

## TOPIC BRIEF

### Accessible Educational Materials and the National Instructional Materials Accessibility Standard/National Instructional Materials Access Center - Additional Assurances Required for Individuals with Disabilities Education Improvement Act Part B Grant

The Individuals with Disabilities Education Improvement Act (IDEA) Section 300.172 addresses access to instructional and educational materials in a timely manner by individuals who are blind or have other print-related disabilities through the establishment of the National Instructional Materials Access Center (NIMAC) and the adoption of the National Instructional Materials Accessibility Standard (NIMAS).

Connecticut has adopted the NIMAS standard, which outlines a set of consistent and valid document source files created by K–12 curriculum publishers or other content producers that allows the creation of accessible formats of print instructional materials. Curriculum materials covered by the NIMAS include printed textbooks and printed core materials that are written and published primarily for use in elementary and secondary school instruction.

In order to ensure that educational materials in accessible formats are provided in a timely manner in Connecticut, all reasonable efforts will be made by the local education agency (LEA) to ensure that accessible educational materials (AEM) are provided to children with disabilities who need accessible formats of educational materials at the same time as other children receiving their educational materials.

Connecticut has provided to the Office of Special Education Programs (OSEP) an assurance that the state will participate in the NIMAC. Without this participation, the state would not have access to the national repository of converted textbook files. The NIMAC utilizes authorized users who can access a national repository of curriculum materials converted into accessible formats for individuals who are blind or individuals with other print-related disabilities.

In October of 2018, the President signed the Marrakesh Treaty Implementation Act (MTIA). The MTIA amends Section 121 of the Copyright Act, 17 United States Code (USC Section 121). There are two changes to 17 USC Section 121 that impact the provisions regarding accessible instructional materials in the IDEA Section 612(a)(23), 20 USC Section 1412(a)(23) and 34 Code of Federal Regulations (CFR) Section 300.172 of the IDEA Part B regulations.

In the Further Consolidated Appropriations Act, 2020, Congress amended the 1931 Act to Provide Books for the Adult Blind (2 USC Section 135a) to incorporate the definitions found in 17 USC Section 121. As a result of MTIA and changes made by the Further Consolidated Appropriations Act, 2020, the following information will be used/replaced/referenced for guidance related to AEM.

#### **Changes to the Definition of ‘Specialized Formats’**

The term “specialized formats” is defined in the IDEA at 20 USC Section 1412(a)(23)(E)(iii) and the IDEA’s definition cross references the Copyright Act. The IDEA Part B regulations at 34 CFR Section 300.172(e)(1)(iv) also incorporate this IDEA

statutory definition. As a result of changes made to the Copyright Act, 17 USC Section 121, the term “specialized formats” has also been removed and replaced with the term “accessible format.” “Accessible format” means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3).” 17 USC Section 121(d)(1).

### **Changes to the Definition of ‘Blind Persons or Other Persons with Print Disabilities’**

The IDEA defines the term “blind or other persons with print disabilities” in 20 USC Section 1412(a)(23)(E)(i). The IDEA part B regulation at 34 CFR Section 300.172(e)(1)(i) incorporates the IDEA statutory definition. The term “blind persons or other persons with print disabilities” has been removed from the Copyright Act and replaced with the term “eligible person.” “Eligible person” means an individual who, regardless of any other disability—(A) is blind; (B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function, substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or (C) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.” 17 USC Section 121(d)(3).

It should be noted that the above section removed the outdated medical perspective of “organic” referring to biological impairments in the central nervous system that was not the result of emotional or non-organic factors and relies on a medical model to be a “competent authority” to determine a certification. The outdated terminology and medical model does not align with the educational perspective. The IDEA does not require documentation by medical personnel to identify a child/student as having a disability and a need for specialized instruction and related services. In Connecticut, the planning and placement team (PPT) participate equally in the decision-making process to determine the specific educational needs of a child with a disability and develop an individualized education program (IEP) for the child (Section 10-76a-1(14)).

