, [select] **PRIORITIZE** the available product that best meets the specifications and has the greatest functionality for equivalent access for students with disabilities, including blindness.

(II) **BEGINNING OCTOBER 1, 2024, FOLLOWING AN EVALUATION OF ~~TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS~~ DIGITAL TOOLS, A LOCAL SCHOOL SYSTEM SHALL SELECT, *FROM AMONG THE AVAILABLE PRODUCTS THAT OFFER PEDAGOGICAL VALUE*, THE AVAILABLE PRODUCT THAT BEST MEETS THE EQUIVALENT ACCESS STANDARDS AND HAS THE GREATEST FUNCTIONALITY FOR EQUIVALENT ACCESS FOR STUDENTS WITH DISABILITIES, INCLUDING BLINDNESS.**

(2) (I) If ***A LOCAL SCHOOL SYSTEM DETERMINES THAT*** a product that meets the equivalent access standards is not available, or if obtaining an available product would fundamentally alter the nature of the instructional activity or would result in an undue burden, the local school system [may obtain a product that does not meet the equivalent access standards but provides the best equivalent access functionality] **SHALL NOTIFY THE DEPARTMENT.**

(II) **AFTER THE DEPARTMENT RECEIVES A NOTICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY AND THE DEPARTMENT OF DISABILITIES TO ~~ENSURE THAT ANOTHER PRODUCT IS PURCHASED THAT WILL OFFER AN EFFECTIVE EDUCATIONAL OPTION ALLOW THE LOCAL SCHOOL SYSTEM TO OBTAIN A PRODUCT THAT DOES NOT MEET THE EQUIVALENT ACCESS STANDARDS BUT PROVIDES THE BEST EQUIVALENT ACCESS FUNCTIONALITY.~~ *DETERMINE HOW TO PROCEED.***

(III) ***IF, AFTER THE CONSULTATION PROCESS, THE DEPARTMENT DETERMINES THAT THERE IS AN AVAILABLE PRODUCT THAT MEETS THE EQUIVALENT ACCESS STANDARD, A LOCAL SCHOOL SYSTEM SHALL OBTAIN THAT PRODUCT.***

(IV) ***IF, AFTER THE CONSULTATION PROCESS, THE DEPARTMENT DETERMINES THAT THERE IS NO AVAILABLE PRODUCT THAT MEETS THE EQUIVALENT ACCESS STANDARDS, A LOCAL SCHOOL SYSTEM MAY, WITH THE DEPARTMENT'S APPROVAL, OBTAIN A PRODUCT THAT DOES NOT MEET THE***

EQUIVALENT ACCESS STANDARDS BUT PROVIDES THE BEST EQUIVALENT FUNCTIONALITY.

[(3) The Department shall:

(i) Monitor compliance with the requirements of accessibility of technology-based instructional products set forth in COMAR 13.A.05.02; and

(ii) Report its findings, in accordance with § 2-1257 of the State Government Article, to the General Assembly on or before December 31 of each year.]

(F) (1) A DIGITAL TOOL DEVELOPED OR PURCHASED BY A COUNTY BOARD FOR USE BY THE LOCAL SCHOOL SYSTEM SHALL INCLUDE SPECIFICATIONS FOR ACCESS FOR STUDENTS WITH DISABILITIES, INCLUDING NONVISUAL ACCESS, IN ACCORDANCE WITH THE TECHNICAL STANDARDS FOR ELECTRONIC AND INFORMATION TECHNOLOGY ISSUED UNDER:

(I) SUBSECTION (A)(2) OF SECTION 508 OF THE FEDERAL REHABILITATION ACT OF 1973; OR

(II) ANY OTHER WIDELY ACCEPTED ~~OR~~ AND FREELY AVAILABLE TECHNICAL STANDARD.

(2) A LOCAL SCHOOL SYSTEM SHALL PROVIDE A STUDENT WITH DISABILITIES ACCESS TO DIGITAL TOOLS THAT:

(I) ~~ARE FULLY AND EQUALLY ACCESSIBLE TO AND~~ PROVIDE EQUIVALENT ACCESS TO AND ARE 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.

(G) (1) (I) IF A LOCAL SCHOOL SYSTEM FINDS THAT A DIGITAL TOOL FAILS TO MEET THE EQUIVALENT ACCESS STANDARDS UNDER SUBSECTION (F) OF THIS SECTION, INCLUDING NONVISUAL ACCESS, WITHIN 18 MONTHS AFTER DEVELOPMENT OR PURCHASE OF THE DIGITAL TOOL, THE LOCAL SCHOOL SYSTEM SHALL SEND A WRITTEN NOTICE TO THE VENDOR OF THE VENDOR'S FAILURE TO COMPLY WITH THE EQUIVALENT ACCESS STANDARDS REQUIRED UNDER THE PROCUREMENT CONTRACT.

