



GOV. MSG. NO. 1357

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 7, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 7, 2023, the following bill was signed into law:

HB388 HD1 SD2 CD1

RELATING TO EDUCATION.
ACT 254

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on _____

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 388
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1 SECTION 1. The legislature finds that books and other
2 instructional materials are needed in alternate accessible
3 formats for use by elementary and secondary school students who
4 are unable to use print as their primary learning media. The
5 Individuals with Disabilities Education Improvement Act of 2004,
6 P.L. 108-446, made important changes to the law, including the
7 establishment of the National Instructional Materials
8 Accessibility Standard and the National Instructional Materials
9 Access Center, which serves as a central repository for files
10 formatted in accordance with the National Instructional
11 Materials Accessibility Standard and as a conduit for the
12 distribution of those files to schools.

13 The legislature further finds that existing state law
14 pertaining to instructional materials for exceptional children
15 directs publishers to meet requirements that are now out of date
16 and undesirable due to advances in technology. Thus, a revision
17 is necessary to harmonize existing state law with the existing



1 federal law and practice, including technological advancements
2 that make more instructional materials available in appropriate
3 accessible formats.

4 Accordingly, the purpose of this Act is to:

- 5 (1) Provide for the timely availability of accessible
6 instructional materials and technology for eligible
7 students; and
8 (2) Ensure that such materials are distributed to eligible
9 students in accordance with the Individuals with
10 Disabilities Education Act, as amended, and the
11 Copyright Act of 1976, as amended.

12 SECTION 2. Section 302A-442.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§302A-442.5 Instructional materials; exceptional**
15 **children.** (a) Whenever used in this section, unless a
16 different meaning clearly appears from the context:

17 "Accessible format" has the same meaning as in section
18 121(d) (1) of the Copyright Act of 1976 (17 U.S.C. 121(d) (1)), as
19 amended.

20 "Accessible instructional materials" means print
21 instructional materials provided to eligible students in the



1 accessible format most appropriate to the needs of each eligible
2 student.

3 "Assistive technology device" has the same meaning as in
4 section 602(1) of the Individuals with Disabilities Education
5 Act (20 U.S.C. 1401(1)), as amended.

6 "Assistive technology service" has the same meaning as in
7 section 602(2) of the Individuals with Disabilities Education
8 Act (20 U.S.C. 1401(2)), as amended.

9 "Braille" means the system of reading and writing through
10 touch commonly known as standard English braille.

11 "Eligible student" means an elementary or secondary school
12 student who:

13 (1) Is eligible for services under the Individuals with
14 Disabilities Education Act, as amended;

15 (2) Is approved as an eligible person, as defined in
16 section 121(d)(3) of the Copyright Act of 1976
17 (17 U.S.C. 121(d)(3)), as amended; and

18 (3) Attends a department school, a private school under
19 chapter 302C, a public charter school under chapter
20 302D, or an approved alternative education program
21 under section 302A-1132(a)(5).



1 "National Instructional Materials Access Center" means the
2 center established pursuant to section 674(e) of the Individuals
3 with Disabilities Education Act (20 U.S.C. 1474(e)), as amended.

4 "National Instructional Materials Accessibility Standard"
5 has the same meaning as in section 674(e) (3) (B) of the
6 Individuals with Disabilities Education Act (20 U.S.C.
7 1474(e) (3) (B)), as amended.

8 "Print instructional materials" means printed textbooks and
9 related printed core materials that are written and published
10 primarily for use in elementary school and secondary school
11 instruction by students in the classroom, including:

12 (1) Digital instructional materials obtained in an
13 appropriate accessible format for an eligible student;

14 or

15 (2) Materials that can be provided by the National
16 Instructional Materials Access Center in a valid
17 National Instructional Materials Accessibility format.

18 "Technology mediated instruction" means learning that is
19 aided or entirely accomplished through the use of computer-based
20 technology.



1 (b) ~~[All publishers of textbooks and instructional~~
2 ~~materials sold to the State or any public school shall furnish~~
3 ~~computer diskettes for literary subjects in the American~~
4 ~~Standard Code for Information Interchange from which braille~~
5 ~~versions can be produced. Publishers shall also furnish~~
6 ~~computer diskettes in American Standard Code for Information~~
7 ~~Interchange for nonliterary subjects including natural sciences,~~
8 ~~computer science, mathematics, and music when braille specialty~~
9 ~~code translation software is available.] In accordance with~~
10 section 612(a)(23) of the Individuals with Disabilities
11 Education Act (20 U.S.C. 1412(a)(23)), as amended, the State
12 adopts the United States Secretary of Education's National
13 Instructional Materials Accessibility Standard as in effect on
14 the effective date of Act _____, Session Laws of Hawaii 2023, and
15 as may be subsequently revised. The department shall coordinate
16 with the National Instructional Materials Access Center to
17 obtain the benefits of this service.

