

IDEA Regulations

NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD (NIMAS)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the Act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the Act. The final NIMAS was published on July 19, 2006 (71 FR 41084) and was included as Appendix C to Part 300--National Instructional Materials Accessibility Standard--published on August 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses statutory and final regulatory requirements regarding NIMAS.

IDEA Regulations

1. Provides definitions related to purchase of and access to instructional materials.

These definitions apply to each State and local educational agency (LEA), whether or not the State or LEA chooses to coordinate with the National Instructional Materials Access Center (NIMAC).

[34 CFR 300.172(e)(2)] [20 U.S.C. 1412(a)(23)(E), 1474(e)(3)(A)]

"NIMAS" has the meaning given that term in section 674(e)(3)(B) of the Act (NIMAS means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats).

[34 CFR 300.172(a)(1)(iii)] [20 U.S.C. 1474(e)(3)(B)]

“Specialized formats” has the meaning given that term in section 674(e)(3)(D) of the Act (“Specialized formats” means Braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities).

[34 CFR 300.172(e)(1)(iv)] [20 U.S.C. 1474(e)(3)(D); 17 U.S.C. 121(d)(3)]

“NIMAC” means the center established in section 674(e) of the Act, through the American Printing House for the Blind (APH), not later than one year after the date of enactment of IDEA. NIMAC’s duties are:

- To receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies (SEAs), and LEAs.
- To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe.
- To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided in sections 612(a)(23) and 613(a)(6) of the Act.

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the IDEA website at: <http://IDEA.ed.gov>.

[34 CFR 300.172(e)(1)(ii)] [20 U.S.C. 1474(e)(2)(A), (B), (C)]

The statute defines “print instructional materials” to be printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a SEA or LEA for use by students in the classroom.

[20 U.S.C. 1474(e)(3)(C)]

“Blind persons or other persons with print disabilities”² means children served under Part 300 who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled “An Act to Provide Books for the Adult Blind,” approved March 3, 1931, 2 U.S.C. 135a.

[34 CFR 300.172(e)(1)(i)] [20 U.S.C. 1474(e)(3)(A)]

2. Requires the adoption of NIMAS.

States must:

- Adopt the NIMAS, published as appendix C to Part 300, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084); and
- Establish a State definition of “timely manner” for purposes of 34 CFR 300.172 (b)(2) and (b)(3) if the State is not coordinating with the NIMAC or 34 CFR 300.172 (b)(3) and (c)(2) if the State is coordinating with the NIMAC.

[34 CFR 300.172(a)] [20 U.S.C. 1412(a)(23)(A)]

3. Establishes SEA rights and responsibilities.

Nothing in 34 CFR 300.172 shall be construed to require any SEA to coordinate with the NIMAC. If an SEA chooses not to coordinate with the NIMAC, the SEA must provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 34 CFR 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

In order to meet its responsibility under paragraphs 34 CFR 300.172 (b)(2), (b)(3), and (c) to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the SEA must ensure that all public agencies take all reasonable steps to provide

² The Library of Congress regulations (36 CFR 701.6(b)(1)) related to the Act to Provide Books for the Adult Blind (approved March 3, 1931, 2 U.S.C. 135a) provide that “blind persons or other persons with print disabilities” include: (i) Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees. (ii) Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material. (iii) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations. (iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner. Competent authority is defined in 36 CFR 701.6(b)(2) as follows: (i) In cases of blindness, visual disability, or physical limitations “competent authority” is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents). (ii) In the case of a reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.

instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.

[34 CFR 300.172(b)] [20 U.S.C. 1412(a)(23)(B)]

4. Establishes requirements for the preparation and delivery of files.

If an SEA chooses to coordinate with the NIMAC, as of December 3, 2006, the SEA must:

- As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to:
 - o Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
 - o Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
- Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

[34 CFR 300.172(c)] [20 U.S.C. 1412(a)(23)(C)]

5. Requires collaboration with State agencies providing assistive technology programs.

In carrying out this section, the SEA, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

[34 CFR 300.172(d)] [20 U.S.C. 1412(a)(23)(D)]

6. Establishes responsibilities of LEAs for purchase of instructional materials.

Not later than December 3, 2006, an LEA that chooses to coordinate with the NIMAC, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under 34 CFR 300.172.

Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.

If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 34 CFR 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

[34 CFR 300.210] [20 U.S.C. 1413(a)(6)(E)]