The PPT, cooperating with other qualified professionals as needed, is responsible for the identification of children requiring special education and related services based on the results of an evaluation, sufficiently comprehensive to identify all of the child’s special education and related service needs. If a student is identified as having a print-related disability (e.g., blindness, visual impairment, physical limitations, and specific learning disability in reading), which impacts the student’s ability to access the general curriculum, then the PPT may determine, as the competent authority, that the student qualifies to receive AEM produced in accessible formats as delineated on the IEP through an accessible media producer and/or the NIMAC.

As part of the IDEA Part B 611/619 grant application, annual assurances related to the coordination of efforts between the LEA and the NIMAC are required. Therefore, any print instructional materials adoption process, procurement contract or other practice, or instrument used for the purchase of print instructional/educational materials with the LEA when entering into a written contract with the publisher of the print instructional materials will:

- a) Purchase instructional/educational materials from the publisher that are produced in, or may be rendered in, accessible formats.
- b) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the NIMAC, electronic files containing the contents of the print instructional materials using the NIMAS standard.

The following is suggested purchase order language to be used by the LEA when purchasing textbooks:

By agreeing to deliver the materials marked with “NIMAS” on this contract or purchase order, the publisher agrees to prepare and submit, on or before \_\_/\_\_/\_\_, a NIMAS file set to the NIMAC that complies with the terms and procedures set forth by the NIMAC. (IDEA Title I, Part D, Section 674(e)). The publisher also agrees to mark up materials eligible for NIMAS submission that contain mathematical and scientific instructional content by using the MathML3 (refer to latest applicable version) module of the Digital Accessible Information System (DAISY)/NIMAS Structure Guidelines as posted and maintained at the DAISY Consortium Website ([www.daisyconsortium.org](http://www.daisyconsortium.org)). Should the vendor be a distributor of the materials and not the publisher, the distributor agrees to notify the publisher immediately of its obligation to submit NIMAS filesets of the purchased products to the NIMAC. The files will be used for the production of alternate formats as permitted under the law for students with print disabilities (IDEA Title I, Part B, Section 612(a)).

This is page \_\_\_\_ of \_\_\_\_ of this contract or purchase order.

At the present time, all LEAs in Connecticut have elected to participate in NIMAS/NIMAC. If in the future an LEA decides to opt out of participation in NIMAS/NIMAC, the LEA will be unable to access this national clearinghouse and its staff will not receive preferential attendance at NIMAS/NIMAC conferences held by the Bureau of Special Education and/or the State Education Resource Center. In choosing not to participate in NIMAC, each LEA would contract with curriculum publishers directly to purchase accessible, student-ready versions. **However, this does not relieve the LEA of providing curricular materials in accessible formats in a timely manner.** Before federal special education funds are released to the district, a plan must be submitted to, and approved by the Connecticut State Department of Education detailing the process it will use to obtain the following:

How to:

- purchase source fields, when and if available directly from publishers, establish a secure access, distribution and tracking system and arrange to use such files to produce student-ready accessible formats;
- purchase student-ready versions, when and if available, directly from publishers; and/or
- establish a workflow for scanning print materials and produce, or otherwise obtain, audio books, Braille, large print and other appropriate accessible formats in a timely manner.

Further information on AEM, the NIMAS/NIMAC and frequently asked questions may be viewed at the following Websites:

- o <http://www.aim.serc.co/>;
- o <http://aim.cast.org/learn/policy/federal/faq>;
- o Need for AEM FAQ - <http://aem.cast.org/navigating/need-faq.html>;
- o Acquisition of Specialized Formats FAQ - <http://aem.cast.org/navigating/acquisition-specialized-formats-faq.html>;
- o NIMAS FAQ - <http://aem.cast.org/policies/nimas-faq.html>; and
- o <http://www.aim.serc.co/>.

If you have any questions about accessible educational materials and the NIMAS/NIMAC, please contact the State Coordinator, Thomas Boudreau at [thomas.boudreau@ct.gov](mailto:thomas.boudreau@ct.gov) or 860-713-6919.