18 (c) ~~[This section shall not apply to publishers of~~
19 ~~textbooks and instructional materials written in the Hawaiian~~
20 ~~language.] The department, as part of any print instructional~~
21 materials adoption process, procurement contract, or other



1 practice or instrument used for purchase of print instructional
2 materials, including digital materials, shall obtain
3 instructional materials from the publisher or other source that
4 are in, or can be rendered in, the appropriate accessible format
5 for the eligible student using the instructional material;
6 provided that:

7 (1) If the needed instructional materials cannot be
8 obtained in the eligible student's appropriate
9 accessible format, the department may enter into a
10 written contract with the publisher of the print
11 instructional materials to require the publisher to
12 prepare and, on or before delivery of the print
13 instructional materials, provide to the National
14 Instructional Materials Access Center electronic files
15 containing the contents of the print instructional
16 materials using the National Instructional Materials
17 Accessibility Standard; or

18 (2) If the needed instructional materials cannot be
19 obtained in the eligible student's appropriate
20 accessible format due to being new or innovative
21 start-up instructional materials or a Hawaii-based



1 publisher, the department may purchase materials as a
2 pilot for up to one calendar year.

3 (d) The department shall obtain accessible instructional
4 materials for eligible students attending any department school
5 and, to the maximum extent allowed, assist any private school
6 under chapter 302C, public charter school under chapter 302D, or
7 eligible student enrolled in an approved alternative education
8 program pursuant to section 302A-1132(a) (5), to obtain
9 instructional materials in accessible formats when the
10 department receives a request from the school or program;
11 provided that the department shall not be liable for the expense
12 of any instructional materials obtained other than the expense
13 for instructional materials obtained for eligible students
14 attending department schools.

15 (e) Each eligible student shall receive accessible
16 instructional materials without regard to whether the accessible
17 instructional materials have been purchased in accordance with
18 subsection (c). Eligible students shall receive accessible
19 instructional materials at the same time the corresponding print
20 instructional materials are provided to all other students in
21 the classroom, including any assistive technology device and



1 assistive technology service to be provided in advance and
2 needed for the eligible student to use the accessible
3 instructional materials.

4 (f) Technology shall be provided to each eligible student
5 receiving technology mediated instruction, including any
6 assistive technology device and assistive technology service
7 needed for the technology to be accessible to and usable by the
8 eligible student.

9 (g) The individualized education program for an eligible
10 student shall:

11 (1) Contain information sufficient to document approval of
12 the student as an eligible person, as defined in
13 section 121(d)(3) of the Copyright Act of 1976
14 (17 U.S.C. 121(d)(3)), as amended;

15 (2) Identify:

16 (A) The print instructional materials to be used by
17 the students without disabilities;

18 (B) All accessible formats of the instructional
19 materials; and

20 (C) The services and instruction to be provided to
21 convert the print instructional materials into



1 accessible instructional materials and enable the
2 eligible student to use the instructional
3 materials in one or more accessible formats
4 usable by the eligible student;

5 (3) Specify the supplementary aids and services the
6 individualized education program reasonably
7 anticipates the eligible student will need to receive
8 for the duration of the individualized education
9 program for reasonable access to classroom materials
10 and media not identified in paragraph (2)(A);

11 (4) If the eligible student is blind and receiving
12 instruction in braille or the use of braille, ensure
13 that instructional materials are provided in braille
14 and may be used by the eligible student in addition to
15 other accessible formats available;

16 (5) List any assistive technology device and assistive
17 technology service needed for the eligible student to
18 use accessible instructional materials and technology
19 mediated instruction, including timely and appropriate
20 instruction to enable the eligible student to use the



- 1 technology to access age-appropriate content
2 independently;
3 (6) Ensure that any assistive technology device or
4 assistive technology service used for accessible
5 instructional materials is available for use by the
6 eligible student in school, at home, and in other
7 settings to the same extent that print instructional
8 materials are available to other students; and
9 (7) Identify and provide technology to be used by an
10 eligible student when receiving technology mediated
11 instruction, including any assistive technology device
12 and assistive technology service needed for the
13 technology to be accessible to and usable by the
14 eligible student."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.



H.B. NO.

388
H.D. 1
S.D. 2
C.D. 1

APPROVED this **7th** day of **July**, 2023

A handwritten signature in black ink, appearing to read "Josh Green". The signature is written in a cursive, flowing style.

GOVERNOR OF THE STATE OF HAWAII

HB No. 388, HD 1, SD 2, CD 1

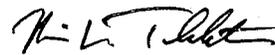
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 2, 2023
Honolulu, Hawai‘i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai‘i, Regular Session of 2023.


President of the Senate


Clerk of the Senate