

**POLICY PROPOSAL
TITLE 4, CHAPTER 8
SECTION 14 & SECTION 15**

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 14. General Policy of the Board of Regents on Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

2. Definitions

For purposes of this policy and Sections 15 (Information and Communications Technology), 16 (Service Animals) and 17 (Emotional Support Animals) of this Chapter the following definitions apply:

- a. Disability: An individual has a qualifying disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment pursuant to Section 4(b)(iii) below.
- b. Qualified Individual with a Disability:
 - i. With respect to NSHE programs and services, means an individual who meets the academic and technical standards requisite for admission or participation in the NSHE program or activity
 - ii. With respect to employment, means an individual who with or without reasonable accommodation can perform the essential functions of the job.
- c. Reasonable Accommodation: An adjustment or modification that allows the qualified individual with a disability access to employment and/or participation in the various programs and services of NSHE and its member institutions. A reasonable accommodation shall not fundamentally alter the curriculum of any program, fundamentally alter the nature of any activity or service provided, or fundamentally alter the essential functions of any job, nor shall it impose an undue burden, on NSHE, any NSHE institution, or any program or activity thereof.
- d. Undue Burden: An undue burden results when a proposed course of action would result in significant difficulty, hardship, or financial or administrative burden.
- e. Fundamental Alteration: A change to a service, program, or activity that fundamentally alters the nature of the service, program, or activity, which includes academic courses or technology.
- f. Timely: Access in a reasonably sufficient time for the individual with the disability to have an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as individuals without disabilities.
- g. ***Accessibility: Individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use.***

Section 15. Policy for Information and Communications Technology (ICT) Accessibility (Effective September 1, 2017)

2. Scope of Policy

- a. This policy applies to Information and Communications Technology (ICT) that is developed, procured, or utilized by NSHE and its institutions for NSHE programs, services, instructional materials, or activities. ICT includes, but is not limited to, computer hardware and software, operating systems, computer or web-based information and applications, ~~cellular and~~ mobile apps, enterprise applications, learning management systems, telecommunication products, information kiosks and transaction machines, ~~World Wide Web~~ **web sites** (including web pages, web applications, and web content), multimedia **content**, ~~and~~ office equipment, **and electronic documents**.
- b. ~~[With respect to this policy, “accessible” means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use.]~~ If an ICT cannot be made accessible due to technical infeasibility or undue financial or administrative burden, “equally effective alternate access” must be provided in a timely manner. “Equally effective alternate access” means an alternative format, medium, or other aid that timely and accurately communicates the same content as does the original format or medium, and which is appropriate to an individual's disability. To provide equally effective alternate access, alternatives are not required to produce the identical result or level of achievement for individuals with and without disabilities, but must provide appropriate auxiliary aids and services as necessary to afford individuals with disabilities an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement, in the most integrated setting appropriate to their needs.
- c. NSHE and its institutions are not required to take any action that results in a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burden pursuant to this policy, but must nevertheless ensure, to the maximum extent possible, that ~~qualified students~~ **individuals** with disabilities receive the benefits or services provided by NSHE and its institutions.

[remove space between paragraphs; continue paragraph below as next sentence]

Each president or the president's designee who has budgetary authority may approve exceptions to this policy based on a determination that the action would result in a fundamental alteration or undue burden.

- d. ~~[Except as otherwise provided herein, this policy does not apply to ICT utilized and intended solely for internal institutional operations, except to the extent accessibility is required for an individual with a disability.]~~

3. Institutional Policies and Procedures

Each institution shall develop policies and procedures to ensure compliance with Board of Regents policy and any and all applicable federal and state laws governing access by an individual with a disability to ICT at postsecondary institutions. Institutional procedures must include, but are not limited to:

- a. Procedures for identifying, reporting and addressing in a timely manner ICT that is not accessible to an individual with a disability These procedures must include the timeline required pursuant to Subsection 5.a. of this Section;
- b. A procedure through which individuals with a disability identify themselves, as required under Section 15 (4)(b)(ii);
- c. When an accessible ICT is not available, a procedure for ~~[an accommodation]~~ **equally effective alternate access** to be provided so that individuals with disabilities are able to receive equally effective communication of ~~[curricula]~~ **information and data** materials (e.g. course materials, textbooks, workbooks, articles, compilations, presentations, collaborative assignments, videos, and images or graphical materials) converted to alternate format or made accessible in a timely manner. The individual with the disability must **report and request access to an inaccessible ICT** ~~[the accommodation]~~ and participate in the ~~[procedures]~~ **process** developed by the institution to identify what will be equally effective communication; ~~[-An institution must document the rationale for why an accommodation requested by an individual is not granted;]~~
- d. A procedure under which a president or the president's designee who has budgetary authority may approve an exception to this policy pursuant to 2.c. above based on a determination that the action would result in a fundamental alteration or undue burden. Any exceptions approved by the president or the president's designee must only be made after considering all resources available for use in the funding and operation of the service, program, or activity. If the president or his designee approves such an exception, the president or his designee must provide a written statement of the reasons for reaching that conclusion, including the cost of meeting the requirement, the available funding and other resources, and the institution's plan for providing equally effective alternate access.

5. Web Content Accessibility and Time Frames

- a. Except as otherwise provided in this Section, each institution must establish a reasonable timeline based on the institution's resources for its web pages, web applications, web content and websites to conform at a minimum with **NSHE Accessibility Standards**. ~~[World Wide Web Consortium's (W3C's) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA.]~~ The procedures must require the institution to demonstrate progress in achieving conformance with these Guidelines.
- b. Exceptions include but are not limited to:
 - i. Archived **Web content** ~~[(i.e., content no longer in use but subject to records retention schedules) web pages and websites]~~, unless specifically requested to be made accessible by an individual with a disability. If such a request is made, NSHE or the institution must provide either access that complies at a minimum with **NSHE Accessibility Standards** ~~[WCAG 2.0 Level AA.]~~ or equally effective alternate access for the individual with a disability. **"Archived Web content" means Web content that is: (1) maintained exclusively for reference, research, or recordkeeping; (2) not altered or updated after the date of archiving; and (3) organized and stored in a dedicated area or areas clearly identified as being archived;**

- ii. Web pages and websites designed solely to conduct research or created for developmental or test-site purposes, unless specifically requested to be made accessible by an individual with a disability who has authorization to access those web pages or websites. If such a request is made, NSHE or the institution must provide either access that complies at a minimum with **NSHE Accessibility Standards** [~~WCAG 2.0 Level AA~~] or equally effective alternate access for the individual with a disability;
- iii. Electronic documents posted to institution or NSHE websites and subdomains or within their web applications that meet all of the following requirements:
 - (a) The documents are of interest to a specific and limited audience (e.g., researchers in a particular academic discipline);
 - (b) The set of documents requiring remediation to conform at a minimum with **NSHE Accessibility Standards** [~~WCAG 2.0 AA~~] is voluminous (i.e., the total page count of the electronic documents that reside on a single web page exceeds 100 pages), or cannot be made accessible due to technical infeasibility; and
 - (c) The documents are presented in such a way that individuals with disabilities are able to identify documents or sections of documents of particular interest and request remediation of those documents in accordance with procedures established by the institution.
- iv. Web pages, web applications, or web content, or that would result in a fundamental alteration in the nature of a service, program, or activity or in an undue financial or administrative burden to bring into compliance with **NSHE Accessibility Standards** [~~WCAG 2.0 Level AA~~].