(II) ON RECEIPT OF NOTICE FROM A LOCAL SCHOOL SYSTEM UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, A VENDOR, AT THE VENDOR'S EXPENSE, SHALL MODIFY THE DIGITAL TOOL TO MEET THE REQUIRED EQUIVALENT ACCESS STANDARDS WITHIN A TIMEFRAME AGREED ON BY THE LOCAL SCHOOL SYSTEM AND THE VENDOR.

(2) A VENDOR THAT FAILS TO MEET THE EQUIVALENT ACCESS STANDARDS IN ACCORDANCE WITH PARAGRAPH (1)(II) OF THIS SUBSECTION:

(I) IS SUBJECT TO A CIVIL PENALTY OF:

1. FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$5,000; OR

2. FOR A SUBSEQUENT OFFENSE, A FINE NOT EXCEEDING \$10,000; AND

(II) SHALL INDEMNIFY THE STATE BOARD OR COUNTY BOARD FOR LIABILITY RESULTING FROM THE USE OF A DIGITAL TOOL THAT FAILS TO MEET THE EQUIVALENT ACCESS STANDARDS UNDER SUBSECTION (F) OF THIS SECTION, INCLUDING NONVISUAL ACCESS.

[(e) If technology-based instructional products are provided to students without disabilities and not to a student with a disability, the State or local school system shall implement an alternative method of instruction, including use of other technology-based instructional products, if available, designed to enable a student with a disability to achieve the same instructional outcomes consistent with the student's IEP Plan, as defined in § 8-408 of this article, or the student's 504 Plan, as provided under the federal Rehabilitation Act of 1973.]

(H) (1) IF ~~TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS~~ DIGITAL TOOLS ARE PROVIDED TO A STUDENT WITHOUT A DISABILITY AND NOT TO A STUDENT WITH A DISABILITY, THE STATE OR LOCAL SCHOOL SYSTEM SHALL IMPLEMENT AN ALTERNATIVE METHOD OF INSTRUCTION, INCLUDING USE OF OTHER ~~TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS~~ DIGITAL TOOLS, IF AVAILABLE, DESIGNED TO ENABLE A STUDENT WITH A DISABILITY TO ACHIEVE THE SAME INSTRUCTIONAL OUTCOMES CONSISTENT WITH THE STUDENT'S IEP PLAN, AS DEFINED IN § 8-408 OF THIS ARTICLE, OR THE STUDENT'S 504 PLAN, AS PROVIDED UNDER THE FEDERAL REHABILITATION ACT OF 1973.

(2) AN ONLINE PLATFORM, ONLINE CONTENT, WEBSITE, WEB SERVICE, WEBPAGE, EDUCATIONAL RESOURCE PRODUCT, OR ONLINE CURRICULUM DEVELOPED OR PURCHASED BY A COUNTY BOARD THAT IS MADE AVAILABLE TO

ENROLLED STUDENTS OF THE LOCAL SCHOOL SYSTEM OR ONLINE TO THE PUBLIC SHALL COMPLY WITH THE MOST RECENT VERSION OF THE WORLD WIDE WEB CONSORTIUM'S WEB CONTENT ACCESSIBILITY GUIDELINES.

(I) (1) ON OR BEFORE OCTOBER 1, 2023, AND EACH OCTOBER 1 THEREAFTER, EACH LOCAL SCHOOL SYSTEM SHALL SUBMIT A REPORT TO THE DEPARTMENT ON THE ACCESSIBILITY OF THE DIGITAL TOOLS THE LOCAL SCHOOL SYSTEM DEVELOPED OR PURCHASED FOR USE DURING THE IMMEDIATELY PRECEDING FISCAL YEAR.

(2) THE DEPARTMENT SHALL COMPILE THE INFORMATION RECEIVED UNDER PARAGRAPH (1) OF THIS SUBSECTION AND MAKE THE INFORMATION AVAILABLE ON THE DEPARTMENT'S WEBSITE, INCLUDING THE STATUS OF THE ACCESSIBILITY OF THE DIGITAL TOOLS USED IN EACH LOCAL SCHOOL SYSTEM.

(J) THE DEPARTMENT SHALL:

(1) MONITOR COMPLIANCE WITH THE REQUIREMENTS FOR ACCESSIBILITY OF ~~TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS~~ DIGITAL TOOLS UNDER COMAR ~~13A.05.02~~ 13A.06.05;

(2) ANNUALLY UPDATE THE REQUIREMENTS FOR ACCESSIBILITY OF ~~TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS~~ DIGITAL TOOLS UNDER COMAR ~~13A.05.02~~ 13A.06.05; AND

(3) ON OR BEFORE DECEMBER 31 EACH YEAR, REPORT ITS FINDINGS TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

Approved by the Governor, April 21, 2022.