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HOUSE BILL NO. 1246

Offered January 20, 2022

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 13 of Title 22.1 a section numbered 22.1-212.2:4, relating to public elementary and secondary schools; students; digital tools; accessibility.*

 Patron—Tran

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 13 of Title 22.1 a section numbered 22.1-212.2:4 as follows:

§ 22.1-212.2:4. Digital tools; accessibility.

A. As used in this section:

"Accessibility standard" means the same as such term is defined under § 508(a)(2) of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794d(a)(2).

"Digital tool" means an online platform, a course, a digital application, information and communication technology services, and digital content.

"Nonvisual access" means the ability to receive, use, and manipulate information and operate controls necessary to access information and communications technology through keyboard control, synthesized speech, Braille, and other methods not requiring sight.

B. The Department shall establish and revise when necessary guidelines for local school divisions that govern the purchase of accessible digital tools to be used in student instruction. Such guidelines shall (i) incorporate, at a minimum, the then-current accessibility standard; (ii) include information on how local school divisions can incorporate the accessibility standard into their procurement processes for digital tools and assess bids for accessibility; (iii) provide minimum requirements for the product accessibility template required in subdivision C 2 and (iv) identify examples of third-party professional accessibility testers.

C. Notwithstanding the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) or alternative policies and procedures adopted in accordance with subdivision A 11 of § 2.2-4343, the procurement process utilized by each local school division for the purchase of a digital tool shall require, except in a case in which (i) the lowest bid received from a vendor for a digital tool that meets the standards for accessibility set forth in the guidelines established by the Department pursuant to subsection B is 20 percent higher than the lowest bid received from a vendor for a digital tool that does not meet such standards or (ii) the school division does not receive any bid from a vendor for a digital tool that meets such standards:

1. The digital tool procured to meet or exceed the standards for accessibility set forth in the guidelines established by the Department pursuant to subsection B;

2. Each digital tool vendor to submit a voluntary product accessibility template prepared by a third-party professional accessibility tester to demonstrate how the digital tool conforms to the standards for accessibility set forth in the guidelines established by the Department pursuant to subsection B and to remedy any nonconforming digital tool within 180 days of receipt of notice of such nonconformity from the local school division at any time during the term of the contract. If the vendor does not remedy such nonconformity within such 180-day period, the local school division shall notify the Department of the name of the vendor and the digital tool within 30 days; and

3. Each digital tool vendor to indemnify the local school board for liability resulting from the use of a procured digital tool that fails to meet the accessibility standard, including nonvisual access.

D. The Department annually post in a publicly accessible format the names of each vendor and nonconforming digital tool received from any local school division pursuant to subdivision C 2.

E. A local school board shall provide each student with a disability with access to digital tools that (i) are fully and equally accessible to and independently usable by a student with a disability and (ii) enable a student with a disability to acquire the same information, participate in the same interactions, access the same services, and derive the same benefit as a student without a disability, with substantially equivalent ease of use.

F. If any digital tool is provided to students without disabilities and not to a student with a disability, the local school board shall implement an alternative method of instruction, including use of another digital tool, if available, that enables the student with a disability to achieve the same educational outcomes in a manner that is consistent with the student's individualized education program.

59 2. The provisions of subsection C of § 22.1-212.2:4, as created by this act, shall apply only to
60 procurement processes initiated on or after September 1, 2022.