

To: Members of the Joint Ways and Means Education Subcommittee
RE: HB 2871

Co-Chairs Monroe and Komp, and Members of the Subcommittee

My name is Ken Brown. I am presenting this testimony in my capacity as the Oregon Legislative Liaison for the National Association of College Stores (NACS). My regular position is as the District Manager for Bookstore Operations at Portland Community College.

Prior to coming to PCC, I was the President and CEO of the Portland State University Bookstore. In that capacity I worked on textbook affordability issues with former Congressman David Wu, OSPIRG, NACS, and student government groups. I participated in numerous forums and testified before the U.S Department of Education in hearings at PSU. In addition I have submitted testimony to the Oregon Legislature. I was a member of the HECC Workgroup that conducted public hearings on textbook affordability in 2012 and I am one of the co-authors of the 2012 textbook affordability report that was required in response to HB 4058 (2012).

My testimony today is to recommend three amendments to HB 2871. Each of these amendments is recommended to strengthen the measure as written and to address shortcomings that may lead to unintended consequences and/or risks to the state and its institutions of higher education under current state and federal statutes.

Accessibility Provision

The Committee should review California's OER law SB 1052 (2012) for appropriate accessibility language. The most applicable provision is the following:

(3) The textbooks and other materials conform to the most current, ratified standards under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d), as amended, and the Web Content Accessibility Guidelines adopted by the World Wide Web Consortium for accessibility. The textbooks and other materials shall be furnished to colleges and universities for distribution to students with print disabilities in accordance with the requirements of Section 67302 or 67302.5, as applicable.

Adding such a provision will proactively address any potential risks under both Title VII and Title IX of the Higher Education Opportunity Act as well as the Americans With Disabilities Act (ADA).

There have been a number of recent lawsuits filed over accessibility issues at colleges and universities and it is simply prudent to require any course materials that are developed using taxpayer funds to adhere to the most current accessibility standards. It is also the right thing to do to ensure that all of our students have equal access to any materials developed under any HECC grants.

Additional Amendments

SECTION 1, Page 2 AFTER line 8, INSERT:

(h) Distribute digital and hard copy textbooks and course materials through the campus bookstore.

SECTION 2, Page 2 AFTER line 21, INSERT:

(4) Collaborate with campus bookstores on strategies to distribute digital and hard copy textbooks and course materials through campus bookstores.

The first amendment will encourage grant applicants to include in their applications ways they plan to distribute digital and hard copy OER and low cost textbooks and course materials through the campus bookstore. This would ensure that students continue to receive current, up-to-date information, and conforms to the intent of Section (4) of current state code as well as the federal Higher Education Act 133 textbook affordability provisions.

The second amendment fosters stronger collaboration and can significantly reduce confusion as well as cost of distribution. Most campus bookstores in the State of Oregon already have mechanisms and systems in place to effectively collate and to disseminate critical information about course materials to our students while also having the ability to readily deliver digital content attached to specific courses. Many of us already have the ability to create print versions of materials to be able to address the need that some students have for print instead of digital only options.

Both amendments also have the following positive outcomes:

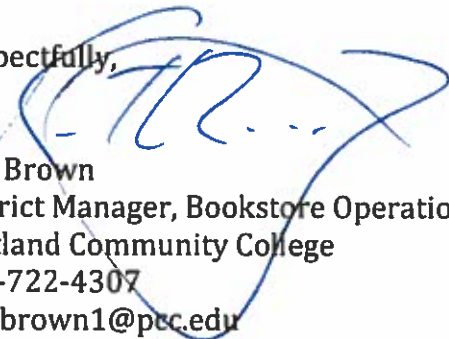
- Are in the spirit and intent of the bill to foster collaboration across the system and on campuses.
- Will strengthen implementation in helping identify and recruit appropriate courses for consideration.
- Increases student choice in format and accessibility in a variety of digital formats and platforms and low cost print options.
- Reduces the financial burden on state taxpayers by promoting HECC and institutions to explore sustainable approaches to supporting and expanding such initiatives, while minimize negative financial impact on student support services and institutional grant aid.

