



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

The Honorable Lamar Alexander
Chairman
Senate HELP Committee
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Senate HELP Committee
Washington, DC 20510

May 4, 2018

Re: Accessible Instructional Materials in Higher Education Reauthorization Legislation

Dear Chairman Alexander and Ranking Member Murray,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Civil Rights, Education, and Technology & Telecommunications Task Forces write to urge you to include the language of S. 2138, the Accessible Instructional Materials in Higher Education Act or the “AIM HIGH Act” in any final higher education reauthorization legislation reported out of the Health, Education, Labor, and Pensions (HELP) Committee. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society.

S. 2138 is bipartisan legislation cosponsored by Senators Orrin Hatch (R-UT) and Elizabeth Warren (D-MA) that clarifies and helps ensure access for students with disabilities to electronic instructional materials and related technologies used in postsecondary education. In particular, the bill authorizes the creation of a commission to develop voluntary accessibility guidelines for colleges and universities regarding electronic instructional materials and related technologies used in postsecondary education. The bill would help provide clarity for postsecondary education providers on compliance with existing obligations under Section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act (ADA), which will help students in higher education institutions access the materials and content they need.

It should be noted that language about accessible instructional materials and related technologies is included in the current House higher education reauthorization bill, H.R. 4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act, as reported out of the House Committee on Education and the Workforce. PROSPER, as reported, includes Section 735, which provides that “[a]n institution of higher education that requires, provides, or both recommends and provides, postsecondary electronic instructional materials or related technologies that conform to the voluntary guidelines shall be deemed in compliance

with, and qualify for a *safe harbor from liability* in relation to, its obligations under section 504 of the Rehabilitation Act of 1973 . . . and titles II and III of the Americans with Disabilities Act . . . with respect to its selection of such materials or technologies.”

The so-called “safe harbor” provision would create intolerable uncertainty for institutions of higher education and for individuals with disabilities because the provision directly conflicts with the Attorney General’s enforcement authority under the ADA and the enforcement authority of other Federal agencies under Section 504. The Department of Justice (DOJ) has been entrusted with the responsibility to review compliance with the ADA and bring enforcement actions if it determines that covered entities are non-compliant. The Department of Education, Office for Civil Rights has similar authority with respect to Section 504. Also, individuals with disabilities may file complaints alleging violations of Section 504 and the ADA. In the meantime all stakeholders would be left in a state of uncertainty.

We believe that the language in the Senate companion bill S. 2138, which does not include the safe harbor provision, achieves the same policy goals of Section 735 of PROSPER Act without undermining the basic tenets of good government where the federal government retains responsibility for determining compliance with federal laws. We urge you to include the language of S. 2138 in your Committee’s final bill.

Please feel welcome to contact the CCD Civil Rights, Education, or Technology & Telecommunications Task Forces’ Co-Chairs with any questions or concerns. You may contact Leif Brierley, Perkins School for the Blind and Co-Chair of the CCD Technology & Telecommunications Task Force, at Leif.Brierley@PowersLaw.com or 202-466-6550 with any questions.

Sincerely,

American Foundation for the Blind
Association of Assistive Technology Act Programs
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law
Council for Learning Disabilities
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Epilepsy Foundation
IndependenceFirst
Institute for Educational Leadership
National Association of Councils on Developmental Disabilities
National Disability Rights Network
Perkins School for the Blind
Rehabilitation Engineering and Assistive Technology Society of North America
TASH
The Advocacy Institute
United Spinal Association