- Are similar to provisions contained in proposed OER grant legislation in California (AB 798) and Texas (SB 915).

I have attached these amendments as an addendum to my written testimony.

I think the committee for its consideration of these recommendations and am available for any further questions.

Respectfully,



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Proposed Amendments to HB 2871

A-Engrossed

SECTION 1, Page 2 AFTER line 8, INSERT:

(h) Distribute digital and hard copy textbooks and course materials through the campus bookstore.

SECTION 2, Page 2 AFTER line 21, INSERT:

(4) Collaborate with campus bookstores on strategies to distribute digital and hard copy textbooks and course materials through campus bookstores.

Summary: The first amendment encourage grant applicants to include in their grant applications ways they plan to distribute the digital and hard copy OER and low cost textbooks and course materials through the campus bookstore. The second amendment would require the OER Coordinator at HECC to collaborate with campus bookstores on strategies to distribute the materials through the campus bookstore.

Justification: The amendments:

- Conforms to the intent of Section (4), current state code, and the federal Higher Education Act Section 133 textbook affordability provisions.
- Are in the spirit and intent of the bill to foster collaboration across the system and on campuses.
- Will strengthen implementation in helping identify and recruit appropriate courses for consideration.
- Increases student choice in format and accessibility in a variety of digital formats and platforms and low cost print options.
- Reduces the financial burden on state taxpayers by promoting HECC and institutions to explore sustainable approaches to supporting and expanding such initiatives, while minimize negative financial impact on student support services and institutional grant aid.
- Are similar to provisions contained in proposed OER grant legislation in California (AB798) and Texas (SB915).

REVIEW OF “A CLEAR STANDARD FOR ACCESS TO EDUCATION”

Adapted from Conference Session facilitated by
Kaela Parks of Portland Community College and Gabriel Merrell of Oregon State University

THE ISSUE

- Websites may not be fully usable – they do not align with WCAG or provide an intuitive user experience.
- Procurement or adoption processes could allow inaccessible technology to become required, putting institutions at risk and leading to situations we cannot accommodate our way out of.
- Not enough pressure is felt by vendors to shift the balance and lead to more accessible offerings.

WHO’S IMPACTED

Almost 57 million individuals in the U.S. have a disability (19%)

Compared to the general population:

- 6.2% (14.9 million) have a visual, hearing, or speech related disability
- 20.8% (50.5 million) have a mobility related disability
- 6.3% (15.1 million) have a cognitive and/or mental disability

Source: Brault, Matthew W., "Americans With Disabilities: 2010," Current Population Reports, P70-131, U.S. Census Bureau, Washington, DC, 2012.

A little over 2 million undergraduate college students have a disability (11%)

Compared to all college students:

- 1% (194,000) have a visual, hearing, or speech related disability
- 1.6% (300,000) have a mobility related disability
- 5.4% (1,040,000) have a cognitive and/or mental disability

Source: U.S. Department of Education, National Center for Education Statistics, 2007-2008 National Postsecondary Student Aid Study

In Oregon nearly 800,000 individuals self-report disability. Oregon Office on Disability and Health (OHSU) 2013 Annual Report on the Health of Oregonians with Disabilities shows disability prevalence by county.

BRIEF LISTING OF CASES RELATED TO CURRICULAR MATERIAL ACCESSIBILITY

- NFB v. LSAC/Cal Law Schools (Feb 2009)
- NFB/ACB v. Kindle (Jan 2010 – all 6 colleges settled)
- Dear Colleague Letter (June 29, 2010) – and follow-up (May 26, 2011)
- NFB complaint v. Penn State (Nov 2010)
 - websites (dept. sites, library catalogue, etc.), software, hardware, vendors
 - NFB - “wake up call for universities”
 - pervasive discrimination against employees /students
- NFB complaint v. Google, NYU, Northwestern, Oregon K-12 districts (March 2011)
- Florida State University – inaccessible course materials (2012)
- University of California at Berkeley – accessible course and library materials (2013)
- South Carolina Technical College System – inaccessible websites (2013)
- Louisiana Tech University – inaccessible course materials (2013)
- University of Montana – inaccessible course materials (2014)
- Maricopa Community College District – inaccessible coursework software (2014)
- University of Cincinnati and Youngstown State University – inaccessible websites (2014)

THE CASES COVERED IN “A CLEAR STANDARD FOR ACCESS TO EDUCATION”

See the AHEAD website for documentation on each of these cases as well as additional supplemental materials such as the AIM commission report and Dear Colleague Letters.

"Accessible" means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. "

LOUISIANA TECH – DOJ - 2013

- Findings
 - Course relied on inaccessible third-party website
 - Student complained, fell behind, then withdrew
 - Instructor did not provide accessible option for hard copy materials in timely manner
- Actions
 - Establish policy that prevents inaccessible online offerings
 - Establish procedures with timelines for grievances
 - Train instructors, administrators and students

SOUTH CAROLINA TECH COLLEGE SYSTEM – OCR - 2013

- Findings
 - Websites not readily accessible, documents on websites, videos without access
- Actions
 - Update websites to be accessible
 - Create resource guides, monitor progress
 - Each college of the system submit annual report documenting compliance reviews

BERKELEY – DRC (PRIVATE LAW FIRM REPRESENTING DISABILITY RIGHTS)

- Findings
 - Inaccessible course materials
 - Claims of unreasonable time waiting for conversion of materials
- Actions
 - Set very specific timelines
 - textbooks in 10 business days
 - course readers in 17 days
 - Instructors select 7 weeks prior
 - Library conversions ~ 5 days
 - Interim accommodations
 - Annually train staff and administrators - enforcement
 - Tracking transparency for alt format process
 - Self-Serve scanning stations
 - AT in labs/libraries

RESOURCES

- PCC has a page on [publishers](#) for faculty in textbook adoption processes as well as a site on [web access standards](#)
- OSU has a comprehensive [accessibility site](#) for ensuring accessibility of the built as well as the online environment
- **The California State University system** has the [Accessible Technology Initiative](#) with templates that can be adapted
- **The AHEAD site** provides direct links to the documents for the cases described in "[A Clear Standard](#)"

SELECTED QUOTES

Requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities – individuals with visual disabilities – is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.

From the June 29, 2010 Dear Colleague Letter

[DOJ] has long taken the position that both State and local government websites and the websites of private entities that are public accommodations are covered by the ADA...[and] are required by law to ensure that their sites are fully accessible to individuals with disabilities...There is no doubt that the internet sites of State and local government entities are covered by Title II of the ADA. Similarly, there is no doubt that the websites of recipients of Federal financial assistance are covered by Section 504 of the Rehabilitation Act.

Testimony of Samuel R. Bagenstos, Principal Deputy Assistant Attorney General for Civil Rights before the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, April 22, 2010.

"Companies that do not consider accessibility in their website or product development will come to regret that decision, because we intend to use every tool at our disposal to ensure that people with disabilities have equal access to technology and the worlds that technology opens up."

Thomas Perez, Assistant Attorney General for Civil Rights
Keynote Speech, 2010 Jacobus tenBrock Disability Law Symposium, April 15, 2010.

As we come to realize anew each day, the pace of technological change is amazing; what appeared impossible just months or years ago is now commonplace. Advancing technology can open doors for people with disabilities and provide the means for them to have full, equal, and integrated access to American life. But technological advances will leave people with disabilities behind if technology developers and manufacturers do not make their new products accessible...We must avoid the travesty that would occur if the doors that are opening to Americans from advancing technologies were closed for individuals with disabilities because we were not vigilant.

Samuel R. Bagenstos, Testimony before the House Judiciary Subcommittee on the Constitution,
Civil Rights and Civil Liberties, April 22, 2010.

"Accessible" means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

Source - Resolution Agreement South Carolina Technical College System OCR Compliance Review No. 11-11-600.